

# URBAN AND RURAL PLANNING ACT, 2000

## Section 40-46

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

**Appeals #:** 15-006-083-008 and 15-006-083-011  
**Adjudicator:** Paul Boundridge, MCIP  
**Appellant(s):** Kerry Butt  
**Respondent / Authority:** Town of Salmon Cove  
**Date of Hearing:** 11 January 2024  
**Location of Hearing:** 1st Floor, Beothuk Building, 20 Crosbie Place, St. John's, NL  
**Start - End Time:** 9:08 a.m. – 10:50 a.m.

### In Attendance

**Appellant:** Kerry Butt  
**Authority Representative(s):** Rebecca Howell, Town Manager/Clerk  
Diane Peach, Councillor  
William Kelloway, Councillor  
**Interested Parties:** Nathan Graham and Victoria Graham  
(owners of 110 Main Street East, Salmon Cove)  
**Appeal Officer:** Robert Cotter, Departmental Program Coordinator  
Department of Municipal and Provincial Affairs  
**Technical Advisor:** Faith Ford, MCIP, Planner III  
Department of Municipal and Provincial Affairs

### ADJUDICATOR'S ROLE

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators. The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Salmon Cove Municipal Plan and Development Regulations 2020-2030 when it passed Motion 023-099 to extend a landscaping permit on April 11, 2023 and issued the development permit (extension) for excavation and landscaping at 110 Main Street East, Salmon Cove on April 12, 2023; and, then rescinded Motion 23-099 for the issuance of the development permit on May 2, 2023, pursuant to Motion 23-109.

At the commencement of the hearing, the parties to the appeal agreed that as the events surrounding each of the appeals and the stated grounds for appeal were similar and intertwined, the appeal hearings could be combined with a single decision/report being issued by the Adjudicator.

It is noted that in an Appeal, the onus rests with the Appellant to demonstrate that the decision(s) of the Authority should be overturned.

## HEARING PRESENTATIONS

The Adjudicator heard oral presentations from the following parties at the appeal hearing. The Adjudicator also received written presentations from the Planner/Technical Advisor the Appellant and the Authority (copy of Technical Report and Appellant's and Authority's submissions are on file with the Appeal Officer), prior to the appeal hearing date.

### Planner's Presentation

*The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness. Under the Rules of Procedure:*

*(a) there shall be a technical advisor to the Board who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether or not the proposal under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.*

*The Planner from Municipal and Provincial Affairs shall provide the framework with respect to the appeals process under the Urban and Rural Planning Act, 2000 and provide an overview of how an application was received from a developer and processed by Council as prescribed in their roles and responsibilities.*

### Background

The Adjudicator heard from the Planner/Technical Advisor that this appeal relates to an earlier decision by the Town of Salmon Cove Council on March 2022 to conditionally approve an application to operate a commercial sawmill at 110 Main Street East, Salmon Cove (the subject property). The decision was appealed in March 2022 and the appeal was heard by the former Eastern Regional Appeal Board in March 2023. The Board ordered the Authority's decision be reversed and advised a rezoning application must be submitted if the proponent intended to continue to seek municipal approval to develop a commercial sawmill at 110 Main Street East.

In April 2023, the Authority received a request from the property owner of 110 Main Street East to extend a development permit for landscaping and excavation that had expired. The original development permit #2021-0036 was issued for landscaping on the subject property in November 2021. Landscaping work had begun on the property sometime on or before April 2022 but stopped at the request of the Authority until the sawmill appeal on the same property was heard. During this time the permit expired.

During a Council meeting on April 11, 2023, Council passed Motion 023-099 to extend permit #2021-0036 for landscaping. Development permit (extension) #2023-0052 for backfilling and landscaping was issued on April 12, 2023. According to the Authority's submission, the landscaping permit is for residential and/or personal purposes only and is not related to the sawmill proposal previously appealed.

The Appellant observed landscaping work taking place on the subject property on April 28, 2023, and learned that a development permit (extension) had been issued earlier that month. The Appellant filed an appeal of the Authority's decision to issue a development permit (extension) for landscaping on May 2, 2022.

