

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-072-058

Adjudicator: John R. Whelan Q.Arb

Appellant(s): Atlantic Sandblasting & Painting Ltd.

Respondent / Authority: Town of Conception Bay South

Decision Dated: October 20, 2023

Re: Appeal of Atlantic Sandblasting & Painting Ltd. vs. the Town of Conception Bay South Regarding the Attachment of Conditions to the Subdivision of Property Located at 54-56 Delaney's Road.

Background

On or about August 18, 2023 a written request was received by the Appeal Officer, Department of Municipal and Provincial Affairs from the Director of Planning and Development Control with the Town of Conception Bay South, requesting that the appeal filed by Atlantic Sandblasting & Painting Ltd. be assessed for jurisdiction under s.43(4) of the *Urban and Rural Planning Act, 2000* SNL 2000 c. U-8 ("the Act"). Specifically, the Respondent stated that:

In response to the applicants' concerns and appeal, the Town issued a revised conditional approval to subdivide the property at 54 Delaneys Road on July 20, 2022. The July 20, 2022 approval rescinded previous approvals on this file. The applicant agreed with the conditions of the July 20, 2022 conditional approval on August 3, 2022. The applicants fulfilled the conditions of the July 20 2022 approval for subdivision of land on October 19, 2022 and conveyed the northern proportion of the property to the federal government on October 31, 2023. Therefore, the Town takes the position that there is nothing to be appealed and the Adjudicator has no jurisdiction to convene a Hearing.¹

On September 13, 2023 I denied the request for a ruling under s.43(4) as the evidence before me was unclear. At the commencement of the hearing on October 10, 2023 additional evidence was received from the Respondent and the Appellant. Based on the additional evidence, I find that I am without jurisdiction to hear the appeal. My reasons follow.

¹ 15-006-072-058 Appeal Package at p. 56.

Section 43 of the Urban and Rural Planning Act, 2000

Section 43(4) of the *Act* states:

Hearings

43. (4) *Where an adjudicator determines that the subject matter of an appeal is not within the jurisdiction of the adjudicator under section 41, the adjudicator may dismiss the appeal without holding a hearing.*

The relevant portions of Section 41 of the *Act* state:

41. (1) *A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where*

(a) *the decision is permitted to be appealed to an adjudicator under this Act or another Act; or*

(b) *the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:*

(i) *an application to undertake a development,*

(ii) *a revocation of an approval or a permit to undertake a development, or*

(iii) *the issuance of a stop work order.*

(2) *A decision of a council, regional authority or authorized administrator to adopt, approve or proceed with a plan, a scheme, development regulations and amendments and revisions of them is final and not subject to an appeal.*

The Respondent, in their August 18, 2023 correspondence, provides a helpful chronological summary of the matter before the Town.

1. *May 13, 2019: Application to subdivide the property received by the Town. Application dated for March 15, 2019.*

2. *September 18, 2019: Development Approval letter issued for the application (#COM-19- 029).*

3. *September 26, 2019: Development Approval returned signed by the applicant.*

4. *September 23, 2021: Development Approval expired.* 5. *January 12, 2022: Application to subdivide the property received by the Town.*

6. *January 15, 2022: Additional information provided by the applicant.*

7. February 1, 2022: Town of Conception Bay South assessed road improvement requirements necessary as a result of the proposal.
8. February 24, 2022: Development Approval letter issued for the application (#1176).
9. February 28, 2022: Applicant submitted draft appeal letter to the Town that was addressed to the Eastern Newfoundland Regional Appeal Board.
10. March 1, 2022: Applicant advised the Town in email of their intent to appeal condition 6 of Development Approval letter.
11. March 3, 2022: The Town was notified that an appeal was filed with the Eastern Newfoundland Regional Appeal Board with respect to a condition of the Development Approval.
12. March 7, 2022: Council's Planning and Development Committee discussed the application.
13. March 15, 2022: Council discussed the application.
14. March 21, 2022: Council's Planning and Development Committee discussed the application.
15. April 6, 2022: Development Approval Addendum issued for the application (#1176) which included a preliminary drawing of the land required for the turnaround (road improvements).
16. April 6, 2022: Applicant responded to the Development Approval Addendum stating they would accept the conditions.
17. June 6, 2022: Council's Planning and Development Committee discussed the application.
18. June 14, 2022: Council discussed the application.
19. June 15, 2022: Revised Development Approval letter issued for the application (#1176).
20. June 15, 2022: Applicant responded to the Revised Development Approval stating they would not accept the conditions.
21. July 4, 2022: Council's Planning and Development Committee discussed the application.
22. July 12, 2022: Council discussed the application.
23. July 20, 2022: Revised (Rev.2) Development Approval letter issued for the application (#1176).

24. July 28, 2022: Applicant requested clarification of condition #6 in the Rev.2 Development Approval Letter.

25. July 28, 2022: Town responded to applicant providing the clarification requested.

26. August 3, 2022: Rev. 2 Development Approval letter returned signed by the applicant.

27. October 19, 2022: Property Descriptions and Boundary Surveys submitted to the Town as

required by the approval of the subdivide application. 28. October 19, 2022: Town advised the applicant that the subdivide application was completed.

29. October 31, 2022: Atlantic Sandblasting and Painting Ltd. conveyed a portion of the property to the federal Government's Department of Fisheries and Oceans.

30. December 8, 2022: Approved subdivide application sent to the Municipal Assessment Agency for adjustment to the assessment roll.

31. February 5, 2023: Atlantic Sandblasting and Painting Ltd. entered into a Purchase and Sale Agreement to convey the remnant land and building at 54 Delaneys Road to Arbotech Management Inc.²

My prior decision on this matter noted that while the Respondent provided the above chronological summary in their August 18, 2023 letter, material facts were disputed by the Appellant in an August 19, 2023 email to the Appeal Officer.³ The facts in dispute included whether the Respondent had agreed to the terms provided by the Appellant; whether portions of the subject property had been conveyed; and whether the Appellant retained title to the land at 54 Delaney's Road.

At the commencement of the hearing on October 10, the Parties confirmed the following:

- That Condition 6 was removed from the Development Approval Letter
- That the Appellant had conveyed the subject property to a Third Party.

Jurisdiction to hear an appeal may be considered lost when the matter becomes moot. The guiding case on the determination of mootness is *Borowski v. Canada (Attorney General)*.⁴ Justice Sopinka, writing for The Court, noted:

² 15-006-072-058 Appeal Package at pp. 56-58

³ 15-006-072-058 Appeal Package at pp. 52

⁴ [1989] 1 SCR 342. [*Borowski*]

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties.⁵

In this case, the Appellants are no longer subject to the appealed condition and no longer own the property in question. A ruling in this instance would have no tangible effect on either the Appellant or the Respondent. The issue has become academic. Consequently, I find there to be no live issue and the appeal is moot.


Accordingly, I find that I have no jurisdiction to hear this matter under s.41 of the *Act* and the appeal is dismissed.

Ordinarily, the appeal fee is refunded if the Appellant is successful in the matter. In this instance the Appellant was aware that the appealed condition had been rescinded by the Respondent and the Appellant was aware that it had conveyed the subject property to a third party. Material public resources were expended to prepare this matter for a hearing. While neither the Appellant or Respondent were successful as there was no hearing, I find that it would not be appropriate to refund the Appeal Fee in this instance.

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 20th day of October 2023.



John R. Whelan Q.Arb

Adjudicator

⁵ *Ibid.*, at p. 353.