

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-094-006

Adjudicator: Lorilee A. Sharpe

Appellant(s): Ken Sooley

Respondent / Authority: Town of Bonavista

Date of Hearing: June 24, 2026

In Attendance:

Appellant: Ken Sooley

Appellant Representative(s): Cassidy LaCosta

Respondent/Authority: Town of Bonavista

Respondent Representative(s): Stephanie Lodge, CAO & Crystal Fudge

Appeal Officer: Sarah Kimball, Municipal and Provincial Affairs

Technical Advisor: Setare Vafari

Observers: Rutvi Patel, Christopher Niccoll, Tastrophia Pham & Dan Sooley

Adjudicator's Role

The role of the Adjudicator is to determine if the Town of Bonavista acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Bonavista Municipal Plan and other applicable Regulations, including the Development Regulations and the Short-Term Rental Accommodation Regulations when it denied the Appellants applications to operate short-term rental accommodations at 10 Ayles Road and 74 Roper Street.

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, the details of which were set out in a technical report and filed as part of the Appeal package which has been thoroughly reviewed by the Adjudicator.

The Appellant's Presentation and Grounds

The Appellant set forth many various grounds of appeal both in written submissions and at the appeal hearing. Some of the submissions are not within the jurisdiction of the Adjudicator to determine, such as whether or not the Town caused an officially induced error that may lead to an award of damages or a deemed expropriation, and whether or not the regulations were properly drafted. I would summarize the grounds put forth by the Appellant that the Adjudicator does have jurisdiction to consider as follows:

- 1) Whether the Town erroneously applied the Short-term Rental accommodation regulations to the Properties as they are subject to two long term commercial leases so may not meet the criteria of section 1 of the Short Term Rental Accommodation Regulations;
- 2) Whether the properties are new builds that were purpose built as short term rental accommodations at the time of construction so are exempted from the 10% cap pursuant to Section 5 (e) of the Short Term Rental Accommodation Regulations;
- 3) Whether the Town erred in applying sections 5 (b) and 5 (c) of the Short Term Rental Accommodation Regulations to deny the permit;
- 4) Whether the Town made procedural errors in its failure to bring the matter to a Town Council meeting for a vote;
- 5) Whether the use was an existing non-conforming use that is allowed to continue; and
- 6) Whether the municipal taxes owing having since been paid and are no longer relevant.

Ken Sooley testified at the appeal. He gave evidence that he is the founder and president of the Cape Race business which provides tourist accommodation. He indicated that both the 10 Ayles Road and 74 Roper Street properties were in a derelict condition when he purchased them and they were uninhabitable. He stated they were extensively renovated for the purpose of tourist accommodation and that his cape ray business involved tourists being provided with keys to three properties to stay in for a period of three to five days. He testified that he commenced operations at the 10 Ayles Road property in 2005 and the 74 Roper Street property in 2017. He could not recall whether he had any permit from the Town to operate the tourist accommodation business at these properties but stated that he had an approval from the Province to run a tourism

business generally. He indicated that he was paying business tax to the Town of Bonavista and due to financial loss during the COVID pandemic he filed a business closure form with the Town to avoid paying business taxes but he did not understand and was not informed that he would be unable to resume providing tourist accommodations at the properties in future.

Authority's Presentation

The Town of Bonavista gave evidence through its CAO Stephanie Lodge and staff member Crystal Fudge that confirmed the timeline of events set forth in their written submissions and the report of the technical advisor. They acknowledged that business taxes had been charged and that the Appellant had filed a business closure form for the purpose of cessation of taxes. The Town acknowledged that they had not considered whether the operation of tourist accommodations at the subject properties had been legally existing uses prior to the enactment of the Short-term Rental Accommodation Regulations and did not know whether permits had been issued to the Appellant for this use at the time of the renovations and/or at occupancy.

