

**CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Glen Lilly **Appellant**

**AND** Town of St. Alban's **Respondent**

**RESPECTING** Refusal

**BOARD MEMBERS** Sam Gibbons – Chair  
Fred Parsons – Member  
Shawn Feener – Member

**DATE OF HEARING** November 17, 2015

**IN ATTENDANCE**

Jamie LeRoux – Authority  
Glen Lilly – Appellant  
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board  
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

## DECISION

### Facts/Background

This appeal arises from a decision made by the Town of St. Alban's to reject an application for a personal band saw (Woodland Mills 722 Portable Sawmill) at 84 Main Street. On April 3, 2015, Mr. Glenn Lilly submitted a development application to the Town of St. Alban's. The Town considered and refused the subject application at the April 21, 2015 Regular Meeting of Council. The Town notified Mr. Lilly of its decision in a letter dated April 22, 2015. Mr. Lilly attended the May 4, 2015 Regular Meeting of Council and discussed his proposal. Council considered Mr. Lilly's application once again at the June 1, 2015 Regular Meeting of Council. Council determined that the proposed use could not be approved in the subject location and refused Mr. Lilly's application. Mr. Lilly was notified of Council's decision in a letter dated June 2, 2015.

In accordance with section 42 of the *Urban and Rural Planning Act, 2000*, Mr. Lilly filed an appeal with the Central Newfoundland Regional Appeal Board against Council's decision to refuse his application to operate a sawmill in his shed located at 84 Main Street. Mr. Lilly initiated the appeals process on June 10, 2015 and as required under section 42(5) of the *Urban and Rural Planning Act, 2000* filed: a summary of the decision being appealed; grounds for the appeal; and the appeal filing fee.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Advertiser* on September 3, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on September 9, 2015.

### Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Town of St. Alban's Municipal Plan and Development Regulations, 2009

### Matters presented to and considered by the Board

#### **How is the subject property zoned?**

The Board learned that the subject property located at 84 Main Street is designated and zoned Mixed Development. General Industry uses are listed as discretionary uses according to the Mixed Development Use Zone Table in Schedule C in the Town's Development Regulations.

**Did the Town accurately classify the personal sawmill as a General Industry use class?**

The Board learned that the proposed use of a personal sawmill is not listed as an example in any of the use classes listed in Schedule B of the Town’s Development Regulations. The Town explained during that hearing that it referred to the closest example indicated in Schedule B, which was a “planing mill”. A planing mill is listed as an example of a General Industry Use Class. An excerpt of Schedule B is below:

SCHEDULE B CLASSIFICATION OF USES OF LAND AND BUILDINGS		
GROUP	CLASS	EXAMPLES
INDUSTRIAL	Hazardous Industry	Bulk Storage of hazardous liquids and substances, Chemical Plants, Distilleries Feed Mills, & Lacquer, Mattress, Paint, Varnish, and Rubber Factories, Spray Painting
INDUSTRIAL	General Industry	Factories, Cold Storage Plants, Freight Depots General Garages, Warehouses, Workshops, Laboratories, Laundries, Planing Mills, Printing Plants, Contractors' Yards
INDUSTRIAL	Service Station	Gasoline Service Stations, Gas Bars, Car Wash
INDUSTRIAL	Light Industry	Light Industry, Parking Garages, Indoor Storage, Warehouses, Workshops

The Board reviewed Schedule B as well as the definitions of General Industry and Light Industry. Schedule A of the Town’s Development Regulations defines General Industry and Light Industry as follows:

*GENERAL INDUSTRY means the use of land or buildings for the purpose of storing, assembling, altering, repairing, manufacturing, fabricating, packing, canning, preparing, breaking up, demolishing, or treating any article, commodity or substance. "Industry" shall be construed accordingly.*

*LIGHT INDUSTRY means the use of any land or buildings for any general industrial use that can be carried out without hazard or intrusion and without detriment to the amenity of the surrounding area by reason of noise, vibration, smell, fumes, smoke, grit, soot, ash, dust, glare or appearance.*

The Board reviewed the examples of the Light and General Industry Use Classes listed in Schedule B. There appears to be a mark difference between the examples provided in the General Industry Use Class and the Light Industry Use Class. The Board’s opinion is that a personal sawmill is more appropriately

classified as a Light Industry Use Class due to the intended use of the sawmill and the size of the motor (7 hp). The appellant stated at the hearing that a 7 hp motor is smaller than most lawnmowers. The appellant also noted that very little dust is created by this particular sawmill. Therefore, based on the information presented at the hearing, the Board found that the Town did not classify the proposed sawmill as a General Industry Use Class appropriately.

