

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-077-034

Adjudicator: Garreth McGrath

Appellant(s): Nakkita Moores

Respondent / Authority: Town of Portugal Cove – St. Philip’s

Date of Hearing: November 30, 2023

Start/End Time : 11:00/12:30

In Attendance

Appellant: Nakkita Moores by Phone Appellant

Representative(s):

Respondent/Authority: Town of Portugal Cove – St. Philip’s

Respondent Representative(s): Les Spurrell, Ashley Linehan

Proponent/Developer:

Developer Representative:

Interested Party:

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 the Town of Portugal Cove – St. Philip’s Municipal Plan and Development Regulations when it denied an agricultural development on 18 October 2022.

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 or not 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 a denial by the town to approve a chicken coop in the yard at 1836 Portugal Cove Road. This was due to there being no discretionary or permitted use for a coop within the "Traditional Community" zoning of the area. The report of the Technical Advisor also showed that the appeal was filed validly according to the Urban and Rural Planning Act.

The Appellant's Presentation and Grounds

While the Appellant was only able to make a brief appearance by phone and the Adjudicator thanks them for their written submissions in assisting with this issue. They outline their issues (that the Adjudicator has authority to make decisions on) as:

- 1) The chickens and their coop do not meet the definition of an Agricultural purpose and as such are exempt from the requirements of the zoning regulations of the town.
- 2) The Appellant states that they were denied natural justice when the town held their Council meeting without informing the Appellant of its time and location to make submissions.

The Adjudicator however does not have the authority to determine whether or not the municipal plan is "outdated" with its regulations on backyard chickens. As such no determination shall be made on the matter.

Authority's Presentation

The position of the Authority is that this application fell outside the permitted use cases for the property. The Traditional Community Zone does not allow for agricultural use in any form, including livestock and poultry, and as such the town denied the application to build a coop.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 and the Town of Portugal Cove – St. Philip's Municipal Plan and Development Regulations and determined the following:

- 1) Is the chicken coop allowed within the Traditional Community zone?

When looking at the regulations for the town and the Traditional Community zone, oddly agricultural use is excluded here. Neither the permitted uses nor discretionary uses allow agricultural use in the Traditional Community zone.

The question then becomes, is the raising of non-food chickens an agricultural use? When we look at the definition for Agriculture under the Town's Development Regulations we see that Agriculture specifically relates to the raising of livestock. Applicable to this is the definition of livestock under the development regulations which outlines that any species of poultry which are normally kept and raised on a farm and used or intended for use as food or food related purposes.

As a matter of statutory interpretation, the Adjudicator finds that chickens are normally kept and raised on farms, and as well that they are intended for use as a food or food related purpose. The purpose of this section on the reading of the Adjudicator is to carve out an exemption for animals that might normally be kept and raised on farms, such as cats and dogs, but are not raised for a food or food related purpose, but would be allowed in the zoning area. As such, there appears to be no carve out for agricultural uses in the area, and no possibility for a chicken coop to be placed in the area.

- 2) The Appellant states that they were denied natural justice when the town held their Council meeting without informing the Appellant of its time and location to make submissions.

The Adjudicator requested that the Authority provide information pertaining to the publication of the information for counsel minutes. The Authority provided an email from Claudine Murray, who's position was not in the signature of their email, however they were able to supply information from iCompass, an organization that assists in municipal planning and governance.

In this email, the Adjudicator was able to see that the Town had published the information for their meeting on October 17th 2022, the day before the hearing on October 18th 2022. On reviewing the Rules of Procedures Governing Meetings for the Town, Section 6.02 of the rules outlines:

Prior to each regular meeting of Council, the Clerk or designate shall prepare an agenda of all business to be brought before the Public Meeting, and the Agenda shall be distributed to Council by the Clerk or designate on the Friday prior to meeting. ... Councillors shall have access to the electronic agenda repository in order to be able to open the latest version.

As per these rules, the Clerk should have distributed the materials and had them made available electronically for the Council October 14 2022. As the Rules of Procedures Governing Meetings has no rule for when there is to be a separate release of the meeting minutes to the public and only one electronic repository, the Adjudicator finds that the applicable rule for when meeting minutes are to be released must necessarily be the Friday prior to the meeting.

As the Authority has provided no evidence that the materials were released on October 14 2022 as is required by their Rules of Procedures Governing Meetings, the Adjudicator must find that the Authority failed in their duty for procedural fairness and natural justice. While the application may have failed on its merits given the above determination of the Adjudicator that there was no ground upon which for the Authority to approve the Chicken Coop, the Authority is still nonetheless bound to their own Rules of Procedures Governing Meetings. Where there is no evidence showing how the Authority met this requirement, the Adjudicator finds in favor of the Appellant that there was a breach of their natural justice and procedural fairness to know when their application was to be heard before council.

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 failed to meet their procedural fairness and natural justice duty under the Town of Portugal Cove St. Philip's Rules of Procedures Governing Meetings to distribute their meeting minutes on the Friday prior to the regular council meeting. As such, the Adjudicator is reversing the decision of the Authority to deny the construction of the coop and sending the matter back to the Authority

to be decided properly within the requirements of their Rules of Procedures Governing Meetings with proper notice of the hearing given.

That is to say, this decision does not authorize the construction of the chicken coop. This decision does not grant the Appellant authority to proceed with construction on the property of 1836 Portugal Cove Road.

Instead, this decision finds that the Authority did not meet their requirements to provide the agenda of their meeting for 18 October 2022 by 14 October 2022, and as such the Town did not meet their procedural fairness and natural justice requirements to follow their own rules in determining whether or not to allow the coop. It is still within the powers of the Authority to deny the coop as they did on 18 October 2022, provided they meet their requirements of the Rules of Procedures Governing Meetings.

As a matter of obiter to this decision on the greater matter of the zoning area, the Adjudicator would like to reiterate comments made by the Authority that they are live to this question and, given their pending zoning review, this issue may become moot before the Authority has an opportunity to hear the application again. There is interest from the town on questions of raising chickens and whether that fits the definition of a “traditional community.” Zoning and regulations are not static, they are an ongoing conversation between the Authority and their constituents. As such I would encourage the Appellant to take this opportunity to engage in the civic process to see the Town become the place that they would like it to be through our democratic processes.

Order

The Adjudicator orders that the decision of the Town of Portugal Cove St. Philip’s to be reversed. The appeal by Ms. Moore is allowed.

The Authority and the Appellant(s) are bound by this decision.

In accordance with section 45(2) of the Urban and Rural Planning Act, 2000, the Adjudicator further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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 21 December 2023.

Garreth McGrath

Adjudicator

Urban and Rural Planning Act, 2000