Adjudicator's Analysis

The adjudicator accepts the evidence of the Appellant that he was previously operating a tourist accommodation business that involved short term rentals of between 3-5 days and that these operations commenced at the 10 Ayles Road property 2005 and at the 74 Roper Street property in 2017 and continued until the Appellant filed a business closure form with the Town of Bonavista on August 25, 2023. I also accept the Appellants evidence that he did not intend the closure to be permanent and did not understand at the time of filing the business closure form that the Short-Term Rental Accommodation Regulations that were adopted March 27, 2023 may prevent his ability to resume operations when the economy improved.

The decision letters issued by the Town of Bonavista on May 5, 2025 in this matter set forth the following reasons for refusal of permission for the Appellant to operate short-term rental accommodations from these locations pursuant to an application he submitted on May 1, 2025:

- 1) 10 Ayles Road: failure to comply with section 5(b) and 5(f) of the Short-Term Rental Accommodation Regulations; and
- 2) 74 Roper Street: failure to comply with sections 5(c) and 5 (f) of the Short Term Rental Accommodation Regulations

The applicable Sections of the Short Term Rental Accommodation Regulations state as follows:

Section 5(b) *"No permits shall be approved for "short-term rental accommodations" on any street with fewer than ten (10) residential dwelling houses thereon, out of concern for traffic and parking on small or sparsely populated streets."*

Section 5(c) *" No more than ten percent (10%) of the dwelling units on any street shall be approved for "short term rental accommodations", out of concern for traffic, parking, noise and vacant premises concerns. "*

Section 5(f) *“Permits will not be issued for properties which are in arrears of property tax, or subject to any municipal work orders. Applications for such properties will be rejected.”*

The evidence indisputably established that there are fewer than 10 residential dwelling houses on Ayles Road, there being only 6 residential dwelling houses on the street. It was also clear that the existing number of dwelling units operating as short term rental accommodations on Roper Street exceed 10%. The Appellant did not dispute the fact that he owed property tax at the time he applied for the permit May 1, 2025 and when he received the decision letters from the Town on May 5, 2025. It would seem therefore that the Town’s denial of the permits was *prima facie* valid and proper.

The Appellant submitted evidence to show that the properties were subject to two long term commercial lease agreements between two corporate entities: one as the owner and the other as the operator. As such, the Appellant takes the position that the properties do not meet the criteria of section 1 of the Short Term Rental Accommodation Regulations (STRA Regulations) and that the STRA Regulations are therefore not applicable.

Section 1 of the STRA Regulations states:

“These Guidelines shall apply “short-term rental accommodations” which are defined as non-owner-occupied residential properties which are rented out for periods of less than thirty days, and which are not subject to a landlord-tenant lease agreement and/or the provisions of the Residential Tenancies Act of Newfoundland and Labrador.

- a. This is to be distinguished from “bed and breakfasts,” which are owner-occupied residences with rooms rented out, and from “single dwelling” residential units, which are residential unit, either owner-occupied or rented as a leased residences pursuant to the provincial Residential Tenancies Act”.*

While the properties are subject to commercial leases for terms in excess of 30 days, the properties are also used for short term rentals by the operator to tourists, which by the Appellants own evidence are 3 to 5 days in duration, are not owner-occupied, and are not residential tenancy leases. As such, I find that the Appellants use meets the definition of short term rental accommodations under section 1 of the STRA Regulations.

The Appellant also submitted that the properties were new builds that were purpose built as short term rental accommodations at the time of construction so are exempted from the 10% cap pursuant to Section 5 (e) of the Short Term Rental Accommodation Regulations. Section 5 (e) of the STRA Regulations states:

“No more than ten percent (10%) of existing residential dwelling units in Bonavista shall be permitted to be converted to “short term rental accommodations”. This provision shall not apply to new builds which are purpose-built as “short term rental accommodations” at the time of construction and thus are not conversions of existing residential stock.

