

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-087-001
Adjudicator: Mary Bishop
Appellant(s): Glen Yetman and Tina Bursey
Respondent/Authority: Town of Bryant's Cove
Date of Hearing: February 28, 2024
Start/End Time : 9:00am – 10:00am

In Attendance

Appellant: Tina Bursey, Glen Yetman
Appellant Representative(s): Tina Bursey, Glen Yetman
Respondent/Authority: Town of Bryant's Cove
Respondent Representative(s): Stephen Jewczyk, Planner
Mayor and Town Clerk, Bryant's Cove also present
Appeal Officer: Robert Cotter, Departmental Program Coordinator,
Municipal and Provincial Affairs
Technical Advisor: Faith Ford, Planner III, Department of Municipal and
Provincial Affairs

Adjudicator's Role

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators.

In the matter of Appeal **No. 15-006-087-001**, the role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, and the Town of Bryant's Cove Municipal Plan and Development Regulations when it revoked a permit issued March 29, 2023 to construct a cabin at 194 Feather Point Road, Bryant's Cove.

Hearing Presentations

Technical Advisor

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness as outlined in the Appeal Board (Rules of Procedure) Order, 1993. 10. The Hearing shall proceed in the following manner:

- (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 in effect ...

At the hearing, the Technical Advisor outlined her report noting that on March 29, 2023, the Authority (Town of Bryant's Cove) issued a permit for the construction of a cabin at 194 Feather Point Road.

During a Council meeting on June 11, 2023, Council passed a motion to rescind the approval for construction of the cabin. The following day, the Authority sent a letter to the Appellants notifying them the approval for a cabin on the subject property was made in error and the permit had been revoked. The letter also addressed the Town's refusal of the Appellant's application to place RV/trailers on the subject property, indicating that RVs and trailers are not permitted in the Rural zone as per the Town's Development Regulations.

The Authority's decision to revoke the permit to construct a cabin at 194 Feather Point Road is the subject of this appeal.

The planner's report notes that construction of a cabin and the parking of an RV or travel trailer on a property both fall under the definition of development as defined in Sections 2 (c) and (g) of the *Urban and Rural Planning Act, 2000*.

The planner's report also indicates that the Municipal Plan and Development Regulations are binding upon the Authority as well as any person undertaking development within the planning area as stated in Section 12 of the Act:

12. A plan and development regulations are binding upon

- (a) municipalities and councils within the planning area governed by that plan or those regulations; and
- (b) a person undertaking a development in the area governed by that plan or those regulations.

The report indicates that the property in question is zoned Rural (RUR) under the Town's Development Regulations and Land Use Zoning Map and is within the Rural designation under the Town's Municipal Plan.

The Municipal Plan policies for the Rural zone encourage the protection of pasture lands and natural features, support agricultural, forestry, conservation, and mineral workings uses, and discourage residential encroachment into rural areas. As such, permitted use classes for the Rural zone include agriculture, forestry, mineral exploration and mineral working, recreational open space, cemetery, veterinary clinic,

and conservation uses. Discretionary use classes for the zone are single dwelling (subject to conditions), outdoor market, outdoor assembly, animal, utilities, transportation, and antenna uses.

The planner's report indicates that Single dwellings may be permitted at the discretion of Council subject to Condition 3, which states single dwellings are only permitted in conjunction with a permitted use such as agriculture. Other types of residential uses, such as Cabins fall within the seasonal residential use class listed in Schedule B of the Development Regulations. A Seasonal residence is defined in the Development Regulations as:

SEASONAL RESIDENCE means a dwelling which is designed or intended for seasonal or recreational use and is not intended for use as permanent living quarters. The provision of on-site water and waste disposal systems for a seasonal residence shall be the responsibility of the owner and approved by Service NL.

Seasonal residential uses are neither a permitted or discretionary use class for the Rural zone. Under Section 91 of the Development Regulations, uses that are not listed as a permitted or discretionary use for the Rural zone are not permitted within the zone.

91. Uses Not Permitted

Uses that do not fall within the Permitted Use Classes or Discretionary Use Classes set out in the appropriate Use Zone Tables in Schedule C, shall not be permitted in that Use Zone.

With regards to the parking of Campers and RVs, the Development Regulations allow what would be considered Outdoor Assembly uses in the Rural Zone at Council's discretion. Campgrounds and RV camping parks are classified as outdoor assembly uses under Schedule B of the Development Regulations but the Rural zone does not contain any provisions that allow for the use of recreational vehicles or campers as a use where not part of a campground or RV park.

Appellant's Presentation

The Appellant outlined the process that they went through to make application and develop their land. The parcel they own is located within the regional pasture on Feather Point Road, just beyond the pasture gate and the last house on the public road leading to the pasture. They provided photos to show the location of the land and the work they had undertaken there.

The appellants indicated that they had applied to service the property with electricity but had been turned down by the Council. They also indicated that the Town had prevented them from parking their RVs on the property. They asserted that it had always been their intention to construct a small cabin on their land. They made application and received an approval subject

to conditions and then proceeded to fulfil the requirements of the conditions by obtaining a letter from the pasture committee, providing proof of their ownership of the property and having a septic system design prepared,

They also indicated that they had had work done on the property that including clearing and grading. They also indicated that in meeting the conditions of the approval they incurred considerable expense prior to receiving the letter informing them that their approval had been revoked.

