

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

Appeal # : **15-006-094-002**

Adjudicator: Garreth McGrath

Appellant(s): Ian Gosse

Respondent / Authority: Town of Portugal Cove - St. Philips

Date of Hearing: 5 March 2026

Start/End Time : 9:00 – 9:30

In Attendance

Appellant: Ian Gosse

Appellant Representative(s):

Respondent/Authority: Town of Portugal Cove - St. Philips

Respondent Representative(s): Les Spurrell, Ashley Linehan

Interested Party: Charlie Druken

Appeal Officer: Sarah Kimball, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei

Board's Role

The role of the Adjudicator is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and Town of Portugal Cove - St. Philips Municipal Plan and Development Regulations when it issued a revoked approval for a fence at 1-5 Druken's Lane, Portugal Cove - St. Philips (hereinafter the 'Subject Property').

Hearing Presentations

Planner's Presentation

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness.

Under the Rules of Procedure:

(a) there shall be a technical advisor to the Board who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether or not the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

The Planner from Municipal and Provincial Affairs shall provide the framework with respect to the appeals process under the Urban and Rural Planning Act, 2000 and provide an overview of how an application was received from a developer and processed by Council as prescribed in their roles and responsibilities.

The Adjudicator heard from the planner that this appeal relates to a revoked order issued by the Town of Portugal Cove - St. Philips for a fence at the Subject Property. The Planner outlined that previously the Authority had granted a conditional approval for the property on 21 January 2025 with conditional approval requiring approval from water resources management for an alteration of a body of water from the Department of Environment and Climate Change.

The Appellant was granted approval under the Water Resources Act on 21 March 2025. After this the Authority in their regular meeting on 25 March 2025 decided on receiving new information to rescind the conditional approval of the permit before final authorization was granted at the Subject Property as is outlined in Section 20 of the Authority's development regulations.

This decision is what gives rise to this appeal today. There are no procedural defects in this application identified by the Planner.

The Appellant's Presentation and Grounds

The presentation of the Appellant focused on the Appellant stating that the decision made by the Authority was unfair as there were many other properties in the area that had similar fencing situations to the one proposed on the Subject Property. As such, the Appellant states that they should be able to go ahead with the proposed fence.

The Appellant is of the opinion that because they had been approved conditionally requiring the authority of the Department of Environment and Climate Change which was a cost the Appellant had to bear. Because of that the conditional approval should be allowed to move forward and that the fence should be allowed to be built.

Authority's Presentation

The Authority's presentation focused on the fact that this decision was made by Council under their powers pursuant to Sections 64 and 67 of the Authority's development regulations. In

particular, the Authority focused on this decision being a discretionary one to be determined by Council and that the Adjudicator has no authority to overturn a discretionary decision of the Council or to substitute their own decision on discretionary matters.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 as well as the Town of Portugal Cove – St. Philip's Municipal Plan and Development Regulations and determined the following:

Question/Answer .

Q: Does the Authority have the power to issue this order?

In reviewing the Urban and Rural Planning act, as well as the Municipal Plan and Development Regulations of the Authority, it is clear that the Authority has reserved the power to make decisions after a conditional approval has been granted to rescind the permit. Section 20 of the Authority's development regulations establishes that conditional approvals are still subject to subsequent approval by Council.

In this case, after issuing the decision to grant a conditional approval, the Authority received information from the attending third party Charlie Druken. It was on the basis of this information that the Authority then decided to exercise their power under Sections 64 and 67 of the Development regulations to rescind the approval in principal as the Council felt that the development of a fence would be unsuitable for the site and possibly cause problems for stormwater management. It is clear from Section 64 that the Authority could make such a decision.

Q: Does the Adjudicator have the authority to overturn or substitute the decision made by the Authority?

The powers of an Adjudicator under the Urban and Rural Planning Act are limited. An Adjudicator is not a judge and does not have the same inherent powers of the Supreme Court of Newfoundland and Labrador. As such, the Adjudicator is limited by Section 44(2) of the Urban and Rural Planning Act which states:

“a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.”

It is clear on reading Sections 64 and 67 of the Authority's development regulations that the authority to deny a permit can be a discretionary decision of the council. In this case the council exercised their authority to do so. Whether or not the Adjudicator agrees with the Appellant that the fence is a problem or concern under Sections 64 and 67 is not a decision in the authority of the Adjudicator to determine. The rightfully elected council of the Authority are the ones with the sole responsibility to make discretionary decisions and it is not for the Adjudicator to overturn those decisions unless they are contrary to the Urban and Rural Planning act, the regulations of the Authority, or is a breach of natural justice.

As such I must find that the Authority had the power to rescind the order, and their actions must be confirmed as they were a discretionary decision of the Authority.

Adjudicator's Conclusion

Urban and Rural Planning Act, 2000

Decisions of adjudicator

44. (1) In deciding an appeal, an adjudicator may do one or more of the following:

- (a) confirm, reverse or vary the decision that is the subject of the appeal;
- (b) impose conditions that the adjudicator considers appropriate in the circumstances; and
- (c) direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have the adjudicator's decision implemented.

(2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.

(3) An adjudicator shall not make a decision that does not comply with

- (a) this Act;
- (b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and
- (c) a scheme, where adopted under section 29.

(4) An adjudicator shall, in writing, notify the person or group of persons who brought the appeal and the council, regional authority or authorized administrator of the adjudicator's decision.

After reviewing the information presented, the Adjudicator concludes that the Authority acted within their authority and was authorized to rescind the conditional approval permit. As such the decision of the Authority is confirmed.

That is to say, the request of the Appellant has been denied and they may not move forward with the construction they proposed in their application.

Order

The Adjudicator orders that the decision of the Town of Portugal Cove – St. Philips to be confirmed. The appeal by Mr. Gosse is denied.

The Authority and the Appellant(s) are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Adjudicator's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 25 March 2026.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000