**Did the Town have the authority to refuse Mr. Lilly's application?**

The Board acknowledges that the Town has the authority to refuse applications if the proposed development conflicts with the Town's Municipal Plan and Development Regulations. The Board found that the Town erred in classifying the sawmill as a General Industry Use Class and therefore did not have the authority to refuse the appellant's application for that reason.

**Did the Town follow proper procedure when it notified Mr. Lilly of the Town's decision?**

The Board found that reasons for refusing an application must be communicated in writing in accordance with section 22 of the Town's Development Regulations. Section 22 states: "The Town shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing."

The Board reviewed the two decision letters issued to Mr. Lilly. The first decision letter is dated April 22, 2015 and the second decision letter is dated June 2, 2015. The Board found that the April 22, 2015 and June 2, 2015 letters are somewhat contradictory. The April 22, 2015 letter states that planer mills are classified as General Industry which is only permitted in the General Industry zone subject to Condition 5 of the General Industry zone. The Board determined that General Industry uses may be permitted in the Mixed Development zone which Mr. Lilly's property is located. It's unclear to the board why the Town included information pertaining to the General Industry zone when the appellant's property is located within the Mixed Development zone. This information pertaining to the General Industry zone is reiterated in the June 2, 2015 letter.

In the last paragraph of the April 22, 2015 letter, the Town states that General Industry uses are permitted at Council's discretion in the Mixed Development zone. However, the letter does not indicate why the proposed use was not considered by the Town as a discretionary use. Comparatively, the June 2, 2015 letter does not refer to the Mixed Development zone requirements at all. Additionally, the June 2, 2015 letter states that Council rejected the appellant's application pursuant to section 194 of the *Municipalities Act, 1999* when in fact the Town used its Municipal Plan and Development Regulations to refuse Mr. Lilly's application.

Therefore, based on the conflicting decision letters offering confusing reasoning as to why the Town rejected the appellant's application, Board determined that the Town did not satisfy the requirements outlined in section 22 of the Town's Development Regulations.

The Board acknowledges that the Town must notify the applicant of their right and process to appeal in accordance with section 5 of the Minister's Development Regulations, 2000. Section 5 states:

*Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the*

*(a) person's right to appeal the decision to the board;*

*(b) time by which an appeal is to be made;*

*(c) right of other interested persons to appeal the decision; and*

*(d) manner of making an appeal and the address for the filing of the appeal.*

While the Board acknowledges that notice was provided in the June 2, 2015 decision letter, the right and process to appeal was not included in the April 22, 2015 letter. The Board also notes that reference to the *Municipalities Act, 1999* in the June 2, 2015 letter is incorrect as the Town rejected the appellant's application pursuant to the Town of St. Alban's Municipal Plan and Development Regulations and not under section 194 of the *Municipalities Act, 1999*.

## **Conclusion**

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information and planning advice.

The Board is bound by section 42 of the *Urban and Rural Planning Act, 2000* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

Based on its findings, the Board determined that the Town of St. Alban's did not have the authority to refuse Mr. Lilly's application for a personal sawmill, based on the General Industry classification. Additionally, the Board found that the June 2, 2015 decision letter did not provide adequate reasons for refusal in accordance with section 22 of the Town's Development Regulations. Therefore, the Board will vacate the Town's decision to reject Mr. Lilly's application. That is to say, the Town must reconsider the application, render a new decision on Mr. Lilly's application, and then issue a new decision letter to Mr. Lilly. If the Town decides to refuse the application again, then the decision letter issued to Mr. Lilly must

clearly articulate the reasons for refusal in accordance with section 22 of the Town's Development Regulations and note the right and process to appeal the decision in accordance with section 5 of the *Minister's Development Regulations*.

**Order**

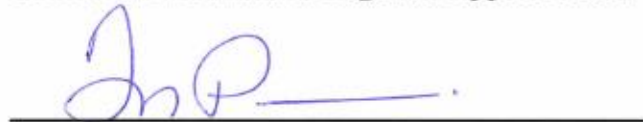
Based on the information presented, the Board orders that the decision to refuse Glenn Lilly's application for a personal sawmill at 84 Main Street made by the Town of St. Alban's, be vacated.

The Town of St. Alban's and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

**DATED** at Grand Falls-Windsor, Newfoundland Labrador, this 17<sup>th</sup> day of November, 2015.



**Sam Gibbons, Chair**  
**Central Newfoundland Regional Appeal Board**



**Fred Parsons, Member**  
**Central Newfoundland Regional Appeal Board**



**Shawn Feener, Member**  
**Central Newfoundland Regional Appeal Board**