- i. *New build short-term rental accommodations must still comply with guidelines (a), (b), and (c).*
- ii. *A new build intended for short-term rental accommodations shall apply for a business permit at the time of the building permit and identify the property as a business build at the time of construction. Failure to obtain a business permit at the time of construction shall render the property a conversion from its initial permit and shall be subject to this part.*
- iii. *For greater clarity, the 2021 Census identifies 1,475 residential dwelling units in Bonavista.*

The Appellant's evidence to support his contention that they were new-builds for the purpose of short term rental accommodations included evidence that the properties were vacant and derelict for many years prior to his renovations and that the renovations were very extensive. They were however previously residential dwelling units and while the Appellant has undoubtedly completed very extensive renovations and restoration of these residential dwelling units, they are not new builds. Further, even if it were agreed that they were new builds, section 5 (e) would not aid the Appellant in his position as section 5(e) (i) makes it clear that the restrictions set forth in sections 5 (b) and (c) apply new builds.

The Appellant also argued that he had not received due process as his permit application had not been brought to a Town Council for a vote. Under Section 109(2) of the Urban and Rural Planning Act a Town Council may delegate authority to employees to approve and reject applications to develop and the definition of development includes a change of use.

109. (2) A council or regional authority may appoint an employee of that council or authority to approve or reject applications, as designated by the council or regional authority, to develop land in accordance with the appropriate plan and regulations and that employee may outline the conditions applicable to that development.

2. In this Act

*(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, **or the making of a material change in the use, or the intensity of use of land, buildings or premises** and the....."*

[Emphasis Added]

The letters of May 5, 2025 from the Town of Bonavista denying the permits was written by the Stephanie Lodge who is an employee of Town Council holding the position of CAO and Town clerk. Ms. Lodge clearly understood that she had been given authority by her employer to review and approve or reject applications for development and the Appellant presented no evidence to the contrary. Ms. Lodge applied the objective criteria that had already been established by Town Council for short term rental accommodations in its adoption of the Short-Term Rental Accommodation Regulations. There was no discretionary decision that would necessitate the matter being brought to Town Council for decision.

The Appellant also took the position that the fact that municipal taxes were owing at the time that the Town denied his permit is no longer relevant as he has since paid his taxes and is no longer in arrears. I do not agree. The question is whether the Town erred in its assessment and denial of the permit at the time they issued their denial letters on May 5, 2025, not whether the Town should now issue the permit under changed circumstances. The Appellant is certainly free to reapply for a permit if there has been a change in circumstances such as payment of taxes or if he wishes to propose a different development from his initial application, but the adjudicator does not have jurisdiction to apply new circumstances to its review of the Town's assessment of the May 1, 2025 application. At the time the Appellant applied, he did not meet the requirement of Section 5(f) of the STRA Regulations and the Town staff had a duty to deny the permit on that basis alone in accordance with the Regulations that had been adopted by Town Council. That is of course if there is no other factor that would render the STRA Regulations inapplicable.

This leads me to the final ground of appeal. That is, the Appellants submission that the use of the properties for short term rental accommodations is a non-conforming use that must be allowed to continue pursuant to section 108 of the Urban and Rural Planning Act (URPA) and section 45 of the Town of Bonavista Development Regulations.

Section 108 of URPA states:

Non-conforming use

108. (1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.

(2) Notwithstanding subsection (1), a right to resume a discontinued non-conforming use of land shall not exceed 6 months after that discontinuance unless otherwise provided by regulation under this Act.

(3) A building, structure or development that does not conform to a scheme, plan or regulations made under this Act that is allowed to continue under subsection (1)

(a) shall not be internally or externally varied, extended or expanded unless otherwise approved by the minister or appropriate council, regional authority or authorized administrator;

(b) shall not be structurally modified except as required for the safety of the building, structure or development;

(c) shall not be reconstructed or repaired for use in the same non-conforming manner where 50% or more of the value of that building, structure or development has been destroyed;

(d) may have the existing use for that building, structure or development varied by the appropriate council, regional authority or authorized administrator to a use that is, in their opinion more compatible with a plan and regulations applicable to it;

(e) may have the existing building extended by the appropriate council, regional authority or authorized administrator where, in its opinion that extension is not more than 50% of the existing building;

(f) where the non-conformance is with respect to the standards included in development regulations, shall not be expanded if the expansion would increase the non-conformity; and

(g) where the building or structure is primarily zoned and used for residential purposes, may, in accordance with the appropriate plan and regulations, be repaired or rebuilt where 50% or more of the value of that building or structure is destroyed.

