

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

Appeal #	15-006-077-009
Appellant(s)	Colton Concrete
Respondent / Authority	Town of Clarendville
Date of Hearing	April 28, 2023

Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Paul Boundridge, MCIP

Also in Attendance

Appellant	Manuel Ellis and Jenny Freeman of Colton Concrete Brad Dyke, P.Geo of NCD Consulting
Representatives for the Authority	David Harris, CAO (via teleconference) Rick Wells, Director of Public Works and Planning (via teleconference)
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Sean McGrath, Planner III, Municipal and Provincial Affairs
Start/End Time	9:00 am – 10:20 am

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Regional Appeal Board (the Board) is to determine if the Authority (Town of Clarendville) acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Clarendville Municipal Plan and Development Regulations when the Town Council made its discretionary decision on April 5, 2022 to refuse a development application from Colton Concrete to establish and operate a quarry near Shoal Harbour Pond.

Presentation's During the Hearing

The Board had oral presentations from the following parties at the appeal hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant, the Authority and the Applicant prior to the appeal hearing date. A representative for the appellant made a PowerPoint presentation. The Board also had access to the digital recording of the appeal hearing made by the recording secretary.

Planner's Presentation

The Authority (Town of Clarendville) received a development application dated November 18th, 2021 from the Appellant (Colton Concrete - 86421 Newfoundland and Labrador (Sand) Ltd) for a proposed new quarry site located 200m east of Shoal Harbour Pond. The subject application is located within a Watershed Zone where Mineral Workings is listed as a discretionary use and is located near Shoal Harbour Pond which is a source point component of the municipality's public water supply. The Authority published notice of the application and upon completion of the notice period referred application to the Provinces Water Resource Management Division. At the same time the Authority received updated information from the Appellant with regards to the development proposal, including a correspondence from NCO Consulting. The Authorities Public Works and Planning Committee reviewed all representations from the discretionary use public notification process, the Provinces Water Resource Management Division and materials submitted by the Appellant. On April 5th, 2022 council, in their discretion, voted 4-3 on motion 22-059 to refuse application submitted November 18th, 2021.

November 18, 2021

The Authority (Town of Clarendville) received a development application dated November 18th, 2021 from the Appellant (Colton Concrete - 86421 Newfoundland and Labrador (Sand) Ltd) for a proposed new quarry site located 200m east of Shoal Harbour Pond.

November 25, 2021

The Authority received supplemental development application information from the Appellant.

December 1, 2021

Public Works & Planning Committee met and recommended a discretionary notice be published for public comment as this type of activity is at Council's discretion within a Water Shed Zone. It was also noted the area is located within the Town's Protected Public Water Supply Area (PPWSA).

December 7, 2021

Town Council adopted Committee minutes from December 1st, 2021.

December 15, 2021

Public Notice of Council pertaining to the proposed new quarry site located 200m east of Shoal Harbour Pond was posted on the Town's Website as well as the Town's Facebook Page. Due to Christmas holidays, deadline for acceptance of comments was extended until January 15, 2022.

January 25, 2022

Comments received from the Public Notice of Council were reviewed by the Public Works and Planning Committee. Committee recommendation was to review all comments submitted as well as reach out to the Provinces Water Resources Management Division (WRMD).

February 11, 2022

The Authority corresponded with WRMD regarding their input pertaining to the effects the proposed quarry may have on the Town's water supply.

February 22, 2022

Correspondence from WRMD to the Town were received.

March 16, 2022

Correspondence from NCO Consulting to the Town were received. NCO was engaged by the Appellant to aid with designing and developing the Shoal Harbour Pond Quarry in a responsible manner.

March 29, 2022

The Authorities Public Works and Planning Committee reviewed all the material complied to date for the proposed quarry application. Committee recommendation was to deny the application and refer the matter to Council for a final decision.

April 5, 2022

Town Council discussed and voted 4 – 3 on Motion 22-059 in favor to support the recommendation put forward to Council from the Public Works and Planning Committee meeting held on March 29, 2022.

April 19, 2022

An official letter from the Town was sent to Colton Concrete informing them of the decision of Council to deny the proposed sand quarry application near Shoal Harbour Pond. Right to Appeal was included.

GROUNDS OF APPEAL

This appeal is based on Section 42(1)(a) of the Urban and Rural Planning Act, 2000 with respect an application to undertake development:

42. (1) 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 a 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.

MUNICIPAL PLAN POLICIES

The Town of Clarendville Municipal Plan came into legal effect on July 30th, 2010, the application pursuant to the refusal under appeal was submitted November 18th, 2021. Under the Town of Clarendville Municipal Plan, 2021, the subject property is situated in the Water Supply Land Use Class Designation. Section 3.3.2 of the Town's Municipal Plan provides the Water Supply Land Use Class Designation:

3.3.2 Water Supply

1. General Intent

(1) Areas are designated Water Supply Area to protect the quantity and quality of the Clarendville drinking water supply. The water area includes the area of the Shoal Harbour River watershed upstream of the Town's water treatment plant.

