

**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

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

Appeal # : **15-006-087-030**

Adjudicator: Garreth McGrath

Appellant(s): Brenda Nolan

Respondent / Authority: Town South River

Date of Hearing: 27 March 2024

Start/End Time : 11:00-12:00

In Attendance

Appellant: Brenda Nolan

Appellant Representative(s): N/A

Respondent/Authority: Town of South River

Respondent Representative(s): Josh Merrigan; Counsel

Proponent/Developer: N/A

Developer Representative: N/A

Interested Party: N/A

Appeal Officer: Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Faith Ford

Adjudicator'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 South River Municipal Plan and Development Regulations when it denied an application for a residential development at 18-20 Taylor's Road, South River on 1 March 2023.

## **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 Adjudicator who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether 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 the denial of a residential development permit by the Town of South River at 18-20 Taylor's Road, South River. The planner outlined the Appellant's grounds for appeal at pages 9 and 10 of the appeals package as:

- 1) The Department of Environment and Climate Change said that there could be a permit issued within the water reservation should Council issue an approval letter, yet Council refused to provide such a letter.
- 2) Council refused to allow the Appellant to pay to rezone the area.
- 3) Council failed to communicate with the Appellant that they were issuing a stop work order until the building was constructed and cost to change the property would be very expensive.

### **The Appellant's Presentation and Grounds**

The presentation of the Appellant focused on the grounds as outlined in their written application and the planner's report. The focus of their arguments were on the fact that the actions of Council were unfair in making their decisions and did not allow the Appellant sufficient time to amend their construction to ensure that it had complied with the water regulations so that they could then finish construction in a way that complied with the regulations.

### **Authority's Presentation**

The Authority's presentation focused on two major arguments. First that the Appellant has no ability to make an application to the Adjudicator as the Appellant's time to file had expired by

the time they made their application. The second is that the permit that was issued to the Appellant was only for a single level garage, and that the structure built is not in line with the issued permit. The Authority also states that the development doesn't comply with the water regulations as it is too close to the shoreline setback and that the Authority has no ability to issue a permit for a development of a structure that doesn't comply with its regulations.

### **Adjudicator's Analysis**

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 as well as the Town of South River Municipal Plan and Development Regulations and determined the following:

Question/Answer .

Q: Was the application made in time?

The test for determining when an Appellant has to file their appeal to the Adjudicator is outline in Section 41 (3) of the Urban and Rural Planning Act:

- (3) An appeal made under this section shall be filed with an appeal officer not more than 14 days after the person who made the original application receives the decision.
- (4) An appeal shall be made in writing and shall include
  - (a) a summary of the decision being appealed;
  - (b) the grounds for the appeal; and
  - (c) the required fee.

The Authority issued a stop work order on the property on 18 November 2022 when they noticed that the construction had gone beyond what was originally approved in the application by the Appellant. The Appellant then filed with the Authority to get a development permit for the property to allow the residential dwelling in the area zoned as is, as well as to inquire about the ability to rezone the property in June/July of 2023. The Authority would then ultimately make their decision on 5 July 2023 where they would issue a refusal letter to The Appellant and not allow the property to be rezoned. The Appellant in their submission stated that they received the refusal from Council on 7 July 2023. In the submission made to the Adjudicator, we can see that in the letter issued to the Appellant on 7 July 2023 (page 122 of the Appeal Package) the Appellant was informed that they had a period of 14 days to file their appeal. The Appellant filed this appeal on 19 September 2023. The Appellant in the hearing when pressed on this question responded that they believed that the time had not expired as they were still in conversation with the Authority as to what options might be available to ensure that the dwelling would be able to remain as constructed.

The law for when the time to file an application under the Urban and Rural Planning Act is clear. As stated by Justice Russell in *Clarke v Eastern Regional Appeal Board et al.*, 2005 NLTD 96, at para. 34:

[34] Also, as noted, it was an error to apply **Laurel** to this matter and conclude that the time period runs from the time that the general public becomes aware of the decision. That is not the test. The issue is when did the Appellant receive the decision (Order of October 10, 2003).

The question is not when did the Appellant believe that they had exhausted their avenues to try and make their development happen, but rather when was the Appellant actually aware that their time to file an application began. It is clear that the Appellant was informed of their right to file an application on 7 July 2023 when, by their submissions, they received the refusal. As the application was filed on 19 September 2023, the application was out of time and as such the Adjudicator must deny the application on this basis.