The Authority's submission indicates they learned a motion was not needed to extend a permit for landscaping, and during a regular Council meeting on May 2, 2023, Council passed Motion 023-109 to rescind the previous motion (Motion 023-099). The Appellant was present at the Council meeting where Council rescinded the previous motion. The Appellant's submission states another motion to extend the landscaping permit was made during the May 2, 2023, Council meeting. The Authority's submission denies this claim. The Appellant filed their second appeal of Council's motion to rescind Motion 023-099 and the motion to extend the development permit for excavation/landscaping on May 9, 2023.

### Jurisdiction/Validity

- The Appeal was filed within the prescribed period (14 days of becoming aware of the Council decision).
- The Appeal concerns an application for development, which is defined under *the Urban and Rural Planning Act, 2000* (URPA) as *"the carrying out of 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 land, buildings or premises..."*
- This appeal is based on Section 41 of the URPA with respect to development which establishes the types of decisions that may be appealed:

**41. (1)** *A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where*

*(a) the decision is permitted to be appealed to an adjudicator under this Act or another Act; or  
(b) the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:*

- (i) an application to undertake a development,*
  - (ii) a revocation of an approval or a permit to undertake a development, or*
  - (iii) the issuance of a stop work order.*
- Both appeal submissions (the Appellant's and the Development Authority's) included all required articles under Section 41 (4) of the Act.

### Planning Considerations

Urban and Rural Planning Act, 2000

The Act defines *building* under Section 2(c), as follows:

- (c) *"building" means*
  - (i) a structure, erection, alteration or improvement placed on, over or under land or attached, anchored or moored to land,*
  - (ii) mobile structures, vehicles and marine vessels adapted or constructed for residential, commercial, industrial and other similar uses,*
  - (iii) a part of and fixtures on buildings referred to in subparagraphs (i) and (ii), and*
  - (iv) an excavation of land whether or not that excavation is associated with the intended or actual construction of a building or thing referred to in subparagraphs (i) to (iii); [emphasis added]***

The Act defines development under Section 2(g), as follows:

- (g) **"development" means the carrying out of building, engineering, mining or other operations in, on, over or under land,** [emphasis added] *or the making of a material change in the use, or the intensity of use of land, buildings or premises and the*
- (i) making of an access onto a highway, road or way,*
  - (ii) erection of an advertisement or sign,*
  - (iii) construction of a building,*
  - (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,*

*and excludes the*

- (v) carrying out of works for the maintenance, improvement or other alteration of a 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,*
- (vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,*
- (vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and*
- (viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling;*

The submission documents indicate a development permit (extension) was issued for backfill and landscaping. Landscaping, excavation, and backfilling falls within the definition of development.

Section 12 of the Urban and Rural Planning Act states:

12. *A plan and development regulations are binding upon*
- (a) municipalities and councils within the planning area governed by that plan or those regulations; and*
  - (b) a person undertaking a development in the area governed by that plan or those regulations.*

Town of Salmon Cove Municipal Plan and Development Regulations

The Town of Salmon Cove Municipal Plan and Development Regulations 2020-2030 came into legal effect on November 13, 2020. According to the Land Use Zoning Map under the Town's Development Regulations, the subject property at 110 Main Street East is zoned Residential (RES).

## The Development Regulations

Within the Residential zone, single dwelling and recreational open space are Permitted Use Classes. Discretionary Use Classes for the Residential zone include double dwelling, row dwelling, apartment, mini home and modular home, place of worship, educational, convenience store, restaurant, childcare, home occupation, special care institutional uses, utilities, antenna and traditional agriculture. Where a use is not listed within the permitted or discretionary use classes for a zone, the use is not permitted within that zone per Section 91 of the Development Regulations.

Section 6 and 7 of the Town's Development Regulations state:

### **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 the Authority.*

The Town's Development Regulations define landscaping as:

**LANDSCAPING** means the development of land by altering the topography and ground cover and may include the use of turf, plants, shrubs, trees, retaining walls and fences.

