

**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

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

**Appeal #: 15-006-087-027**

Adjudicator: Cliff Johnston

Appellant: Stephen LeGrow

Respondent /Authority: Town of Salmon Cove

Date of Hearing: April 16, 2024

Appeal Hearing Location: Confederation Building, St. John's

Start/End Time: 11am-11:45am

**In Attendance**

Appellant: Stephen LeGrow

Respondent/Authority: Councilor Dianne Peach, Councilor William Kelloway, Town of Salmon Cove

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

Technical Advisor: Faith Ford, Planner III, MCIP, Municipal and Provincial Affairs

Others: Setare Vafaei, Planner II, Municipal and Provincial Affairs

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**Adjudicator's Role**

The role of the Adjudicator is to determine if the Authority, in this case of this appeal, the Town of Salmon Cove, acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Salmon Cove Municipal Plan and Development Regulations when it made the decision on September 28, 2023 to issue a letter of support for the "*Home is Where the Art is*" proposal received from Fabian James/Tyndrum Media Inc. for the property located Civic Number 195 Main Street East, Salmon Cove.

## **Hearing Presentations**

The following is a synopsis/summary of the verbal presentations made to the Adjudicator at the appeal hearing held on April 16, 2024. In addition, the Planner/Technical Advisor prepared a Technical Report on the appeal which was provided to and reviewed by the Adjudicator prior to the appeal hearing. As well, both the Appellant and the Town of Salmon Cove provided background materials to the Appeal Officer which materials were referred to and reviewed by the Adjudicator prior to the appeal hearing.

**Adjudicator's Note: There was a question of the validity of the appeal in regard to Section 41(1)(b) of the Urban and Rural Planning Act, 2000; specifically, whether the Town Council's decision to issue a letter of support to the "*Hone is Where the Art is*" project is a matter that can be appealed under this section of the Act.**

**The Adjudicator asked the Appellant and the Town's representatives to speak to this jurisdictional matter before the Adjudicator would determine whether he had jurisdiction to hear the appeal.**

## **Planner's Presentation**

The role of the Planner is to act as a technical advisor to the appeal process and to 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 or not the proposal under appeal conforms, or 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 Planner summarized the Technical Report that she had prepared for this appeal and that was provided to and reviewed by the Adjudicator prior to the appeal hearing. In summary, the Planner outlined the chronology of the "*Home is Where the Art is*" proposal that was presented to the Town by the proponent: Fabian James/Tyndrum Media Inc.. which consists of 10-15 local artists to paint murals on designated sections of the exterior of the building on the subject property and filming the transformation of the building. The art would then be removed to accommodate a future restoration or reconstruction of the dwelling.

The Planner outlined the types of decisions that may be appealed under Section 41(1)(b) of the Urban and Rural Planning Act, 2000.

The Planner advised that the subject property is zoned “Residential (RES)” under the Town’s Development Regulations.

The Planner advised that the Town Council passed a motion to issue a letter of support for the proposal; however, it is unclear if the Authority has issued a development permit. She also advised that the Town’s written submission indicates that the Town advised the proponent of the requirement to obtain permits for the replacement of clapboard and future exterior renovations to the building on the subject property.

### **Appellant’s Presentation**

The Appellant advised the Adjudicator that in his opinion, that the proposed project at the subject property is a development and that by agreeing to issue a letter of support for the project that the Town Council had in fact given development approval to the project. The Appellant advised that in his opinion, that the appeal should be heard by the Adjudicator.

### **Authority’s Presentation**

The two Town Councillors attending the appeal hearing advised the Adjudicator that no formal development application had been submitted by the proponent and that the Town has issued no development approvals or development permits for the project. In the Town’s opinion, the Town has only agreed to issue a letter of support for the project to the proponent. Once the appeal was filed by the Appellant, all Town action on the file ceased and thereby, the letter of support for the project has not yet been issued by the Town to the proponent. The Town was of the opinion that the appeal should not be heard by the Adjudicator as no development application has been received by the Town from the proponent.