(2) The Water Supply Area designation provides for two levels of protection for the Clarendville water supply, as implemented through the zoning in the Development Regulations. The highest level of protection is provided in the lower portion of the Shoal Harbour River watershed directly upstream of and in the vicinity of the water supply intake. In the much larger upper portion of the watershed, while the level of protection is also high, certain resource uses may be permitted subject to strict conditions.

2. Land Uses

(1) Permitted uses in the Water Supply Area include conservation uses and developments expressly related to managing water resources.

(2) In the area of highest protection, certain passive recreational uses such as walking trails may be permitted at Council's discretion if they are deemed to be compatible with water supply protection. In the more remote upper portion of the watershed, discretionary uses may include certain resource uses such as forestry, agriculture, mineral workings, and recreational open space. These will be subject to high standards and conditions to ensure they will have no effect on the water supply.

(3) No form of residential or other built-up development will be permitted in a Water Supply Area.

3. Department of Environment and Conservation

(1) No form of development shall be permitted in the designated Water Supply Area without the approval of the Water Resources Branch of the Department of Environment and Conservation.

4. Watershed Monitoring and Enforcement

(1) Council will closely monitor land uses and activities in the Water Supply Area development to ensure they are being carried out in a manner that will not harm water quantity and quality.

(2) Uses or activities that are found to be taking place in a manner deleterious to the water supply will be subject to an immediate stop- work order.

5. Emergency Measures

(1) Council will encourage the Departments of Transportation and Municipal Affairs, and other appropriate agencies, to take steps to reduce the threat of chemical contamination of the Shoal Harbour River water supply by road salt and vehicle mishaps on the Trans-Canada Highway and establish emergency procedures to deal adequately with a catastrophic chemical spill.

Section 3.2.1 of the Town's Municipal Plan provides General Land Use Policies. Section

3.2.1.5 provides policy with respect to Land Development and Subdivisions:

5. Land Development and Subdivisions

Colton Concrete v Town of Clarendville 15-006-077-009

(1) Site Suitability

When reviewing a proposed land development, Council will consider the site's suitability in terms of steepness of grades, soils, geology, location of watercourses and wetlands, and overall environmental sensitivity. When considering approval, Council will ensure that the development will have minimal negative effects on water resources and surrounding properties.

Section 3.2.1 of the Town's Municipal Plan provides General Land Use Policies. Section 3.2.1.5(8) provides policy with respect to Public Input:

(8) Public Input

Council may seek input from nearby residents and landowners when reviewing development proposals.

Section 3.2.1 of the Town's Municipal Plan provides General Land Use Policies. Section 3.2.1.9 provides policy with respect to Council Decision:

(9) Council Decision

Council will review each development application on a case by case basis and may:

- (a) Approve the development as proposed,
- (b) Approve the development subject to certain terms or conditions,
- (c) Defer a decision subject to more detailed information or requested modifications to the proposal, or
- (d) Not approve the development if it concludes that it is unsuitable for the location, will be prohibitively expensive for the Town to service or maintain, or will create environmental or other problems that cannot be sufficiently corrected or mitigated.

Section 3.2.1 of the Town's Municipal Plan provides General Land Use Policies. Section

3.2.1.12 provides policy with respect to Discretionary Uses:

12. Discretionary Uses

(1) Council may decide that a land use should be set out as a discretionary use in the Development Regulations, where:

- (a) the suitability of the use within a zone is not clear and may depend on the land use characteristics and circumstances of individual locations within the zone,
- (b) Council determines that the use could negatively affect the predominant uses of the zone and in order to mitigate this impact it would be desirable to consult with the public prior to issuing, issuing subject to conditions, or refusing a permit, or
- (c) it is necessary to attach conditions to an approval that differ from the standard conditions under the Development Regulations to ensure that the use is developed in a way that is compatible with nearby uses and the predominant uses of the zone.

Section 3.2.1 of the Town's Municipal Plan provides General Land Use Policies. Section 3.2.1.14 provides policy with respect to Mineral Working:

14. Mineral Working

- (1) Mineral working operations will be permitted in appropriate areas subject to necessary terms and conditions to minimize impacts on surrounding land uses, particularly in or near built-up areas.
- (2) Aggregate extraction operations will take measures to ensure water resources and other sensitive resources will not be negatively affected by extraction activities.

Section 3.2.2 of the Town's Municipal Plan provides General Environmental Policies.

Section 3.2.2 states:

3.2.2 General Environmental Policies

Conservation values are intrinsic to this Municipal Plan. High priority is given to protecting sensitive areas from water contamination, stormwater impacts, soil erosion, watercourse scouring and sedimentation, coastal erosion, and loss and fragmentation of habitat. All land use decisions will duly consider environmental sustainability and biodiversity objectives.

Section 3.2.2 of the Town's Municipal Plan provides General Environmental Policies.