The Authority's submission indicates a development permit was issued for landscaping on the subject property on November 26, 2021. The permit expired in November 2022 and the property owner sought an extension for the permit in April 2023. The Authority can extend a permit in accordance with Section 21(3) of the Development Regulations:

### **21. Development Permit**

- (1) *A written Permit to Develop, including a temporary Permit to Develop, issued by the Council shall be permission to develop. This permission shall not relieve the applicant from full responsibility of obtaining all other approvals, prior to the commencement of development, and complying with the requirements of all other regulations and statutes during development.*
- (2) *The Council may attach conditions to a Permit to Develop to ensure compliance with the Municipal Plan and these Regulations, and the permit holder shall be responsible for full compliance with the permit conditions.*
- (3) *A Permit to Develop is valid for a period of 1 year and may be extended twice up to a total maximum period of 3 years.*

## Procedural Compliance

Section 6 of the *Town of Salmon Cove Development Regulations 2020-2030* requires all development within the Planning Area to adhere to the Regulations. The Authority's submission states the landscaping and excavation work is for residential and/or personal purposes. The Appellant's submission asserts the landscaping and excavation work is related to the sawmill development previously appealed.

Landscaping and excavation are not land uses but rather the development of land. Under the Town's Development Regulations, landscaping and excavation may be permitted within any use zone. As landscaping and excavation is development, a development permit is required under Section 7 of the Town's Development Regulations.

The Authority's submission indicates a development permit for landscaping, Permit #2021-0036 was first issued in November 2021. The permit expired in November 2022, and the property owner requested an extension in April 2023. Development Permit #2023-0052 was issued on April 12, 2023. Based on the submission materials, a public Council meeting was held on April 11, 2023.

The Authority's submission includes an excerpt from the meeting minutes. At this meeting, Council moved into a privileged meeting and then moved back into a public meeting. Council may hold a privileged meeting per Section 213 of the *Municipalities Act, 1999*:

- 213.** (1) *A meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting.*
- (2) *Where a meeting is held as a privileged meeting or declared to be a privileged meeting, all members of the public present at the meeting shall leave.*
- (3) *A decision of the councillors made at a privileged meeting shall not be valid until that decision has been ratified by a vote of the councillors at a public meeting.*

The minutes indicate Council moved back into a public meeting prior to voting on Motion 023-099 to extend the permit; however, the Appellant's submission states the public were not invited back into the meeting.

During the May 2, 2023, public Council meeting, Council rescinded a previous motion (Motion 023-099). Council Motion #023-109 does not state the rationale for rescinding the previous motion; however, based on the evidence submitted as well as the Town's Permit Policy, it seems the motion was rescinded as a procedural correction. The Authority's submission states a motion of Council was not required to extend a permit for landscaping. It is unclear from the submission whether the development permit issued on April 12, 2023, remains valid.

The Authority's submission includes a copy of the Town's Permits Policy which indicates new building permits require Council's approval, but other permit types may be processed by staff. Under Section 109(2) of the *Urban and Rural Planning Act, 2000*, Council may delegate the power to approve or reject applications to an employee of the Council:

- 109.** (2) *A council or regional authority may appoint an employee of that council or authority to approve or reject applications, as designated by the council or regional authority, to develop land in accordance with the appropriate plan and regulations and that employee may outline the conditions applicable to that development.*

The submission materials indicate the development permit (extension) was issued on April 12, 2023.

## **Appellant's Presentation**

The Appellant is appealing the issuance of the development permit extension [appeal # 15-006-083-008] based on the following grounds:

- The Appellant was excluded from the portion of the public Council meeting where the decision to extend the development permit was made;
- The issuance of the permit for excavation and landscaping contravenes a previous decision by the former Eastern Regional Appeal Board, as rezoning is required prior to a sawmill development use;
- The property should be rezoned before further development is permitted;
- The Appellant believes the excavation and landscaping work is to support and/or accommodate a future sawmill development which is not permitted under current regulations; and
- The Town did not follow proper procedure and did not adhere to the Town Plan or former Eastern Regional Appeal Board's decision.

The Appellant is appealing Council's decision to rescind Motion 023-099 and Council's motion to extend the development permit [appeal # 15-006-083-011] based on the grounds summarized above as well as the following:

- The motion to extend the expired development permit was made in error;
- Council rescinded the original motion to extend the development permit, and then made the same motion again to extend the development permit to circumvent the Appellant's right to appeal the decision; and
- Council is trying to allow a sawmill operation to proceed to the detriment of surrounding residents.

The Appellant added that she felt the Town was being inconsistent in how it was dealing with applications for development of landscaping and the amount/type of information that property owners were being asked to provide with their development applications.

