

URBAN AND RURAL PLANNING ACT, 2000

(URPA, 2000)

Section 40-46

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

Appeal #: 15-006-077-024

Adjudicator: Elaine Mitchell, RPP, MCIP

Appellant: Dylan Thomas

Respondent / Authority: Town of Wabana

Respecting the revocation of a permit issued to Vinland Motorsport Inc., Bell Island Air Strip, Wabana, Newfoundland and Labrador.

In Attendance

Appellant: Dylan Thomas, Treasurer, Vinland Motorsport Inc.

Gordon Maxwell, President, Vinland Motorsport Inc.

Respondent/Authority: Jenna Vokey, Town Clerk, Town of Wabana

Henry Crane, Councillor, Town of Wabana

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

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

Start Time: 11:10 am End Time: 12:12 pm

Adjudicator's Role

The role of the Adjudicator is to determine whether the Authority acted in accordance with the *Urban and Rural Planning Act, 2000*, *Municipalities Act, 1999* and the Town of Wabana Municipal Plan and Development Regulations with respect to the revocation of a special events permit issued to Vinland Motorsports Inc. for the use of the Bell Island Airstrip. The special events permit was issued on April 11, 2022, and the Authority's decision to revoke this permit was made on May 26, 2022.

Question of Jurisdiction

The technical report, prepared on October 4, 2022, and shared with all parties by the Appeal Officer, raised questions on jurisdiction on two grounds:

- Whether the proposed use of the Bell Island Air Strip by Vinland Motorsport Inc. meets the definition of “development” as defined in section 2 (g) of the *Urban and Rural Planning Act, 2000* and whether the revocation of the permit meets section 41 (1) (b) of the *Urban and Rural Planning Act, 2000* as a decision which can be appealed; and
- Whether the *Municipalities Act, 1999* allows the decision to revoke a special event permit to be appealed.

At the start of the hearing, all parties were asked to address the questions of jurisdiction as a preliminary matter. In addition, the Technical Advisor was requested to focus her remarks on the matters of jurisdiction raised in the technical report.

Can the Authority’s decision to revoke a permit issued to Vinland Motorsport Inc. to be appealed?

No. Section 41 (1) (b) of the *Urban and Rural Planning Act, 2000* states:

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

Section 41 (1) (b) (ii) of the *Urban and Rural Planning Act, 2000* indicates that the revocation is with respect to a permit to undertake development. Section 2 (g) of the *Urban and Rural Planning Act, 2000* includes a definition of development:

- 2** (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
- (i) making of an access onto a highway, road or way,
 - (ii) erection of an advertisement or sign,
 - (iii) construction of a *building*,
 - (iv) *parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,*
- and excludes the

(v) carrying out of works for the maintenance, improvement or other alteration of a building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building,

(vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,

(vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and

(viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling.

In this matter, the activities carried out by Vinland Motorsport Inc. do not meet the definition of “development” as defined in the *Urban and Rural Planning Act, 2000*. The activities described during the hearing do not include “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”. The activities carried out by Vinland Motorsport Inc. at the Bell Island Air Strip involved laying out a course with traffic cones for timed auto slalom events. On these grounds, the decision of the Authority to revoke the permit is outside of the jurisdiction of section 41 (1) (b) of the *Urban and Rural Planning Act, 2000* as subsection (ii) specifically refers to “an approval or a permit to undertake a development”.

Does the Municipalities Act, 1999 allow a decision to revoke a permit to be appealed?

No. Sections 408 (1) and 409 of the *Municipalities Act, 1999* outline the matters that can be appealed to an adjudicator.

408. (1) A person aggrieved by an order made under subsection 404(1) may, within 14 days of the service or posting of the order, appeal to an adjudicator appointed under the *Urban and Rural Planning Act, 2000* and the adjudicator may make an order with respect to the matter that appears just.

409. A person aggrieved by the refusal of a council to issue a permit required under section 194 may, within 14 days from the date of that refusal, appeal the refusal to an adjudicator appointed under the *Urban and Rural Planning Act, 2000* and the adjudicator may make an order with respect to the matter that appears just.

Neither of these sections identify revocation of a permit as a matter that may be appealed to an adjudicator.

During the hearing and in their written submission, the Authority referenced their powers to require an application for a permit and to require the submission of information under section 407 of the *Municipalities Act, 1999*.

407. (1) A person may apply to a council for a permit required under this Act in the required form and accompanied by the information which the council may require.

(2) A council may, where a person makes an application under subsection (1), require that person to submit additional information that it considers necessary.

Section 407 (1) specifies “required under this Act”. Sections of the *Municipalities Act, 1999* specify the requirement of a permit. In addition, section 414 (2) (tt) of the *Municipalities Act, 1999* allows the Authority to make regulations with respect to permits and licenses.

414. (2) A council shall make regulations ...

(tt) respecting permits and licences and requiring that permits or licences be obtained, including temporary permits or licences, as required under this Act or regulations and fixing terms, conditions and fees applicable to those permits and licences; ...

From the information provided in the technical report, and by the Authority at the hearing, it does not appear that the Authority has adopted regulations under section 414 (2) (tt) of the *Municipalities Act, 1999* with respect to issuance of permits or licenses for special events. As a result, requiring and revoking a special event permit is not supported by the *Municipalities Act, 1999* or Council regulations. Decisions to issue or revoke a permit under municipal regulations are not appealable under sections 408 and 409 of the *Municipalities Act, 1999*.

Legislative Framework

Under section 43 (4) of the *Urban and Rural Planning Act, 2000*, an adjudicator may dismiss an appeal that is not within the jurisdiction of the adjudicator.

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.

Adjudicator’s Conclusion

After reviewing the information provided in the technical report and after hearing from both parties during the hearing, the Adjudicator has determined that the appeal filed by Vinland Motorsports Inc. concerning the Authority’s decision to revoke a permit is dismissed as the decision is outside of the jurisdiction of the adjudicator as outlined in

section 41 (1) (b) (ii) of the *Urban and Rural Planning Act, 2000* and section 408 and 409 of the *Municipalities Act, 1999*.

Appeal to Supreme Court

According to section 46 of the *Urban and Rural Planning Act, 2000*, the adjudicator's decision 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 Appellant have received the Adjudicator's decision.

DATED at St. John's, Newfoundland and Labrador, this 16th day of October 2023.

A handwritten signature in dark ink, appearing to read 'Elaine Mitchell', with a stylized flourish at the end.

Elaine Mitchell, RPP, MCIP
Adjudicator, *Urban and Rural Planning Act, 2000*