Section 3.2.2.1 General Environment states:

1. General Environment

(1) Protection of Sensitive Areas

Land and natural resources that are environmentally sensitive, including watercourses, riparian areas, water supply areas, wetlands, steep slopes, coastal resources, wet or unstable soils, and important habitat will be protected from the potentially damaging effects of development.

(2) Consideration of Environmental Impacts

Potential environmental effects will be considered when reviewing development applications. At its discretion, or in accordance with other statutory requirements, Council may refer development proposals to the Provincial or Federal departments such as Environment and Conservation, Government Services, Health, and Fisheries and Oceans Canada for advice and/or regulatory approval.

Section 3.2.2 of the Town's Municipal Plan provides General Environmental Policies.

Section 3.2.2.3(1)(4) Watercourse and Wetland Protection states:

3. Watercourse and Wetland Protection

(1) Development in the vicinity of watercourses and wetlands will be carried out in a manner that minimizes the potential for environmental impacts, protects natural drainage, and preserves existing public access to the water.

(4) Where it believes that a proposed development may affect a wetland, Council may, at its discretion:

(a) require the developer to have the wetland delineated by a qualified consultant, (b) establish a sufficient buffer from the edge of the wetland, in which development will not be permitted,

(c) require such other conditions or restrictions as may be necessary to protect the wetland, and/or

(d) refuse to approve the development if it believes that identified impacts cannot be sufficiently minimized or mitigated.

Section 4.4 of the Town's Municipal Plan provides Development Control policies. Section

4.4.1 Municipal Plan is Binding states:

1. Municipal Plan is Binding

(1) The Clarendville Municipal Plan is a legal document which is binding upon all persons and organizations, including the Council.

Section 4.4 of the Town's Municipal Plan provides Development Control policies. Section

4.4.2 Council Responsibility states:

2. Council Responsibility

(1) Council shall exercise appropriate control over development in the Clarendville Planning Area in accordance with the Municipal Plan and the Development (Land Use Zoning, Subdivision, and Advertisement) Regulations.

Section 4.4 of the Town's Municipal Plan provides Development Control policies. Section

4.4.3 Subdivision and Development Applications states:

3. Subdivision and Development Applications

(1) All persons wishing to subdivide or develop land for any purpose within the Planning Area shall apply to Council for permission on the prescribed applications forms and shall submit a detailed drawing of the proposal indicating the location and dimensions of the land and the development.

(2) Council will examine the application on the basis of the Development Regulations. Council may approve the application, approve it with conditions, or refuse it.

Section 4.4 of the Town's Municipal Plan provides Development Control policies. Section

4.4.4 Right to Appeal states:

4. Right to Appeal

(1) An applicant who receives a refusal decision from Council on a development application may appeal that decision to the Appeal Board in accordance with the Clarendville Development Regulations.

Section 4.4 of the Town's Municipal Plan provides Development Control policies. Section

4.4.5 Provincial and Federal Referrals states:

5. Provincial and Federal Referrals

(1) If Council forms an opinion that a proposed development may be affected by the regulations of a Provincial or Federal department, the application will be referred to the concerned department for comments before a permit is issued.

DEVELOPMENT REGULATIONS

The Town of Clarendville Development Regulations came into legal effect on July 30th, 2010, enabled by Section 35 of the Urban and Rural Planning Act, 2000. The regulations within the Development Regulations are, enabled by and pursuant to, the Town's Municipal Plan and the policies there within. The Authorities Development Regulations Schedule A – Definitions provides the following definitions pertinent to the matter under appeal as follows:

DEVELOPMENT means the carrying out of any building, engineering, mining or other operations in, on, over, or under land, or the making of any material change in the use, or the intensity of use of any land, buildings, or premise and without limiting the generality of the foregoing, includes:

- (i) the making of an access onto a highway, road or way,
- (ii) the construction of a building,
- (iii) the erection of an advertisement or sign, and
- (iv) (iv) the parking of a trailer, or vehicle of any description used for the sale of refreshments or merchandise, or as an office, or for living accommodation, for any period of time.

and excludes:

- (i) the carrying out of works for the maintenance, improvement or other alteration or any building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building,
- (ii) the carrying out by a highway authority of any works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,
- (iii) the carrying out by any local authority or statutory undertakers of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose, and
- (iv) the use of any building or land within the courtyard of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.

DEVELOPMENT REGULATIONS means these regulations and regulations and by-laws respecting development that have been enacted by Council.

DISCRETIONARY USE means a use that is listed within the discretionary use classes established in the use zone tables of Council's development regulations.

ENVIRONMENTALLY SENSITIVE AREA means an area that is easily disrupted by human activity, and may include steep slopes, cliffs, watercourses, wetlands, riparian areas, springs, coastal features, wet and unstable soils, unstable geology, and vulnerable or threatened flora or fauna.

LAND includes land covered by water, and buildings and structures on, over, or under the soil and fixtures that form part of these buildings and structures.

MINERAL WORKING means the use of land for the surface extraction, processing, crushing, and stockpiling of sand, gravel, clay, shale, bedrock, or other aggregates, and may include washing and blasting where permitted under Provincial regulation, along with associated buildings and machinery.