[Emphasis Added]

Section 4(1) (m) of the Town of Bonavista Development Regulations defines non-confirming use as follows:

*4(1)(m) "non-conforming use" means a **legally existing** use that is not listed as a permitted or discretionary use for the use zone in which it is located or which does not meet the development standards for that use zone;*

[Emphasis Added]

Section 45(2) of the Town of Bonavista Development Regulations adopts the same provisions as section 108 URPA but extends the timeline for the right to resume a discontinued non-conforming use from six months to within three years following discontinuance of the use:

45. Non-Conforming Use

*(1) Notwithstanding the Municipal Plan, scheme or regulations made under this Urban and Rural Planning Act, 2001, the Authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land **provided that the non-conforming use legally existed before the registration** under section 24 of the Act, scheme or regulations made with respect to that kind of development or use.*

*(2) Notwithstanding subsection (1), a right to resume a discontinued non-conforming use of land shall not exceed **3 years** after the discontinuance of that use.*

[Emphasis added]

As indicated in my summary of the evidence of the Appellant and Respondent above, the Appellant was operating his short term rental accommodation business for tourists at 10 Ayles Road from sometime in 2005 until August 25, 2023 and at 74 Roper Street from sometime in 2017 until August 25, 2023. However, in order to establish a non-conforming use such that the use would be grandfathered under section 108 of the Urban and Rural planning Act and section 45 of the Town of Bonavista Development Regulations, the use must not have merely existed but must have also been a **legally existing use** of the property prior to implementation of the Short-Term Rental Accommodation Regulations on March 23, 2023. Further, the use must not have been discontinued for a period of more than 3 years. The Appellant is within the three year time limit for continuance of a non-conforming use, having ceased the use on August 23, 2023 and applied for resumption on May 1, 2025. The question left to be determined is whether or not the use was one which legally existed for these properties on March 27, 2023. Neither party was able to provide evidence on that point and the Town admitted that it had not given consideration to whether or not the use may have been a legally existing non-conforming use that must be allowed to continue.

Adjudicators 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 Town failed to consider whether the use of each of these properties were legally existing non-conforming uses at the time that the Short-Term Rental Accommodation Regulations were adopted by Town Council. As such, I direct the matter be referred back to the Town of Bonavista to consider whether or not the use of either of these properties that existed on March 27, 2023 were legally existing non-conforming uses in accordance with section 108 of the Urban and Rural Planning Act and sections 4 (1)(m) and 45 of the Town of Bonavista Development Regulations. If the Town finds that they were legally existing non-conforming then the Appellant must be allowed to continue with those uses as the Short-Term Rental Accommodation Regulations would not be applicable. If however, the Town determines that the uses were not legally existing non-conforming uses, then the decision of the Town should be confirmed as I find that the Short-Term Rental Accommodation Regulations were appropriately applied by the Town. The Appellant will retain the right to appeal the Town's determination on the issue of whether or not there was an existing non-conforming use.

Order

The Adjudicator orders that the decision of the decision of the Town of Bonavista be referred back to the Town of Bonavista to consider whether or not the uses of 10 Ayles Road and 74 Roper Street that existed on March 27, 2023 were legally existing non-conforming uses in accordance with section 108 of the Urban and Rural Planning Act and sections 4 (1)(m) and 45 of the Town of Bonavista Development Regulations.

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 Corner Brook, Newfoundland and Labrador, this 31st day of July, 2026.



Adjudicator

Urban and Rural Planning Act, 2000