

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Roger and Sharon Gollop **Appellant**

AND Town of Paradise **Authority**

RESPECTING Matter under appeal Respecting Refusal of Discretionary Use
Application to do woodworking on residential property situated at
192 St. Thomas Line, Town of Paradise
(MAE File #:15-006-044-050)

BOARD MEMBERS Chair – Cliff Johnston
Member – Paul Boundridge
Member - Robert Warren

DATE OF HEARING October 26, 2018

IN ATTENDANCE

Appellant: Roger Gollop

Respondent: Town of Paradise – Alton Glenn, Director of Planning and Development

Interested Third Party: David Brazil, MHA (speaking on behalf of Appellant)

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Paradise refusal on November 15, 2016 of a Discretionary Use Application to operate a woodworking business as a Home Based Business on property situated at 192 St. Thomas Line, Paradise; the subject property is zoned Residential Low Density (RLD). This was conveyed to the applicant in a letter dated November 24, 2016.

On December 8, 2016 the Appellants filed an Appeal package with the Secretary of the Appeal Board. The grounds of appeal can be based on "similar uses operating in nearby dwellings".

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of appeal was published in The Telegram newspaper and a notice of the time, date and place of the hearing was provided to the appellant and the authority as required by the *Urban and Rural Planning Act, 2000*.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Paradise Municipal Plan 2004 and Town of Paradise Development Regulations 2004

Matters presented to and considered by the Board

Q: How is Home Based Business defined in the Town's Development Regulations, 2004?

A: The Town of Paradise Development Regulations 2004 define a Home Based Business as the "secondary use of a dwelling unit or its accessory building by at least one of the residents of such dwelling unit to conduct a gainful occupation or business activity, and subsidiary to a residential use."

Q: Is a Home Based Business a Discretionary Use in the RLD Zone?

A: Yes, subject to Zone Requirements and other requirements of the Development Regulations.

Q: Can the activities described in the Appellant's Home-Based Business application be considered as falling under the definition of Light Industry Use?

A: The Town's Development Regulations, 2004 define a Light Industry Use as:

"**LIGHT INDUSTRY** means the use of land or buildings for 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."

Q: Should the Appellant's application be categorized as a Home Based Business or a Light Industry Use?

A: The Town has the authority and obligation to classify an application in the manner it feels most appropriate within the provisions of the Town's Development Regulations. In the case of this appeal, the Town determined to classify the workshop application as a Light Industry Use, a use not permitted in the RLD Zone.

Q: Could the activity carried out at the subject property by the Appellant – "woodworking - preparing material to be installed in homes" offsite be considered as falling outside the definitions of Home Based Business and Light Industry Use?

A: At the appeal hearing the Appellant and his representative stressed that he is an independent contractor who is only intermittently undertaking woodworking at his own property for his off-site contracting work, and that he is not operating a business from his property. He further stressed/noted that there are no customers coming to his property, no products sold from his property, and no traffic generated. The Appellant's position is that he is not operating a business from his home and that therefore it should not be necessary for him to obtain a permit from the Town. At the appeal hearing, the Appellant did not provide any information to support his grounds for appeal that there are similar uses operating in nearby dwellings which was his grounds for appeal.

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.

Based on its findings, the Board determined that the Town was acting within its authority under the Town's Development Regulations, 2004 to refuse the Discretionary Use application.

Therefore, the Board confirms the Respondent's decision.

ORDER

Based on the information presented, the Board orders that the decision of the Town of Paradise of November 15, 2016 to refuse the Discretionary Use application from the Appellant to operate a woodworking business as a Home Based Business at 192 St. Thomas Line be confirmed.

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).

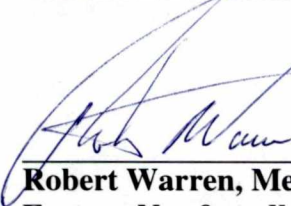
DATED at St. John's, Newfoundland and Labrador, this 30th day of October, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board