NOXIOUS USE means a use of land or a building which, from its nature or operation, creates a nuisance, or is liable to become a nuisance that is offensive or dangerous by reason of noise, vibration, or emission of gas, fumes, dust, or objectionable odour.

PIT AND QUARRY WORKING carries the same meaning as Mineral Working.

WATERCOURSE means the full width and length, including the bed, banks, side and shoreline, or any part, of a river, stream, spring, brook, lake, pond, reservoir, estuary, or other natural or artificial freshwater channel open to the atmosphere, the primary function of which is the conveyance or containment of water, whether the flow is continuous or not.

WATERSHED means the surface area contained within a topographical divide above a specified point on a river, brook, stream, or other flowing body of water;

WETLAND means a land whose soil is saturated with moisture either permanently or seasonally. Wetlands include swamps, marshes, bogs, fens, and shallow water, among others. The water found in wetlands can be saltwater, freshwater, or brackish.

ZONING MAP means the map or maps attached to and forming part of the Regulations

Regulations 7. of the Authorities Development Regulations Compliance with Regulations requires all development within the Municipal Planning Area to be in accordance with the Development Regulations.

Regulation 8. Permit Required, requires a permit to be issued by the Authority prior to any development commencing within the Municipal Planning Area unless otherwise stated in the regulations or Urban and Rural Planning Act, 2000. Regulations 7 and 8 are as follows:

6. Compliance with Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

7. Permit Required

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by Council.

According to the Authority's Land Use Zoning Map the subject location associated with the application under appeal is located in a Watershed Land Use Zone. Schedule C – Use Zone Schedules contains tables showing the use classes which may be classified as a permitted or discretionary use. The tables also indicate the required standards of development and conditions affecting some or all of the use classes. The Watershed “W” Use Zone Table under Schedule C of the Authority's Development Regulations, 2010 provides the following

Use Classes as Permitted or Discretionary:

PERMITTED USE CLASSES (See Regulation 101): Conservation, Open space, Passive recreational use

DISCRETIONARY USE CLASSES (See Regulations 30 and 102): Agriculture (See Condition 3), Developments related to water supply management and protection, Energy generation facility (See Condition 5), Forestry (See Condition 3), Mineral exploration, Mineral working (See Condition 4).

Condition 1. Discretionary Use Class of the Watershed “W” Use Zone Table under Schedule C of the Authorities Development Regulations, 2010 states:

1. Discretionary Use Classes

The discretionary use classes listed in this table may be permitted at the discretion of Council provided the development would be in the public interest and would not be contrary to the purpose and intent of the Watershed zone. Development that is permitted at the discretion of Council will be subject to terms and conditions to ensure there will be no adverse impact on the drinking water supply.

Regulations 30(1)(c) and 30(4) of the Authorities Development Regulations, 2010, Notice of Application, provides a proposed development listed as a discretionary use in Schedule C of the Development Regulations, 2010, will be advertised for a minimum of 7 days. Regulation 30(5) specifies where a Council determines the public should be made aware of an application to undertake development, an advertisement period of 7 days will be provided.

30. Notice of Application (Refer to Ministerial Development Regulations, Sections 13 & 15)

(1) Notice of an application must be given when:

- (a) A variance is to be considered under Regulation 12,
- (b) A change in a non-conforming use is to be considered under Regulation 54,
- (c) A proposed development is listed as a discretionary use in Schedule C,
- (d) A Comprehensive development is proposed in accordance with Regulation 48, or
- (e) Council determines that the public should be notified of an application.

(2) In accordance with Regulation 13 of these Regulations and Section 13 of the Ministerial Development Regulations, notice of a variance application will be given directly to persons who are likely to be affected and a minimum of seven (7) days will be provided for persons to respond.

(3) In accordance with Regulation 56 (4) of these Regulations and Regulations 15 of the Ministerial Development Regulations, notice of an application to change a non-conforming use will be by advertisement in a newspaper circulating in the area, and a minimum of seven (7) days will be provided for persons to respond.

(4) Notice of an application to develop a discretionary use will be by advertisement in a newspaper circulating in the area, and a minimum of seven (7) days will be provided for persons to respond.

(5) Notice of an application for a development that council determines the public should be made aware of will be by advertisement in a newspaper circulating in the area, and a minimum of seven (7) days will be provided for persons to respond.

Regulation 11. Discretionary Powers of Council of the Authorities Development Regulations, 2010 states:

11. Discretionary Powers of Council

(1) In considering an application for a development permit or approval in principle, Council shall take into account the policies of the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development, the amenity of the surroundings, availability of utilities, public safety and convenience, and other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) When approving an application for a discretionary use, Council shall state in writing the basis for its approval.