## **Authority's Presentation**

The Town representatives, mostly Ms. Howell and Ms. Peach, in response to the Appellant's grounds for appeal, advised that:

- At the April 11, 2023 Council Meeting Council went from a public meeting to a privileged/private meeting and back again to the public meeting. It was an oversight of Council that no Council representative had checked to see if the Appellant was still waiting after 2 hours for the public meeting to resume and invited her back into the Council chamber.
- The landscaping permit and the work it was intended to allow does not contravene a previous decision by the former Eastern Regional Appeal Board concerning a proposed sawmill development as the landscaping is not part of the failed sawmill development application.
- Rezoning of the subject property is not necessary as landscaping is allowable in any zone.
- When the previous appeal on Council's decision to give approval-in-principle to an application to allow development of a sawmill was made in 2022, Council (Deputy Mayor Oates) requested Mr. Graham (the property owner and applicant) to stop landscaping work until after the sawmill appeal was addressed. Application for and issuance of a Permit for landscaping was done before

Mr. Graham applied to the Town for approval of the proposed sawmill and was never part of the sawmill application.

- The only time Mr. Graham was Ordered to stop landscaping work on his property was on May 3, 2023 when he was written by the Town and advised that an appeal had been filed on Council's decision to approve the excavation and landscaping of property at 110 Main Street East, and that per Section 45(1) of URPA, any work associated with the landscaping and excavation should stop until the appeal was concluded.
- Council does not view landscaping and excavation as development and does not believe that such activity requires Council to approve a Development/Landscaping Permit. Such an application would not have to go before Council for approval but could be dealt with by staff. Also, "you do not need an application for landscaping... The Town does not have an application process for landscaping." [*Council's Rebuttal*, page 2]
- "All permits DO NOT go through council only developments/permits that have issues or disputes, very few permits come to council... a copy of the Town of Salmon Coves' (sic) policy on permits is attached." [*Council's Rebuttal*, page 1]

When questioned by the Adjudicator about the information required to be included with the Graham application for a permit to excavate and landscape the subject property (no site landscaping plan or written description of work to be undertaken attached to the application form), and how Council would know what it was being asked to approve and whether work being done was within the scope of the Permit issued, Town representative advised that Council would rely on the Maintenance Man to meet with applicants at the site to discuss what was proposed to be done and that he would verbally report back to Council if there were any concerns/issues that should be taken into consideration by Council or which would prevent the issuance of a Permit.

When questioned by the Adjudicator about the Development Permits containing a direct reference to Section 194 of the Municipalities Act but not to Sections 6 (Compliance with Regulations), 7 (Permit Required) or other sections of the Salmon Cove Development Regulations (such as Section 21 – Development Permit), the Town representatives said that it was a carryover from previous councils and Town Clerk's/Managers that would be addressed by the current Council and new Town Clerk/Manager.

In closing, the Town's position can be summarised with the following excerpt from the June 19, 2023 "Council's Rebuttal" document:

"Council has taken the proper procedure as on the Landscaping/excavating permits as per our town plan and permit policy as these are no applications necessary for landscaping (fill)... An application was received for a landscaping permit, it met the Town's guidelines, and the permit was issued...Council followed all proper procedures."

### **Interested Party's Presentation**

Nathan and Victoria Graham are the owners of the subject property that has been subject to third-party appeals by a neighbouring property owner. They expressed the feeling that anything they do with their property which requires Council approval will be appealed by the neighbour. This will continue to prevent them from enjoying the benefit of the reasonable use of their property, and this is frustrating for them.



## ADJUDICATOR'S ANALYSIS

These following questions arise from this appeal:

- Q:** Is excavation and landscaping Development?
- R:** A review of the definitions for Development contained in the *Urban and Rural Planning Act, 2000* and the Salmon Cove Development Regulations confirms that, contrary to the view of the Salmon Cove Council, excavation and landscaping is an activity that falls within the definition of development.
- Q:** Is the excavation and landscaping of property within the Town of Salmon Cove municipal planning area subject to compliance with the Town's Development Regulations, and if so, must it conform with the Town's Development Regulations and require the issuance of a Permit by the Town Council before it can proceed?
- R:** Section 6 and 7 of the Town's Development Regulations state:

***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 the Authority.*

- Q:** How long is a Development Permit valid for and can the Development Permit (Council approval) be extended?
- R:** A Development Permit is valid for a period of 1 year from the date of the Council approval and the date of the issuance of the Permit. Section 21 of the Salmon Cove Development Regulations states that Council has the discretionary power to extend the life of a valid Permit twice (1 year + 1 year), with the Permit having a total life of 3 years from the date of Council's original approval and the date of the Permit issuance.

