

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

Central Newfoundland Regional Appeal Board

Appeal #	15-006-072-026
Appellant(s)	Sherry Haas
Respondent / Authority	Town of Baie Verte
Date of Hearing	April 28, 2022

Board Members

Chair (Acting)	Allan Scott
Member	Rebecca Redmond Mclean
Member	Charles Irving

Also in Attendance

Appellant(s)	Sherry Haas
Representatives for the Appellant(s)	Bradley Haas
Representatives for the Authority	Amanda Humby, CAO, Town of Baie Verte
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Keith Batstone, MCIP
Interested Parties	
Start/EndTime	9: 00 am – 11: 15 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 Central Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Baie Verte (the Authority) refusal of an application for an end of life vehicle: scrap yard/solid waste development at 17 Harborview Terrace, Baie Verte is in accordance with the Urban and Rural Planning Act, 2000.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

The legislation, policies, and regulations applicable to this appeal are:

- Municipalities Act, 1999
- Urban and Rural Planning Act, 2000
- Town of Baie Verte Development Regulations, 1985

Background:

On December 30, 2019, the Authority (Town of Baie Verte) received a request from the Appellant (Sherry Haas) for a Business Permit to 'collect and store solid waste material' at 17 Harbourview Terrace in Baie Verte, NL.

On August 18, 2021, the Authority issued notification of a decision to refuse a request for a Business Permit based on Council's determination that the proposal involves a 'scrap yard' which is not listed as either a Permitted Use or Discretionary Use in the Rural Use Zone.

On August 19, 2021, the Appellant received the Authority's letter as notification of the Council decision to refuse the requested Business Permit for a 'scrap yard'.

The Appellant filed an appeal on August 31, 2021 with the Secretary of the Central Newfoundland Regional Appeal Board.

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 technical advisor spoke about the Municipal Plan and Development Regulations.

The Town of Baie Verte Municipal Plan, 1985 and Development Regulations, 1985 came into effect on November 1, 1985. The subject property is located in the 'Rural' land designation, as established in the Future Land Use Map (see: Municipal Plan) and 'Rural' Use Zone, as established in the Zoning Map (see: Development Regulations).

The Municipal Plan outlines a policy goal for the 'Rural' land designation to achieve the following (see: General Intent/Uses):

The intention of this designation is to accommodate several uses associated with the rural land and resource base of the planning area. Uses which may be permitted within the Rural area include (...):

- Mineral exploration,
- Forest harvesting and silviculture programs,
- Agriculture,
- Recreational and subsistence uses (sport, fishing/hunting, cross country skiing, etc.),
- Specified seasonal residential (cottage) developments."

The Municipal Plan contemplates the future accommodation of limited types of industrial and residential uses, where consistent with the intent of the Rural designation and compatible with surrounding land uses:

Industrial uses associated with the natural resource base may be permitted within the Rural area, particularly those which need to be located near raw materials, are highly land extensive or for such other reason could not be feasibly located within the areas designated for industrial use.

Residential uses will not be permitted within the Rural area except as accessory to the permitted uses noted above, where residences may be allowed at the discretion of Council.

The Development Regulations (Schedule 'C') provide for various land uses in the 'Rural' Use Zone consistent with the policies of the Municipal Plan, including:

- Permitted Uses – Agriculture, Forestry, etc.
- Discretionary Uses – Single Dwelling, Mineral Working, Solid Waste, General Industry, etc.

The regulations for the 'Rural' Use Zone establish development conditions intended to provide for the future compatibility of the anticipated discretionary uses, including:

3. Discretionary Use Classes General Industrial

General industrial uses shall be restricted to maintenance and repair of equipment, processing and storage related to agriculture, forestry or other rural resource uses. Industrial uses shall be further limited to those which must be located within the Rural area in order to avail of raw materials. Other reasons for considering a rural location may include the avoidance of nuisance within the built-up community or the location of highly extensive land uses away from areas provided with municipal services.

Single Dwellings

Where permitted, single dwellings shall be subsidiary to and part of a farm or forestry operation. Dwellings shall only be permitted on individual water and sewage services.

