

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal # : 15-006-087-015

Adjudicator: Lorilee A. Sharpe

Appellant(s): Craig Simms

Respondent / Authority: Town of Pasadena

Date of Hearing: February 7th, 2024

Start/End Time: 2:00 p.m.

In Attendance

Appellant: Craig Simms

Appellant Representative(s): Self-Represented

Respondent/Authority: Town of Pasadena

Respondent Representative(s): Michael Collins, legal counsel

Interested Parties: Nil

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

Technical Advisor: Faith Ford

Adjudicators Role

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators. The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000 and Regulations* enacted thereunder, the *Municipalities Act, 1999*, and the *Town of Pasadena Municipal Plan and Development Regulations* when it denied a permit to construct a residence and accessory building on the Appellants property.

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.

Rule 10 (a) of the Rules of Procedure provides that there shall be a technical advisor 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 provides the framework with respect to the appeals process under the *Urban and Rural Planning Act, 2000* and 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 denial of a permit to build a residential home by the Town of Pasadena to the owner of property at Pynn's Brook adjacent to the Trans Canada Highway. The property is located in a Rural zone within the Town of Pasadena's Planning boundary and as such is subject to the Town of Pasadena municipal plan and development regulations. The Property is also located adjacent to the Trans Canada Highway in Pynn's Brook which is a class 1 protected road in accordance with the *Protected Road Zoning Regulations* under the *Urban and Rural Planning Act*.

The Appellant's Presentation and Grounds

The Appellants' grounds for appeal are set out in the written appeal and were summarized in the technical advisors' report as follows:

- The Appellant is requesting to upgrade the existing access road, not create a new access road;
- It is unclear whether the Town of Pasadena has authority to deny or grant access from the Trans-Canada Highway or if the Department of Highways [Transportation and Infrastructure] has the authority to control access;
- The Town of Pasadena has not allowed for further development of the area;
- Other communities allow new access from the Trans-Canada Highway; and
- The Appellant feels they are being discriminated against because they want to build in a rural area.

In support of his grounds of appeal, the Appellant appeared at the hearing and made oral submissions. The Appellant takes the position that he is not proposing to construct a new access from his property to the Trans Canada Highway but rather to utilize an existing access. In support of his contention that the access road already exists he submitted a professional survey

and aerial photo showing the location of the access road. He testified that while the road had been overgrown from lack of use, once the fallen trees had been removed, it was once again passable. He also testified that the road led to a spot where there had been a cabin on the property and there still remained two old vehicles on the property (one of which was an old pick up truck), evidencing the fact that the road had been used for vehicular access. The Appellant stated that he had obtained permission from the Province, so the only impediment to his development now was the Town of Pasadena's denial of permit due to the issue of road access.

On cross-examination by legal counsel for the Town of Pasadena, he acknowledged that his permit application to the Town initially proposed new access roads to be built in different locations than the existing road located on the professional survey that he presented at the hearing. The Appellant stated that his first development proposal was to construct a driveway adjacent to existing road accesses on neighbouring properties as the Town had advised him that using existing access points would be his best option for approval. However, he was unaware of the existing road access on his property when he first made his application to the Town and the neighbours were not willing to accommodate his request for shared access. As such, when he received the survey showing the existing access, he provided that to the Town and had understood that they would then consider the existing road on his property in evaluating his permit application as he did not have all of the required documentation at the time of submission of his initial permit application.

Authority's Presentation

The Town of Pasadena did not present any witnesses or evidence other than what had already been provided in the appeal package. The letter from the Town to the Appellant dated August 18, 2023 in which the Town denied the permit application provides only one reason for the Town having denied the Appellants application for a permit to construct a dwelling and accessory building: that no new access road will be permitted on the Trans Canada Highway pursuant to s. 3.12.4(c) of the Town's Development Regulations.

The Town did not provide any evidence to suggest that it had considered the existing access road indicated on the Appellants survey to determine whether or not it may meet the requirements of s.3.12.4 (c) of the Town's Development Regulations. It was unclear from the Town's submissions whether the Town's refusal was a denial of the new access proposed by the Appellant in his initial permit application to run along the neighbours' access roads, whether the Town was denying the use of the access road that was indicated as already existing on the survey subsequently submitted by the Appellant, or whether the Town was denying both.

Interested parties

There were no other interest parties who participated in the hearing.

Adjudicators Analysis

I have reviewed the documents in the appeal package and submissions of all parties, as well as the applicable provisions of *The Urban and Rural Planning Act, 2000*, the *Town of Pasadena Municipal Plan and Development Regulations* and the *Protected Road Zoning Regulations*.

In answer to the question on appeal of whose authority governs the property and its access to the highway, the answer is that both the requirements of the Province set out in the *Protected Zoning Regulations* and the requirements of the Town of Pasadena set out in its *Municipal Plan and Development Regulations* need to be met by an applicant to develop the property as the property falls within both the provincial protected road zone and the planning area for the Town of Pasadena.

The Town of Pasadena denied the Appellant's permit in accordance with condition 4 (c) of the Rural Zone of its Development Regulations which states "*No new access roads will be permitted on the Trans Canada Highway.*"

As indicated above, it was not clear from the Town's submissions which of the proposed road locations the Town was denying. The Appellant was of the understanding that the Town was denying the existing access road location indicated on the survey. The Town in its submissions emphasized that the Appellants application for a permit indicated new access points adjacent to neighbouring properties but was unable to clarify when asked whether the Town had considered the existing access road indicated on the survey.

The powers of an adjudicator in deciding an appeal are set out in s.44 of the Urban and Rural Planning Act:

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.

I am satisfied that the Town's denial of a permit on the basis of the new access points proposed in the sketches initially submitted by the Appellant in his application for a permit should be confirmed on the basis of condition 4 (c) of the Rural zone set out in the Town's Development Regulations. I am not satisfied that the Town considered the Appellant's proposal to use the existing road in the location indicated on the survey subsequently submitted by the Appellant. As such, I refer the Appellant's development application back to Pasadena Town Council to review and consider whether the requested permit will be issued to the Appellant if he utilizes the existing road access in the location indicated on the survey.

Order

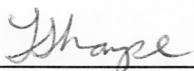
As such, the Adjudicator orders that:

- 1) the denial of a permit to create new road access in the location adjacent to neighbouring properties is hereby confirmed; and
- 2) the issue of whether the requested permit will be issued to the Appellant utilizing the existing road access indicated on the professional survey submitted by the Appellant is hereby referred back to Pasadena Town Council for consideration and decision.

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 Regional Appeal Board 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 Corner Brook, Newfoundland and Labrador, this 26th day of February, 2024.



Lorilee A. Sharpe, Adjudicator
Urban and Rural Planning Act, 2000