**21. Development Permit**

- (1) A written Permit to Develop, including a temporary Permit to Develop, issued by the Council shall be permission to develop. This permission shall not relieve the applicant from full responsibility of obtaining all other approvals, prior to the commencement of development, and complying with the requirements of all other regulations and statutes during development.*
- (2) The Council may attach conditions to a Permit to Develop to ensure compliance with the Municipal Plan and these Regulations, and the permit holder shall be responsible for full compliance with the permit conditions.*
- (3) A Permit to Develop is valid for a period of 1 year and may be extended twice up to a total maximum period of 3 years.*

- Q:** Can Council extend the life of a Permit that has expired (lost its validity)?
- R:** The Salmon Cove Development Regulations do not give the Salmon Cove Council the authority to extend the life of a Permit that is no longer valid. The Council cannot legally revive an expired Development Permit.
- Q:** When did the original Development Permit # 2021-0036 for landscaping of the subject property expire?
- R:** The Town has informed us that the original Development Permit # 2021-0036 was issued on November 26, 2021 and was valid for one (1) year from date of issue. In the Town's May 29, 2023 written "Chronological Order of Events", item number 5 states that in "April 2022 Deputy Mayor Oates spoke to the homeowner (Nathan and Victoria Graham) and **requested** (emphasis added) he stop landscaping on his property until after the sawmill appeal was addressed..." The Request to stop landscaping of the subject property was not the same as an Order to stop landscaping the property as the decision to comply with the request would have been voluntary. Thus, the figurative clock on the November 26, 2021 Permit continued to run, resulting in the Permit expiring (losing its validity) on or about November 26, 2022. This was several months prior to Council's consideration of the April 2023 verbal request from the property owner to have Permit # 2021-0036 extended.
- Q:** Was the Council decision of April 11, 2023 to "extend Landscaping Permit # 2021-0036 To resident to resume landscaping" in conformity with the Salmon Cove Development Regulations?
- R:** No, the decision was clearly in contravention of Section 21. (3) of the Salmon Cove Development Regulations.
- Q:** Was the Council decision of April 11, 2023 to "extend Landscaping Permit # 2021-0036 To resident to resume landscaping" made at a public meeting of Council and in conformity with Section 213 of the *Municipalities Act, 1999*?
- R:** Section 213 of the *Municipalities Act, 1999* states:

**213. Privileged Meetings**

- (1) *A meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting.*
- (2) *Where a meeting is held as a privileged meeting or declared to be a privileged meeting, all members of the public present at the meeting shall leave.*
- (3) *A decision of the councillors made at a privileged meeting shall not be valid until that decision has been ratified by a vote of the councillors at a public meeting.*

Information provided by the Town Manager/Clerk indicates that after Council finished its Privileged/Private Meeting, it did not invite Town residents at the Public Meeting to return to the Council chamber to observe the proceedings. The *de facto* result was to maintain the status of the meeting as a Privileged Meeting of Council. Consequently, the Council decision of April 11, 2023 to "extend Landscaping Permit # 2021-0036 To resident to resume landscaping" was not valid on April 11, 2023. Thus, it was correct for Council on May 2, 2023 to rescind the Council decision of April 11, 2023 to extend Landscaping Permit # 2021-0036.

**Q:** What recourse does a person have who has had a Development Permit expire and wishes to continue with the proposed development?

**R:** The proponent has the right under Section 17 of the Salmon Cove Development Regulations to submit to the Town an application for a Development Permit.

**17. Form of Application**

(1) *An application for a development permit or for approval in principle shall be made only by the owner or by a person authorized by the owner in writing and signed by the owner to the Authority on such form as may be prescribed by the Authority. The ownership information must be sufficient to meet the satisfaction of Council. Every application shall include a property description and the location of the proposed development, and such plans, specifications and drawings as the Authority may require, and be accompanied by the permit fee required by the Authority.*

(2) *The Authority shall supply to every applicant a copy of the application forms referred to in Regulation 17(1) and a description of the plans, specifications and drawings required to be provided with the application and any information or requirements applicable to the application.*

**Q:** Has any evidence been brought forward that links the application to landscape the subject property with the failed application for approval to develop a sawmill on the subject property?

