

# EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

## URBAN AND RURAL PLANNING ACT, 2000

### Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-055
Appellant(s)	Joseph & Elizabeth McNeil
Respondent / Authority	Town of Paradise
Date of Hearing	April 21, 2022

#### Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Carol Ann Smith

#### Also in Attendance

Appellant(s)	Joseph McNeil
Representatives for the Appellant(s)	
Representatives for the Authority	Alton Glenn, MCIP, Director of Planning
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Keith Batstone, MCIP

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 Eastern Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Paradise (the Authority) to issue an Order is in accordance with the Urban and Rural Planning Act, 2000.

## **LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD**

- Municipalities Act, 1999
- Urban and Rural Planning Act, 2000
- Town of Paradise Development Regulations, 2016
- Town of Paradise Commercial Vehicle Regulations, 2013

### **Background:**

The Appellants (Joseph and Elizabeth McNeil) received notice from the Authority (Town of Paradise) on April 23, 2021, regarding the parking of a commercial vehicle at 49 Plateau Park in Paradise. The Authority issued an Order on June 11, 2021, to stop the parking of a commercial vehicle (trailer), contrary to the Commercial Vehicle Regulation, 2013. The Appellants filed appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board on June 24, 2021.

### **Presentations During Hearing**

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

### **Technical Advisor:**

The Town of Paradise Commercial Vehicle Regulation, 2013 came into effect on July 5, 2013. The Town of Paradise Development Regulations, 2014-2024 came into effect on April 6, 2018.

The subject property is located in the Residential Medium Density (RMD) Use Zone, as established in the Zoning Map (see: Development Regulations).

The Development Regulations provide for various residential uses in the 'RMD' Use Zone, including: Single-detached Dwelling (Permitted Use) and Apartment Building (Discretionary Use). The development standards at Section 8.0 (Off-Street Parking and Loading) are intended to "...ensure that the flow of traffic on adjacent Streets is not impeded by the on-street parking of vehicles associated with the... Use".

The Commercial Vehicle Regulations are intended to provide for the control of the parking of commercial vehicles in Residential Zones within the Town through the issuance of a permit for a period no longer than one year. The regulations outline the following definitions and development standards for commercial vehicle parking:

## Section 2. Interpretation

c) "Commercial Vehicle" means any vehicle designed, maintained, or used primarily for the transportation of property and Persons, and includes a Bus, (excluding vehicles less than 1 tonne), delivery van or wagon, tractor, truck tractor and/or trailer, heavy equipment, construction equipment, but does not include a taxi-cab jitney bus or recreational vehicle. For the purpose of these Regulations, all vehicles less than one tonne in weight are exempt from these Regulations.

## Section 5. Permit

a) No person shall Park any Commercial Vehicle or allow the Parking of a Commercial Vehicle within any Residential Zone with(in) the Town unless Council has issued a Commercial Vehicle permit for the Parking, valid no longer than one year. The Parking of Commercial Vehicles without a permit is considered a violation of these Regulations.

c) Council will not issue a permit to Park a Commercial Vehicle on any residential property where:

- i) The residential lot has less than 18 m frontage and less than 1000 m<sup>2</sup> in lot area; and
- ii) The residential lot is considered a Fully Serviced Lot.

The Authority's appeal package outlines that the Town received a complaint about the parking of a commercial vehicle (transport truck and trailer) at 49 Plateau Park. The Town's appeal submission details that staff initiated discussions with the property owner, issued a written warning notice, and requested the removal of the commercial vehicle. The Authority's appeal records further indicate that the Town received a second complaint regarding the parking of a trailer vehicle and that staff served an Order on July 11, 2021. The Authority's minutes for the Council meeting of July 15, 2021 establish that Council considered the land use complaint, the Town's issuance of an enforcement notice letter, and resolved unanimously to pass motion No. M21-192, which required the removal of a commercial vehicle from the subject property.

The Authority contends that the trailer vehicle, being parked in a Residential Use Zone and "used to store classic cars" is consistent with the regulatory definition of 'Commercial Vehicle' as established in the Commercial Vehicle Regulation, 2013 and is therefore non-conforming to the Town's standards (see: Authority's appeal submission package).

The Appellant contends that it is pertinent to the Board's consideration of the appeal matter that:

- the Town is asserting that the subject trailer is a commercial vehicle



- the subject trailer vehicle is for personal recreational vehicle use
- the removal notice is not valid based on use definition

The Municipalities Act, 1999 would appear to provide authority for Council to control and regulate the parking of commercial vehicles:

Council regulations:

Section 414

(2) A council may make regulations

(t) respecting parking lots and parking garages and controlling or prohibiting the parking of commercial vehicles within the municipality or certain areas of the municipality;

Section 404(1) of the Act also provides for:

Council orders

404.