(3) The exercise of discretionary powers does not enable Council to permit the development of a use that is not set out as a permitted use or a discretionary use under Schedule C or other Regulation, except when it considers that a proposed use is sufficiently similar to a permitted or discretionary use and in accord with the general intent of the Municipal Plan and the applicable zone under Schedule C

Condition 4. of the Watershed "W" Use Zone Table under Schedule C of the Authorities Development Regulations, 2010 states:

4. Mineral Working

In addition to the requirements of this zone, a mineral working use will be subject to all requirements for mineral working set out in the Rural zone.

The Rural "RUR" Use Zone Table under Schedule C of the Authorities Development Regulations, 2010, provides conditions for Mineral Working Uses under Condition 5, as follows:

5. Mineral Working Uses

5.1 Mineral Working Sites

A mineral working use will be subject to the following, unless otherwise authorized by Council:

(a) No new mineral working operation will be developed without a development permit issued by Council. The development, operation, termination, and rehabilitation of the mineral working site will be carried out only in accordance with terms and conditions specified in the development permit. The development permit will be revoked if the operator does not comply with the terms and conditions of the development permit.

(b) An application to Council for the development of an extraction pit or rock quarry will include a site development plan with the following information:

- (i) the site's biophysical features
- (ii) a delineation of the proposed extraction area
- (iii) the type and location of aggregate processing equipment
- (iv) a site rehabilitation plan (see Paragraph 5.4)

(c) No extraction of any sort will take place closer than:

- (i) 50 metres from a watercourse or wetland,
- (ii) 50 metres from a public street or highway,
- (iii) 200 metres of a residential, commercial, or public building,

(d) No quarrying of hard rock will take place within 800 metres of a residential, commercial, or public building.

(e) All topsoil and organic material, including the rusty coloured and iron stained layer, will be securely stockpiled for future rehabilitation of the site. The operator will ensure that the topsoil is not mixed with aggregate materials.

- (f) An undisturbed buffer strip will be maintained at least 30 metres wide between the final perimeter of a pit or quarry and the boundary of the lot on which it is located. Council may permit this buffer width to be reduced by up to 50% with the written consent of the adjacent property owner,
- (g) Where a proposed mineral working site is located in the vicinity of a public street or highway, or an existing or proposed residential, commercial, or recreational area, Council may require the owner to provide for natural or artificial screening to obstruct visibility of the site.
- (h) Council may require the mineral working site or excavated area to be fully or partially enclosed by a fence designed and constructed to Council's specifications.
- (i) No mineral working shall create excessive drainage or erosion onto adjacent properties or into nearby watercourses.
- (j) No mineral working shall cause the accumulation or ponding of water in any part of the site. Settling ponds will be permitted only with approval from the Department of Environment and Conservation.
- (k) The mineral working site shall be kept clean of refuse, abandoned vehicles, abandoned equipment and derelict buildings.
- (l) During seasonal or other extended periods of shutdown, the slope of any sand or gravel embankment shall not have a gradient steeper than 60% for the full depth thereof, and
- (o) Other such conditions that Council deems as necessary.

Regulation 66. Site Development Requirements of the Authorities Development Regulations, 2010, states:

66. Site Development Requirements

The following requirements will apply to all proposed site developments involving new street construction or large sites for commercial or other development.

- (a) Council shall consider the suitability of the site in terms of steepness of grades, soils and geology, and environmentally sensitive areas, including watercourses, wetlands, and coastal shorelines when reviewing a development application.
- (b) Council shall ensure that the proposed development will not be unsuitable by reason of resulting in pollution, erosion, sedimentation of watercourses, other environmental damage, or aesthetic degradation of the site or surrounding area.
- (c) No development of land, building, or structure will be permitted on a site where it otherwise would be permitted under these development regulations when, in the opinion of Council, the site is marshy, geologically unstable, excessively steep, or otherwise unsuitable for a proposed purpose by virtue of its soil or topography.

(d) Before approving development of a site having a slope greater than fifteen (15) percent up to twenty-five (25) percent, Council will require the submission of a review of the development proposal by a certified planner, engineer, landscape architect, or similar professional. The review shall evaluate the site's soil and

Regulation 57. Offensive and Dangerous Uses of the Authorities Development Regulations, 2010, states:

57. Offensive and Dangerous Uses

No building or land shall be used for any purpose which may be dangerous by causing or promoting fires or other hazards or which may emit noxious, offensive or dangerous fumes, smoke, gases, radiation, smells, ash, dust or grit, excessive noise or vibration, or create any nuisance that has an unpleasant effect on the senses unless its use is authorized by Council and any other authority having jurisdiction.

Regulation 26. Reasons for Refusing a Permit or Setting Conditions on a Permit of the Authorities Development Regulations, 2010 states:

26. Reasons for Refusing or Setting Conditions on a Permit

Council shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.