Should this decision be appealed, the Adjudicator will also answer the other issue raised by the Appellant in this matter.

Q: Could the Authority have amended the property to allow the Appellant to go ahead with their construction?

The other questions raised by the Appellant are ultimately a question over whether the Authority properly exercised their discretion in failing to issue them a letter or permit that would allow them to keep the Development that was already on the property.

With regards to the question of whether the Authority could have provided the Appellant with a letter to continue with development in an area that was not allowed by the Municipal Regulations, it is clear to the Adjudicator that the Authority did not have that power. As the construction was within the water reservation zone of 15 meters, Council may have some discretionary power should they rezone the area or amend the regulations to allow property within the reservation. However, that is a discretionary power and one that the Council does not have to exercise.

Here the decision of the Authority was correct. Under the development regulations as they were, they did not have the authority to issue a letter allow the Appellant to construct within the water reservation as their bylaws did not allow it and the Authority does not have the power to issue a decision outside of their Regulations. Council also did not amend the regulations or bylaws discretionarily, which is their power, and as such there is no reason why this decision of the Authority should be reversed.

Q: Did the Authority wait too long to issue their stop work order?

On the evidence, we can see that the Authority issued Permit No. 22-045 to construct a 32'x22' shed up to 16 feet on 20 July 2022. On 18 November 2022, within 4 months of issuing the permit, the Authority issued their Stop Work order after gaining information that what was originally intended to be a 16' one story garage had now become a two story residential dwelling.

While not specifically plead by the Appellant, the argument here is essentially one on the basis of natural justice and fairness in the form of a semi promissory estoppel argument. This is to say the Appellant is pleading that they should be allowed to keep the structure because the Authority did not act in a timely manner to issue the stop work order. When we look at the law of Promissory Estoppel in *Maracle v. Travellers Indemnity Co. of Canada*, 1991 CanLII 58 (SCC), [1991] 2 S.C.R. 50, at p. 57, Sopinka, J. said of promissory estoppel:

The principles of promissory estoppel are well settled. The party relying on the doctrine must establish that the other party has, by words or conduct, made a promise or assurance which was intended to affect their legal relationship and to be acted on. Furthermore, the representee must establish that, in reliance on the representation, he acted on it or in some way changed his position. In *John Burrows Ltd. v. Subsurface Surveys Ltd.*, 1968 CanLII 81 (SCC), [1968] S.C.R. 607, Ritchie, J. stated at p. 615

It seems clear to me that this type of equitable defence cannot be invoked unless there is some evidence that one of the parties entered into a course of negotiation which had the effect of leading the other to suppose that the strict rights under the contract would not be enforced, and I think that this implies that there must be evidence from which it can be inferred that the first party intended that the legal relations created by the contract would be altered as a result of the negotiations.

Here we see the opposite of what is required for fairness and natural justice to be breached. The Authority issued a permit for a specific type of structure. The Applicant then acted beyond the scope of the permit and within a period of 4 months the Authority acted to stop the Applicant. There was no discussion, conduct, promise or assurance given to the Applicant that they would be allowed to build a two story dwelling structure instead of a 16' shed. The Authority, by all evidence, acted to stop the Appellant once they had become aware of the deviation from the original permit and stopped the development, as is their power and authority under the Urban and Rural Planning Act. The conduct of the Appellant was essentially to beg for forgiveness rather than to ask for permission and as such, the Adjudicator must find that there was no breach of natural justice in the Authority acting to deny the permit on this property.

#### 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 the scope of their authority when they denied the permit. As well the application of the Appellant is time barred as it was brought outside the statutory limitation under Section 41 of the Urban and Rural Planning Act. As such the Adjudicator must confirm the decision of the Authority.

That is to say that the Authority may proceed with any lawful action to enforce their stop work order. The Appellant's construction was not and could not be permitted by the Authority and the Appellant by failing to file on time lost the ability to challenge the decision.

#### Order

The Adjudicator orders that the decision of the Town of South River to be confirmed.

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 adjudicator 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 16 April 2024.

Garreth McGrath\_\_\_\_\_

Adjudicator

Urban and Rural Planning Act, 2000