(1) A council may make an order that

(j) a person who causes a nuisance contrary to the regulations of the council cease causing that nuisance;

A council may delegate to an official or employee of the council the power to issue order under this section.

The Town of Paradise Development Regulations, 2014-2024 do not establish any development standards for off-street parking and commercial vehicles relevant to the Board's consideration of this particular appeal matter.

The Authority's appeal submission package indicates that enforcement investigation proceedings initiated as a result of a resident complaint, involved:

- Town inspection, discussion with Appellant, and Council evaluation
- Council determination of non-conforming parking of commercial vehicles
- Issuance of a Council Order by hand delivery
- Specification of a 14 day time period within which there shall be compliance
- Notice of the right of appeal and the associated application process for the Eastern Newfoundland Regional Appeal Board

The Board must contemplate whether Council in exercising its authority to regulate the parking of commercial vehicles in a residential zone, adequately considered and carried out the enforcement procedures in accordance with the provisions of the legislative, policy, and regulatory framework.

### **The Appellant:**

- The Appellant advised the board that the Town asserts that the trailer is "commercial vehicle"; it is not. It is a trailer used to transport his drag race vehicles to races which is a recreational activity.
- He also advised that he plans to eventually convert a portion of the trailer for living space for his use when he travels to racing events.
- He confirmed that he will not be applying to the Town for a commercial vehicle parking permit.
- He advised the Board that there are a number of trailers similar to his parked on residential properties in the town.

### **The Authority:**

- Mr. Glenn advised the Board that the Town classifies the Appellant's trailer as a commercial vehicle, under the Town's Commercial Vehicle Regulations.
- It is the Town's practice to check with the Motor Vehicle Registration Office to determine if a particular vehicle is registered as a recreational vehicle. The Appellant advised that his trailer is not registered.
- Mr. Glenn advised that the Town does not currently have a specific definition for "Recreational Vehicle".

### **BOARD ANALYSIS**

- Q. Does the Town have the authority to control the parking of commercial vehicles?
- A. Yes. The Town's Commercial Vehicle Regulations are intended to provide for the control of the parking of commercial vehicles in Residential Zones within the Town through the issuance of a permit for a period no longer than one year. The regulations outline the following definitions and development standards for commercial vehicle parking:

#### **Section 2 Interpretation:**

c) "Commercial Vehicle" means any vehicle designed, maintained, or used primarily for the transportation of property and Persons, and includes a Bus, (excluding vehicles less than 1 tonne), delivery van or wagon, tractor, truck tractor and/or trailer, heavy equipment, construction equipment, but does not include a taxi-cab jitney bus or recreational vehicle. For the purpose of these Regulations, all vehicles less than one tonne in weight are exempt from these Regulations.

#### Section 5 Permit:

a) No person shall Park any Commercial Vehicle or allow the Parking of a Commercial Vehicle within any Residential Zone with(in) the Town unless Council has issued a Commercial Vehicle permit for the Parking, valid no longer than one year. The Parking of Commercial Vehicles without a permit is considered a violation of these Regulations.

c) Council will not issue a permit to Park a Commercial Vehicle on any residential property where:

- i) The residential lot has less than 18 m frontage and less than 1000 m2 in lot area; and
- ii) The residential lot is considered a Fully Serviced Lot.

#### **BOARD'S CONCLUSION AND DETERMINATIONS**

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 Paradise has the authority to control the parking of commercial vehicles in residential zones within the town. The Board has further determined that the Town has discretion to determine how vehicles are defined as commercial vehicles. The Board has determined that the Town was within its authority to issue the Order to the Appellant to remove his trailer and that the Order was processed and issued correctly.



## **BOARD'S ORDER**

The Board orders that the decision made by the Town of Paradise to issue an Order on June 11, 2021 (Order ratified by the Town Council on June 15, 2021) to Joseph McNeil to remove a commercial vehicle (trailer) at 49 Plateau Park, Paradise, be confirmed.

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

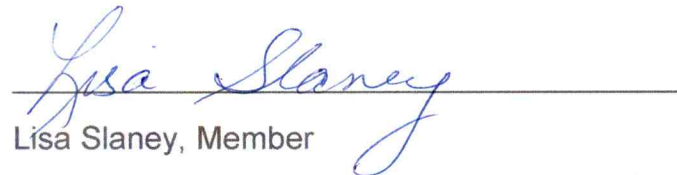
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this 21<sup>st</sup> of April, 2022.



Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member

Eastern Newfoundland Regional Appeal Board