Regulation 27. Notice of Right to Appeal of the Authorities Development Regulations, 2010 states:

27. Notice of Right to Appeal (Refer to Ministerial Development Regulations, Section 5) Where Council makes a decision that may be appealed under Section 42 of the Act, Council 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 appeal 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

PROCEDURAL COMPLIANCE

Application was received by the Authority on November 18th, 2021 and was reviewed by the Public Works and Planning Committee on December 1st, 2021. The committee noted the location is within a Watershed Zone and within the Town's Protected Water Supply Area (PPWSA)/ Water Supply Land Use Designation as per the Future Land Use Map of the Municipal Plan. The Committee noted the use was Discretionary in the Water Shed Zone and recommended a Discretionary Notice be posted for a period of (2) weeks. The Public Works and Planning Committee minutes of December 1st, 2021 are as follows:

Application received from 86421 Newfoundland & Labrador (Sand) Ltd. for a new quarry permit near Shoal Harbour Pond. It was noted that this location is within the Water Shed zone and quarry operation is a Discretionary Use within the zone. It was also noted that the area is located within the Town's Protected Public Water Supply Area (PPWSA).

RECOMMENDATION: That a discretionary notice be posted for a period of two (2) weeks for comment. Once the discretionary notice period has ended the Committee will discuss the comments received and may reach out to the public to hold a meeting to voice any concerns.

At a regular meeting of council on December 7th, 2021, Council voted in favor of Motion: 21-182 to adopt the recommendation of the Public Works and Planning Committee minutes of December 1st, 2021, as follows:

MOTION: 21-182 Cr. Fillier/Cr. Smith

BE IT RESOLVED that the report given to the meeting held on December 1, 2021 be adopted and the recommendations therein be accepted.

IN FAVOUR 7 –CARRIED

The Authority published Public Notice of the application for new quarry activities in the Shoal Harbour Pond Road Area on December 15th, 2021, the deadline for public representations was set to January 15th, 2022. Please note: the Public Notice issued on December 15th, 2021, as included in the Authorities appeal package did not include the term Discretionary or Use. As per information submitted by the Authority the deadline for public notification was extended due to Christmas holidays. Section 3.2.1.5(8) of the Town's Municipal Plan, 2010, Public Input, establishes it is a policy of council that Council may seek input from nearby residents and land

owners when reviewing development proposals. Section 3.2.1.5(8) of the Municipal Plan, Public Input states:

(8) Public Input

Council may seek input from nearby residents and landowners when reviewing development proposals.

Regulations 30(1)(c) and 30(4) of the Authorities Development Regulations, 2010, Notice of Application provides a proposed development listed as a discretionary use in Schedule C of the Development Regulations, 2010, will be advertised for a minimum of 7 days. Regulation 30(5) specifies where a Council determines the public should be made aware of an application to undertake development, an advertisement period of 7 days will be provided. Public notice was issued from December 15th, 2021 to January 15th, 2022.

30. Notice of Application (Refer to Ministerial Development Regulations, Sections 13 & 15)

- (1) Notice of an application must be given when:
 - (a) A variance is to be considered under Regulation 12,
 - (b) A change in a non-conforming use is to be considered under Regulation 54,
 - (c) A proposed development is listed as a discretionary use in Schedule C,
 - (d) A Comprehensive development is proposed in accordance with Regulation 48, or
 - (e) Council determines that the public should be notified of an application.
- (2) In accordance with Regulation 13 of these Regulations and Section 13 of the Ministerial Development Regulations, notice of a variance application will be given directly to persons who are likely to be affected and a minimum of seven (7) days will be provided for persons to respond.
- (3) In accordance with Regulation 56 (4) of these Regulations and Regulations 15 of the Ministerial Development Regulations, notice of an application to change a non-conforming use will be by advertisement in a newspaper circulating in the area, and a minimum of seven (7) days will be provided for persons to respond.
- (4) Notice of an application to develop a discretionary use will be by advertisement in a newspaper circulating in the area, and a minimum of seven (7) days will be provided for persons to respond.

- (5) Notice of an application for a development that council determines the public should be made aware of will be by advertisement in a newspaper circulating in the area, and a minimum of seven (7) days will be provided for persons to respond.

On January 25th, 2022 public comments were received from the Public Notice of Council and were reviewed by the Public Works and Planning Committee, who recommended Council review all comments submitted and make referral to the Provinces Water Resource Management Division. Council has the authority to defer consideration of an application with the written agreement of the applicant, where more detailed information is requested. Please note: information provided by the Authority did not specifically state

“deferment of decision” and record of written agreement was not provided by the Authority of Appellant. Municipal Plan Policy 3.2.1.5(9) states:

(9) Council Decision

Council will review each development application on a case by case basis and may:

- (a) Approve the development as proposed,
- (b) Approve the development subject to certain terms or conditions,
- (c) Defer a decision subject to more detailed information or requested modifications to the proposal, or
- (d) Not approve the development if it concludes that it is unsuitable for the location, will be prohibitively expensive for the Town to service or maintain, or will create environmental or other problems that cannot be sufficiently corrected or mitigated.

