

URBAN AND RURAL PLANNING ACT, 2000**Section 40-46**

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

Appeal # : 15-006-077-016

Adjudicator: John V O’Dea KC

Appellant(s): Justin and Michael Parsons

Respondent / Authority: Town of Victoria

Date of Hearing: 21 September 2023

Location of Hearing: Comfort Inn, St. John's

Start/End Time : 11:00 – 11:45am

IN ATTENDANCE

Appellant: Justin Parsons and Michael Parsons

Respondent/Authority Representative(s) Shelly Butt, Town Clerk/Manager, Town of Victoria

Appeal Officer: Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs

Technical Advisor: Faith Ford, Planner III, Technical Planning Expert, Department of Municipal and Provincial Affairs

ADJUDICATOR'S ROLE

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 Victoria Municipal Plan and Development Regulations when it refused the Appellant’s application for Approval In Principle to operate a “domestic sawmill” (personal use) at 33 Pye’s Road, Victoria pursuant to Motion 2022-162.

APPEAL HEARING PRESENTATIONS

PLANNER'S PRESENTATION ON THE TECHNICAL REPORT

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:

- 10 (a) there shall be a technical advisor to the panel 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 in effect.

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 the Authority as prescribed in their roles and responsibilities.

The Adjudicator heard from the Planner that this appeal concerns the refusal by the Town of Victoria (the Authority) to issue an Approval in Principle to the Appellant to operate a domestic sawmill at 33 Pye's Road, Victoria. The Authority's decision was made a regular meeting of the town council on 12 July 2022 by Motion 2022-162. The Authority issued a letter to the Appellant dated 14 July 2022 informing the Appellant of the decision of the Authority.

The Planner advised as follows:

1. The Appellant's application was for Approval in Principle for the operation of a domestic sawmill for personal use at the residence at 33 Pye's Road, Victoria.
2. The Appellant advised that the approval was required to be attached to a "Domestic License Application" form issued by the Government of Newfoundland and Labrador (Government).
3. On 3 July 2022, the Appellant submitted to the Authority a development permit application for the operation of a domestic sawmill (personal use).
4. The appeal was filed by the Appellant on 26 July 2022 which is within the prescribed period for filing appeals as set forth under the Urban and Rural Planning Act, 2000, section 41(3).
5. On 4 July 2022, the Authority contacted the Planner seeking input on the interpretation of domestic sawmill to determine what classification it may fall under in the Authority's development regulations.

6. A planner with Government advised the Authority that the operation of a domestic sawmill fell within the definition of “General Industry” of the Authority’s development regulations, and that a general industrial use would not be permitted within the Residential Zone.
7. The Authority issued a letter to the Appellant dated 14 July 2022 informing the Appellant of the decision of the Authority to refuse the application due to non-compliance with “the Town’s adopted Plan & Development Regulations and more specifically that a sawmill is classified as General Industry which is not permitted in a residential zone”.

In the technical report prepared for this appeal and in the presentation, the Planner outlined the main points in the chronology of this appeal. **A copy of the Planner's Technical Report prepared for this appeal is on file with the Appeal Officer.**

THE APPELLANT'S PRESENTATION AND GROUNDS

The Appellant submitted the Appeal and related correspondence providing grounds of appeal. The Appellant also made oral submissions at the hearing. The Appellant stated:

1. They made a presentation to the Authority and explained that the piece of equipment was a domestic band saw of about 12 feet in length, for domestic use, not industrial use.
2. They said that the council members agreed that there was no issue with operating such a tool and they should use it without getting a permit.
3. They said that the council denied the request on the basis that a planner with the Government considered the domestic sawmill within “General Industry” and not permitted.
4. They said there was no reference to “Personal Sawmills” and further inquiries to the Government garnered “no response”.
5. In addition, the Appellant made a presentation at the council meeting and provided a description of the equipment that was to be used.
6. The Appellant appealed on the following grounds:
 - a. “Wrong interpretation of the Municipal Plan (the application is not a “General Industry” development).
 - b. We are not looking for a Municipal Permit, rather than an approval in principle letter to send to NL Department of Forestry.
 - c. There is no mention of any form of Sawmill in the Town Plan, therefore how can they deny?
 - d. If this is the case any other tool such as snowblowers, lawnmowers, chainsaws, table saws, log splitters, lawn tractors etc. can all be utilized as “General Industry” are not permitted in the plan nor banished by council. So why banish a bandsaw?
 - e. Members of council verbally stated in a public meeting that they see no issue with the tool but yet denied the application based on one person’s interpretation.