The appellants presented evidence of situations where recreational vehicles are being parked in the community. They also asserted that they had cooperated with the Town, removing their RVs when requested but felt they were being unfairly singled out when others were permitted to park and use RVs in other areas of the community.

Authority's Presentation

The Authority, in making their presentation, asserted that the issue that is the subject of the appeal pertains only to Council's revocation of the permit to construct a cabin and that issues around the parking and use of RVs and campers on the property in question is irrelevant to the matter under appeal.

The Authority re-iterated information from the Technical Report that indicates that Municipal Plan policies and the Development Regulations permit single dwellings in the Rural land use designation/use zone only where they are part of a permitted use such as an agricultural use. Seasonal dwellings are not permitted at all in the Rural land use zone. Furthermore, outdoor assembly uses (which includes RV parks/campgrounds) may be permitted in the Rural land use designation/use zone. However, the parking and use of individual RVs and campers that are not part of an RV park are not permitted.

The Town admits that the permit issued to the appellants on March 29, 2023 to construct a cabin at 194 Feather Point Road was issued in error. However, once they became aware that they had made an error in issuing the permit, Council used its authority under Section 21 (5) of the Town's Development Regulations to revoke the permit. The Regulation states:

The Council may revoke a Permit to Develop for failure by the developer to comply with the Municipal Plan and these Regulations, or any condition attached to the Permit to Develop, or where it was issued in error or was issued on the basis of incorrect information.

Under questioning by the Adjudicator, the Authority indicated that the current Municipal Plan and Development Regulations is their first, approved in May 20, 2022. Staff and Council are still getting used to interpreting its policies and regulations, but once Council became aware of the error in issuing the permit, it was revoked. It was not clear from the evidence presented how or when Council became aware that the approval issued for construction of the cabin had been issued in error.

Adjudicator's Analysis

This following questions arise from this appeal:

1. What is the zoning of the property which is the subject of this appeal?

The property is designated in the Town's Municipal Plan as Rural and zoned in the Development Regulations as Rural.

2. Does the current Municipal Plan and zoning of the property allow for the construction of a seasonal residence in the Rural land use designation and use zone?

No. Policies of the Municipal Plan only allow single dwellings to be constructed where they are considered to be necessary for and part of a permitted use, such as a dwelling that is associated with the operation of an agricultural use. Seasonal residences are not listed as either permitted or discretionary uses in the Rural land use zone and are therefore not permitted.

3. Was the decision by Council to issue a permit for the construction of a cabin at 194 Feather Point Road in accordance with the Town's Municipal Plan and Development Regulations?

No. The decision was not in accordance with the Town's Municipal Plan and Development Regulations. Section 12 of the *Urban and Rural Planning Act, 2000* establishes the requirement for a municipality or council, including the Town of Bryant's Cove, to adhere to their Municipal Plan and Development Regulations.

4. Did the Town have the authority to revoke the permit issued March 29, 2023 for the construction of a cabin?

Yes, Section 21 (5) of the Town's Development Regulations enable Council to revoke a permit that has been issued in error.

Decisions of adjudicator

As Adjudicator, I am bound by Section 44 of the URPA, 2000, which states:

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

- (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 wit

- (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 written information and evidence presented, along with the technical information, the applicable provisions of the *Urban and Rural Planning Act, 2000* and the Town's Municipal Plan and Development Regulations, the Adjudicator has determined that the Authority had the authority to revoke the permit issued March 29, 2023 for construction of a cabin at 194 Feather Point Road. In issuing the permit, Council was acting contrary to its Municipal Plan and Development Regulations as the proposed development is not permitted in the Rural land use zone. In approving the permit the Town was contravening Section 12 of the *Urban and Rural Planning Act, 2000*, which requires a Town to adhere to their Municipal Plan and Development Regulations when making decisions on development applications. Upon becoming aware that they had issued the permit in error as it was contrary to their Plan and Regulations they took the appropriate step to revoke the permit.

For the appellants, this unfortunate error has resulted in expenditures that would not have been incurred had the Town made the correct decision on the application at the outset. A first – new Municipal Plan and Development Regulations is no excuse for failing to make decisions that are in accordance with it. Engaging professional planning advice to assist with the implementation of the new Plan and Regulations could have helped avoid this mistake.

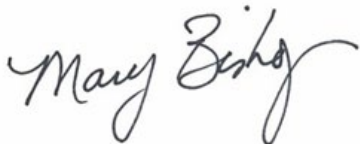
Order

Concerning Appeal No.15-006-087-001 the Adjudicator orders that the decision of the Town of Bryant's Cove Municipal Council made on June 11, 2023 to revoke the permit issued to Tina Bursey and Glen Yetman to construct a cabin at 194 Feather Point Road, Bryant's Cove, be confirmed. The Appellant's appeal is thereby rejected.

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 the 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 5th of March, 2024.



Mary Bishop, RPP, MCIP, FCIP
Adjudicator
Urban and Rural Planning Act, 2000