

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Stephen Johnson **Appellant**

AND Town of Clarenville **Respondent**

RESPECTING Council's refusal to allow the operation of a band saw at 42
Taverner Place, Clarenville (15-006-057-029)

BOARD MEMBERS Cliff Johnston, Chair
Carol Ann Smith, Member
Robert Warren, Member

DATE OF HEARING April 25, 2019

IN ATTENDANCE

Stephen Johnson, Appellant (via teleconference)

Rick Wells, Director of External Operations, Town of Clarenville (via teleconference)

David Harris, Town Manager, Clarenville (via teleconference)

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

Victoria Akerele, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the decision made by the Town Council of Clarendville on September 25, 2018 to refuse the Appellant's request to carry out a personal portable sawmill operation at 42 Taverner Place.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Clarendville Development Regulations

Matters presented to and considered by the Board:

Q. Is the Town in receipt of a formal application from the Appellant for the proposed personal portable sawmill operation?

A. The Appeal Board has been advised by representatives for the Town that a formal application has not been received to date. To this point in time, the Appellant's submission has been considered a request only.

Q. Can the Appeal Board decide on an appeal that is based on a request only and that is not based on a formal application to a municipality?

A. The Board has determined that it cannot decide upon an appeal that lacks a formal application to a municipality and/or appropriate authority. Section 42(1) of the Urban & Rural Planning Act, 2000 states that "*A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to*

- a) an application to undertake a development;*
- b) a revocation of an approval or a permit to undertake development;*
- c) the issuance of a stop work order; and*
- d) a decision permitted under this or another Act to be appealed to the board."*

Further, the Board has determined that the Town made a procedural error by processing a request as opposed to requiring submission of a formal application. The Town also erred by advising the Appellant of his right to appeal the Council decision to the Eastern Newfoundland Regional Appeal Board.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

Therefore, the Board reverses the Respondent's decision to refuse the request from the Appellant to operate a personal portable sawmill at 42 Taverner Place, Clarenville.

If the Appellant wishes to proceed with his proposed personal portable sawmill operation, the Board orders the Appellant to submit a formal application to the Town of Clarenville, and that if/when received, the Town is ordered to process the application in accordance with the Town's Development Regulations. The Board notes that the Town has the authority under the provisions of the Urban & Rural Planning Act, 2000 to modify its existing Development Regulations to allow the proposed use if the Town so chooses.

Order

Based on the information presented, the Board orders that the decision of the Town of Clarenville to refuse the request from the Appellant to operate a personal portable sawmill at 42 Taverner Place be reversed, and further orders the Appellant to submit a formal application to the Town for processing if the Appellant still wishes to proceed with his proposal. The Board further orders the Respondent to process the Appellant's formal application (if/when received) in accordance with the Town's Development Regulations.

The Board further orders that the Town pay an amount of money equal to the fee paid by the Appellant.

The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland 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 Board's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 29th day of April 2019.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member

Eastern Newfoundland Regional Appeal Board