**Adjudicator’s Note: Upon completion of the Appellant’s and Town’s presentations, the Adjudicator ordered a short recess to contemplate the matter of his jurisdiction to hear the appeal. Upon completion of this recess, the Adjudicator verbally advised the Appellant and the Town representatives that he had determined that per Section 41(1)(b) of the Urban and Rural Planning Act, 2000 that he did not have jurisdiction to hear the appeal and thereby, that the appeal hearing would not proceed. The Adjudicator advised that he would provide his reasons for this decision in writing to all affected parties within twenty one (21) days from the scheduled date of the hearing.**

## **Adjudicator’s Analysis**

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 and the Town of Salmon Cove Municipal Plan and Development Regulations and determined the following:

Q. Does the Adjudicator have jurisdiction to hear this appeal?

A. No. In accordance with Section 41(1)(b) of the Urban and Rural Planning Act, 2000, the Adjudicator has determined that he has no jurisdiction to hear this appeal. The matter being appealed by the Appellant does not involve an application to undertake a development or a decision to allow/approve a development.

Section 41(1)(a) and (b) of the Urban and Rural Planning Act, 2000:

*“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.”*

The Appellant is appealing the Town of Salmon Cove’s decision to agree to issue a letter of support for the proposed *“Home is Where the Art is”* proposal for the property at Civic Number 195 Main Street East, Salmon Cove. Based on the information provided by the applicable parties to the Adjudicator, I have determined that there is no evidence that the proponent has submitted an application to the Town of Salmon Cove to undertake a development nor have any approvals or permits been issued by the Town for the project. Further the Town has not issued any Stop Work Orders for the project. Thereby, the appeal does not qualify under Section 41(1)(b) of the Urban and Rural Planning Act as a matter that can be appealed to an Adjudicator.

## **Adjudicator’s Conclusion**

In arriving at my decision as the appointed Adjudicator, I have reviewed the submissions and comments given by parties present at the appeal hearing along with the technical information. The Adjudicator is bound by the provisions of the Urban and Rural Planning Act, 2000 and therefore must make a decision which applies with the applicable legislation, policy and regulations.

As per Section Section 41(1)(b) of the Urban and Rural Planning Act, 2000, a decision that can be appealed is limited to decisions based on an application to undertake a development. In the case of this appeal, the Town Council of Salmon Cove’ decision of September 28, 2023 to issue a letter of support to for the proposed *“Home is Where the Art is”* project does not involve approval of an

application or involve the issuance of a permit from the Town to undertake development. Further, neither the Appellant nor the Town representatives could produce a copy of any development application received from the proponent or copies of any development approvals/development permits issued by the Town to the proponent.

**The Adjudicator has determined that no development application was submitted by the proponent for the project and no development approvals/development permits have been issued by the Town for the proposal. Thereby, the Adjudicator has determined that per Section 41(1)(b) of the Urban and Rural Planning Act, 2000, that he has no jurisdiction to hear this appeal.**

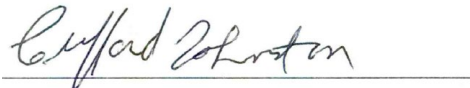
## **ORDER**

The Adjudicator has determined as per Section 41(1)(b) of the Urban and Rural Planning Act, 2000, that he has no jurisdiction to hear the appeal from Stephen LeGrow against the Council Motion 023-214 approved by the Town Council of Salmon Cove on September 28, 2023 to issue a letter of support to Fabian James/Tydrum Media Inc. for the proposed "*Hone is Where the Art is*" project proposed to be undertaken at Civic Number 195 Main Street, East, Salmon Cove.

The Authority and the Appellant 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.

DATED at St. John's, Newfoundland and Labrador, this 18<sup>th</sup> day of April 2024.

A handwritten signature in cursive script, reading "Cliff Johnston", is written above a horizontal line.

Cliff Johnston, Adjudicator

Urban and Rural Planning Act, 2000