- f. Why are regional planners passing their interpretation of the Town's Plan and being the sole decision on requests? This is not democracy, why have a council if this is how they are going to operate.
- g. Domestic sawmills are permitted in all other Towns in the area. I know that the Town Plans vary slightly but the basics remain the same. I ask who is in the wrong? Is Victoria right and every other municipality that allows domestic sawmills wrong?"

AUTHORITY'S PRESENTATION

The Town's Clerk/Manager, spoke to the appeal. A written submission had also been provided in the record of the appeal. **A copy of the Authority's written submission is on file with the Appeal Officer.**

The Clerk/Manager reiterated the written submission of the Authority, and made the following comments:

1. The application was for a development, "a non-mobile sawmill", that was not permitted under the regulation in a residential zone.
2. A sawmill is not listed in the General Industry or Light Industry categories. There are no definitions in the regulations and the town cannot list every piece of equipment possible in its plan.
3. The Government form that indicating the requirement for the town's approval was not provided by to the council by the Town Clerk/Manager.
4. The council relied on the 5 July 2022 email from the planner that stated use of sawmills in residential zone is considered to be a General Industry and are not permitted.
5. A person would not have to get permit for use of a chainsaw, circular saw or table saw.
6. Council did not go behind the words of the application. However, the council was informed by the appellant at the council meeting specifically what the equipment was.

ADJUDICATOR'S ANALYSIS

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 and the applicable Town of Victoria Municipal Plan and Development Regulations and determined the following information through the questions noted below.

Q. What is the zoning of the development site?

R. It is zoned as Residential under the Authority's Development Regulations.

Q. What is it that the Government requires the Authority to provide approval for on the form submitted by the Appellant?

R. The form is for a **"Domestic Licence"** and has a place to indicate if **"Municipal Approval Attached __Yes __No"**. It also provides the following so that the type of equipment is described:

"Mill Type: (Circular Saw) (Edger) (Band Mill Stationary) (Band Mill Mobile) (Chainsaw) (Other, please describe) _____"

It is clear that the form relates to a Domestic Licence and is not concerned with the "General Industry" classification that the Authority relied on in its decision.

Q. Did the Authority accurately classify the personal sawmill as a General Industry class?

R. The Authority's Development Regulations do not define a sawmill, nor do they provide specific development standards for sawmills. Within the Residential Zone sawmills are not listed as a permitted nor discretionary use class. The Authority refused the development application because a "sawmill" use falls within the General Industry use classification, but that is not listed in that class. The Development Regulations establish the classification of uses in Schedule B – Classification of Uses of Land and Buildings. This Schedule lists examples of specific uses that fall with each use classification. The uses that fall within the General Industry classification does not list sawmills. The Authority deemed the proposed domestic sawmill use a General Industry classification. In classifying the proposed domestic sawmill as a General Industry class, I find that the Authority did not classify the proposed domestic sawmill appropriately.

Q. Did the Authority have the authority to deny approval of the Appellant's application?

Q. The Authority has the authority to refuse the application if the proposed development is not in conformity with the Authority's plans and regulations. However, I find that the Authority erred in its use of the General Industry classification. It relied entirely on the opinion of the planner who did not seem to have all the necessary information as to what equipment was being applied for. Also, at the time that the Appellant made a presentation to the council, had the Clerk/Manager provided the council with the Government form, on which the Authority's approval was sought, it would have been clear that what was being

applied for was to use a domestic band saw, something that the Appellant said had the same engine size as a lawnmower.

ADJUDICATOR'S CONCLUSION AND DECISION

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 written submissions and evidence presented by the parties along with the technical information and planning advice, the Adjudicator has determined that the decision of the Authority on the application of the Appellant is reversed, and the Authority is directed as follows:

1. approve the application of the Appellant for the use of a domestic band saw; and
2. approve the Government Domestic Licence Application form by appending to the form the proper description of the equipment for which the Appellant has been give approval.

ORDER

The Adjudicator orders that the decision of the Town Council of Victoria made on 12 July 2022 to deny the application of the Appellant to operate a domestic saw as described by the Appellant be reversed. The appeal by the Appellant is hereby upheld.

Further, the Authority is directed as follows:

1. to approve the application of the Appellant for the use of a domestic band saw; and
2. to approve the Government Domestic Licence Application form by appending to the form the proper description of the equipment for which the Appellant has been give approval.

The Authority and the Appellant(s) are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this 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 27 September 2023.



John V O'Dea KC
Adjudicator