With regards to referral to the Provinces Water Resource Management division the following Municipal Plan Policies support council in its decision:

Section 4.4 of the Town’s Municipal Plan provides Development Control policies. Section 4.4.5 Provincial and Federal Referrals states:

1. Provincial and Federal Referrals

Colton Concrete v Town of Clarendville 15-006-077-009

(2) If Council forms an opinion that a proposed development may be affected by the regulations of a Provincial or Federal department, the application will be referred to the concerned department for comments before a permit is issued.

Section 3.2.2 of the Town's Municipal Plan provides General Environmental Policies.

Section 3.2.2.3 General Environment states:

3.3.2.3 Water Supply

3. Department of Environment and Conservation

(1) No form of development shall be permitted in the designated Water Supply Area without the approval of the Water Resources Branch of the Department of Environment and Conservation.

Section 3.2.2 of the Town's Municipal Plan provides General Environmental Policies.

Section 3.2.2.1 General Environment states:

1. General Environment

(1) Protection of Sensitive Areas

Land and natural resources that are environmentally sensitive, including

watercourses, riparian areas, water supply areas, wetlands, steep slopes, coastal resources, wet or unstable soils, and important habitat will be protected from the potentially damaging effects of development.

(2) Consideration of Environmental Impacts

Potential environmental effects will be considered when reviewing development applications. At its discretion, or in accordance with other statutory requirements, Council may refer development proposals to the Provincial or Federal departments such as Environment and Conservation, Government Services, Health, and Fisheries and Oceans Canada for advice and/or regulatory approval.

Section 3.2 of the Town's Municipal Plan provides General Land Use Policies. Section 3.2.1.14 provides policy with respect to Mineral Working:

14. Mineral Working

- (1) Mineral working operations will be permitted in appropriate areas subject to necessary terms and conditions to minimize impacts on surrounding land uses, particularly in or near built-up areas.
- (2) Aggregate extraction operations will take measures to ensure water resources and other sensitive resources will not be negatively affected by extraction activities.

On February 22, 2022, the Authority received correspondence from Christia V Skinner, Environmental Scientist with the Provinces Water Resources Management Division, offering general comments with regards to the proposed quarry development. On March 16th, 2022 the Authority received correspondence from NDC Consulting on behalf of Colton Concrete (86421 Newfoundland and Labrador (Sand) Ltd).

The Public Works and Planning Committee on March 29th, 2022, reviewed all materials submitted to date including all materials submitted by the Appellant, public responses and the Provinces Water Resource Management Division. Minutes from the March 29th, 2022 Public Works and Planning Committee are as follows:

As a follow-up discussion, the DEO summarized all the materials compiled to date for the proposed sand quarry application.

RECOMMENDATION: The Committee is recommending to deny the application, and the matter be referred to Council for a final decision.

The Authorities Council Minutes of April 5, 2022 provide discussion on the matter and confirmed refusal of the application under Motion 22-059 pursuant to Public Works and Planning Committee recommendation to Council on March 29st, 2022.

MOTION: 22-059 Cr. Fillier/D.M. Tilley

BE IT RESOLVED that the quarry application submitted by 86421 Newfoundland and Labrador (Sand) Ltd be denied.

IN FAVOUR 4 - CARRIED

The Authority exercised Discretionary Powers Council under Regulation 11. of the Town's Development Regulations, 2010, in determining refusal as per motion 22-059 in relation to the applied for Discretionary Use Application received November 18th, 2021. This was communicated to the Appellant inclusive of Regulation 26. Reasons for Refusing a Permit or Setting Conditions on a Permit in the letter of refusal dated April 19th, 2022 as follows:

Upon completion of the discretionary notice period/process, the Committee discussed the comments and concerns received by the public and referred the matter back to Council to render a final decision. The main concerns that were discussed was the effects the quarry could possibly have on the Town's drinking water supply, as well as overall negative effects on our pristine water quality.

As a result of these concerns, Council exercised their discretionary right to deny the application at a recent April 5, 2022 Council meeting.

Please note: the refusal letter notes "Upon completion of the discretionary notice period/process," however the public notice included in the Authorities appeal package did not include the terms Discretionary or Use.

The letter of refusal included the Notice of Right to Appeal as per Regulation 26. of the Town's Development Regulations, 2010, pursuant to Section 5. of the Development Regulations under the Urban and Rural Planning Act, 2000. The Notice of Right to Appeal was stated as follows:

If you feel this decision is unjust, you have a right to appeal this decision to the Regional Appeal Board; however, any appeal must be lodged within fourteen (14) days of notification of the decision. An appeal form is attached, if you chose to appeal this decision.

Section 42(10) and (11) of the Urban and Rural Planning Act, 2000 state:

(10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

(11) Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision.