**R:** No

**Q:** Has any evidence been brought forward that Council has been considering an application to rezone the subject property from Residential to Commercial to accommodate an application to allow it to be developed for a commercial sawmill?

**R:** No

**Q:** Is rezoning of the subject property required to allow it to be landscaped?

**R:** No, landscaping could be permitted in any zone.

## ADJUDICATOR'S CONCLUSION

In arriving at his conclusion, the Adjudicator has reviewed the submissions and evidence presented by all parties, along with technical information and planning advice.

The Adjudicator is bound by Section 44 of the Urban and Rural Planning Act, 2000 and must therefore make a decision that complies with the applicable legislation, policy and regulations.

### **Urban and Rural Planning Act, 2000**

#### **"Decisions of adjudicator**

*44. (1) In deciding an appeal, an adjudicator may do one or more of the following:*

- (a) confirm, reverse or vary the decision that is the subject of the appeal;*
- (b) impose conditions that the adjudicator considers appropriate in the circumstances; and*
- (c) direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have the adjudicator's decision implemented.*

*(2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.*

*(3) An adjudicator shall not make a decision that does not comply with*

- (a) this Act;*
- (b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and*
- (c) a scheme, where adopted under section 29.*

*(4) An adjudicator shall, in writing, notify the person or group of persons who brought the appeal and the council, regional authority or authorized administrator of the adjudicator's decision."*

After reviewing the information presented, the Adjudicator concludes that the Town of Salmon Cove was not within its authority under the Town of Salmon Cove Municipal Plan and Development Regulations and the Municipalities Act to make its decision on April 11, 2023 to "extend Landscaping Permit # 2021-0036 To resident to resume landscaping". [appeal # 15-006-083-008]

Furthermore, after reviewing the information presented, the Adjudicator concludes that the Town of Salmon Cove was not within its authority under the Town of Salmon Cove Municipal Plan and Development Regulations to make its decision on May 2, 2023 to rescind its decision of April 11, 2023 to "extend Landscaping Permit # 2021-0036 To resident to resume landscaping" and to refer the matter to staff for processing per the Town's Demolition and Excavation Policy and the Town's Permits Policy. There is no documentation indicating that a new development application for landscaping, with supporting information, was submitted to the Town for review and approval in terms of compliance with the requirements of the Town's Municipal Plan and Development Regulations. [appeal # 15-006-083-011]

The Adjudicator also concludes that there is no evidence of any contravention of the March 2023 Order from the former Eastern Newfoundland Regional Appeal Board concerning Council's decision on a sawmill development application; there is not an application to rezone and/or develop the property for a commercial sawmill; and that rezoning of the subject property is not required to allow landscaping of the subject property.

## **ADJUDICATOR'S ORDER**

Concerning Appeal # 15-006-083-008 - the Adjudicator orders that the Council Decision of April 11, 2023 to "extend Landscaping Permit # 2021-0036 To resident to resume landscaping" made by the Town of Salmon Cove be reversed. That is to say, the Development Permit # 2023-0052 that was issued on April 12, 2023 is/was not valid and could not have remained in effect had Council not subsequently rescinded it.

Concerning Appeal # 15-006-083-011 - the Adjudicator orders that the May 2, 2023 Council's decision rescinding of Motion 023-099 and Council's Motion to extend development permit for excavation and landscaping at 110 Main Street East, Salmon Cove be reversed. That is to say, the Council must inform the owners of the subject property that they must submit to the Town an application, in accordance with Section 17 of the Salmon Cove Development Regulations, in order to obtain a Permit from the Town to landscape the subject property.

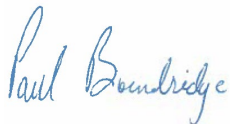
Any further Approval/Development Permits with respect to the property should be issued under the appropriate sections of the relevant legislation and in accordance with the Town's Development Regulations and Municipal Plan.

The Authority and the Appellant are bound by this decision.

In accordance with section 45(2) of the Urban and Rural Planning Act, 2000, the Adjudicator further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 for each of the two appeals, to the Appellant.

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

DATED at St. John's, Newfoundland and Labrador, this 18<sup>th</sup> day of January, 2024.



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**Paul Boundridge, MCIP**

**Adjudicator**

*Urban and Rural Planning Act, 2000*