The Appellant:

The Appellant provide a history of the application. The authority is supposed to give reasons as to why a development does not meet regulations. However, the Town of Baie Verte in their "opinion" feels the requested development should be identified as a scrap yard. The appellant noted that in Schedule C: Use Zone Tables, a scrap yard is not included as a permitted or discretionary use. The appellants believe that the Authority have categorized the requested development as scrap yard because that is a "ghost use" under its current development and regulations.

Further, Ms. Haas stated that contrary to Council's opinion that the requested development is a scrap yard, the development in question only collects and stores end of life vehicles. The vehicles are processed by a certified third party recycling company. The vehicles are either towed or driven to the identified location and therefore this was the reason for requesting a solid waste permit, which is a discretionary use for the rural zone. The Town imposed their opinion of 'scrap yard' on this because they(the Town) are acutely aware that they have a monopoly for metal created for themselves by having a scrap yard not a permitted or discretionary use in the Use Zone.

It was explained by Ms. Haas that a company (Newco) processes and transfer the metal. 90% of recycling yards for end of life vehicles are located on rural properties. Ms. Haas believes that Council has failed to give a reason why a rural property is not suitable.

Another reason the Board learned from the appellant for rejecting the application is that it was considered a nuisance by Council. However, after an Access to Information and Protection of Privacy application, it was noted the Town CAO said, "nuisance won't carry much weight" with respect to stopping the business application. The appellant's also pointed out that the property is not in visual view of surroundings.

The Authority:

The Town's CAO, Ms. Humby stated that the Town recognizes revenue and the importance of the business. They also recognize the current Regulation are outdated but still in effect.

With respect to the use classes of the current municipal policies and development regulations the application as received on December 30, 2019 was for a solid waste storage of vehicles. Ms. Humby stated that storage of vehicle is not listed as a permitted use in the zone. Miss Humby pointed out the problems in Schedule B of the Regulations.

In the Town's opinion they used the proper procedure in refusing the application. The Town consider the application as a scrapyard. Town's restrictions are based on current regulations and that Scrapyard / wrecking yard is consistent with current classification. The Town of Baie Verte is not trying to prohibit business growth and trying to enforce regulations and have powers over development and have done so appropriately.

BOARD ANALYSIS

What is the daily operation of the business?

The Board learned from Mr. Haas that vehicles are received at the site, drained of fluids, tires and wheels are removed, catalytic converters removed and storage. Also that Newco crushes vehicles on site during a year.

The Board also learned that with respect to Justice Chaytor's decision referenced during the hearing that Ms. Haas is storing wrecked vehicles and catalytic converters and therefore carrying out a development without a permit.

How did the Town of Baie Verte process the application?

The Authority reviewed the application under the Town of Baie Verte Municipal Plan, 1985 and Development Regulations which came into effect on November 1, 1985. The zoning for the area is Rural. The Board reviewed the plan and regulations and scrapyards are not listed in the Rural Zone as a permitted use. The Town considered the development to be a scrapyard operation. The Town noted that the development is not a permitted or discretionary use and had no choice but to refuse. It's not the role of the Board to determine whether or not the development is suitable. The Board accepts the Town's decision.

Did the Town of Baie Verte have the authority to refuse the application?

Yes. The current Municipal Plan and Development Regulations supports the Town's rejection of the application within the Rural Zone.

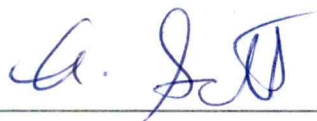
BOARD'S ORDER

The Board orders that the decision made by the Town of Baie Verte on August 21, 2021 to refusal of an end of life vehicle: scrap yard/solid waste development at 17 Harborview Terrace, Baie Verte 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 Gander, Newfoundland and Labrador, this May 13, 2022.



Allan Scott, Acting Chair
Central Newfoundland Regional Appeal Board



Rebecca Redmond MacLean, Member
Central Newfoundland Regional Appeal Board



Charles Irving, Member
Central Newfoundland Regional Appeal Board