The Appellant

- Mr. Ellis advised the Board that he feels his company's application for the quarry was in compliance with the Town's Municipal Plan and Development Regulations.
- This proposed quarry will only involve one truck and one loader.
- The Town of Clarendville has previously allowed a range of other land uses in this watershed area, a number of which use motorized vehicles and equipment and there are seasonal dwellings.
- Mr. Ellis advised that the Mayor and some other Councilors had determined that the proposed quarry could meet all of the Town's regulatory requirements.
- Mr. Ellis advised that this quarry operation would provide a number of local jobs.
- Mr. Dyke provided a PowerPoint presentation to the Board. In his presentation, he noted that the proposed quarry would be a very low impact operation and would only be approximately 4.5 hectares in size and that its proposed buffers would exceed all regulatory requirements.
- Mr. Dyke also indicated that his company, at the request of Colton Concrete, undertook an analysis of other potential quarry sites within a 200km range from this application site at Shoal Harbour Pond. This study determined that the proposed site is the most viable site.

The Authority

- Mr. Harris advised the Board that the Shoal Harbour Pond Watershed area is the Town's primary water supply and the Town Council has determined that it does not wish to introduce new developments which may put the quality of the water supply at risk.
- Mr. Harris advised the Board that this appeal should focus on process and not policy; Appeal Board's cannot interfere with a discretionary decision of a Municipal Council.
- Mr. Harris indicated that the Muskrat Falls Act authorized development of the Nalcor Transmission Line and associated forest uses in this Watershed area with requirement for Municipal approval.
- Mr. Wells advised the Board that there was a long public advertising period for this application as it was over the Christmas 2021 season.
- Mr. Wells also advised that a number of the other land uses in the Watershed area are "grandfathered" as they existed prior to the establishment of the Watershed Zoning in this area and the Town Council does not have the authority to abolish these uses.

Appeal Board Analysis

Q. What is the nature of the proposed development?

A. An application was submitted from Colton Concrete to establish and operate a new quarry site located 200 metres east of Shoal Harbour Pond which would be approximately 4.5 hectares in size.

Q. What is the zoning of the proposed quarry site and does this current zoning allow a quarry operation?

A. The zoning of the subject property is "Watershed" under the Town of Clarendville Development Regulations. The Watershed Zone allows quarry operations (mineral workings) as a Discretionary Use.

Q. Was the quarry Development application processed in accordance with the requirements of the Town's Development Regulations and Municipal Plan?

A. Yes. The Board was advised that the Town advertised the application for public review and comment prior to the Town Council making its decision to refuse the application. The public advertisement period exceeded the requirements of the Towns Development Regulations. The Board has also been advised that the Town referred the application to the Provincial Water Resource Management Division for review prior to making its decision to reject the application. It has also been demonstrated to the Board that the Town Council reviewed and considered the applicable sections of the Towns Municipal Plan and Development Regulations pertaining to the quarry application before Council made its decision to reject the application. Further, it has been demonstrated to the Board's satisfaction that Council reviewed and considered the public representations received in response to the public notification process.

Q. Was it relevant in processing the quarry application for the Town Council to consider other existing nonconforming uses in the Watershed area such as seasonal dwellings and existing quarries?

A. No. The Town representatives have advised the Board, and the Board agrees, that these existing land uses are nonconforming uses which must be "grandfathered" and allowed to continue under certain conditions under the provisions of the Urban and Rural Planning Act, 2000 and the Town of Clarendville Development Regulations.

Q. Did the Town of Clarendville use its Discretionary Powers appropriately?

A. Yes.

Section 11 of the Town of Clarendville Development Regulations speaks to the Discretionary Powers of Council.

(1) In considering an application for a development permit or approval in principle, Council shall take into account the policies of the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development, the amenity of the surroundings, availability of utilities, public safety and convenience, and other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) When approving an application for a discretionary use, Council shall state in writing the basis for its approval.

(3) The exercise of discretionary powers does not enable Council to permit the development of a use that is not set out as a permitted use or a discretionary use under Schedule C or other Regulation, except when it considers that a proposed use is sufficiently similar to a permitted or discretionary use and in accord with the general intent of the Municipal Plan and the applicable zone under Schedule C

The Board has determined that the Appellant has not demonstrated an absence of procedural fairness. Based on the provisions/requirements of Section 11 (Discretionary Powers of Council) of the Town's Development Regulations, the Board has determined that this application has been processed in statutory compliance with applicable planning legislation and regulations.

Appeal Board 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.

The Board has determined that the Town of Clarendville was within its discretionary authority under the Town's Municipal Plan and Development Regulations to make its decision on April 5, 2022 to reject the application from Colton Concrete to establish and operate a quarry at property located 200 metres east of Shoal Harbour Pond, Clarendville.

BOARD'S ORDER

The Board orders that the decision made by the Town of Clarenville on April 5, 2022 to refuse the application from Colton Concrete to develop and operate a quarry (mineral working) on property located 200 metres east of Shoal Harbour Pond, Clarenville, **be confirmed**. The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

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 Appellant have received the Board's decision.

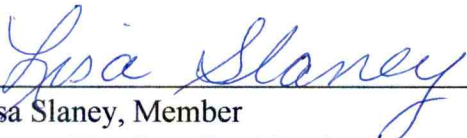
DATED at St. John's, Newfoundland and Labrador, this 28 of April, 2023.



Clifford Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member
Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member
Eastern Newfoundland Regional Appeal Board