

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-043
Appellant(s)	Jack Rose and Christine Rose
Respondent / Authority	Town of Harbour Grace
Date of Hearing	January 26, 2021

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Jack Rose and Christine Rose
Representatives for the Authority	Don Coombs, Mayor; Sonia Williams, Deputy Mayor; Amy Parsons, Town Manager
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Tolulope Victoria Akerele
Interested Parties	John Pritchett, Powell Group of Companies

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 is to determine whether it has jurisdiction to hear this appeal; and if the Authority's decision which is the subject of the appeal was made in conformity with the Town of Harbour Grace Municipal Plan and the Town of Harbour Grace Development Regulations.

## Presentations during the Hearing

### 1. Planner's Presentation

In this case, the appeal does not relate to an application for a commercial bakery at 85-90 Harvey Road, Harbour Grace as the Town has indicated that no permit has been issued. Neither is there any documentation to prove that the Town received a development application from the Powell Group of Companies for the development of a commercial bakery at 85-90 Harvey Road. Section 42 of the Urban and Rural Planning Act (URPA) limits the appealable Council decisions to those regarding a development application; revocation of a development approval or permit; issuance of a stop work order; and other decisions that can be appealed as specified under the Act or other applicable legislation.

The Appellant is appealing Council's support for the project based on the following grounds:

- The Town's support for the commercial bakery operation was premature and does not follow proper protocols, which would have recognized the intended use as a discretionary use.
- The Town did not follow the Town's municipal plan and development regulations before providing a commitment to support the commercial bakery.
- The Town did not investigate the impact of the proposed use on the neighbourhood, neither did the Town Council consult the neighbours before making the decision to support the business.
- The proposal should be treated as a discretionary use and be subject to all Town development regulations and development standards.

As per section 42 of URPA, a decision that can be appealed is limited to decisions based on an application. In this case, there was no application submitted to the Town. The support letter provided by Council does not constitute a written decision in response to an application.

### 2. Appellant's Presentation

- "Verbal permission from the Town" to undertake demolition to the interior of the building and install the footings for the building extension constitutes development approval.
- Council's Letter of Support constitutes a level of "approval" to the Developer and the public; and it is the Appellant's opinion that it was issued prematurely and without consideration of the Town's Municipal Plan policies and the requirements of the Town's Development Regulations.
- Efforts, as neighbouring residents and property owners, to communicate with the Town and seek additional information were unsuccessful.
- The Town had 5 weeks from the time it had received the September 30, 2020 request for the Letter of Support to the time it issued the November 19, 2020 Letter of Support to require the Developer to submit a formal development application and to review/process it against the Town's Municipal Plan policies and the requirements of the Town's Development Regulations and to consult with the public (e.g. issuance of a public notice of a Discretionary Use Application).
- The Town has not followed its Municipal Plan and Development Regulations.

### 3. Authority's Presentation

- The Town had not received a development application from the Powell Group of Companies as of January 26, 2021; the September 30, 2020 letter from the Powell Group of Companies is not viewed by the Town as a development application.
- The Letter of Support issued on November 19, 2020 is not seen by the Town as a level of approval (i.e. approval in principle) for an application that has yet to be made.
- What is being appealed is the Letter of Support.
- The Town is of the understanding that a permit is not required for the interior demolition which has been occurring on the site.
- The Town did not provide any elaboration on the subject of the installation of footings for the anticipated expansion of the former supermarket building.

### 4. Other Parties (John Pritchett, on behalf of Powell Group of Companies)

- The letter requesting support from the Town for the proposed development project was not an application for development approval.
- The Letter of Support from the Town was not viewed as a form of development approval by the Powell Group of Companies.
- The Powell Group of Companies, if it decides to proceed with the development project, recognizes that it will need to submit a formal development application to the Town, with all required information and that it will need to be processed in accordance with all the applicable requirements of the Town, including public notification/consultation.

## Board's Analysis

**Q:** Does the Board have the jurisdiction to hear this appeal?

**R:** In accordance with Section 42 of the Urban and Rural Planning Act, the Board has determined that it lacks jurisdiction to hear this appeal. The matter being appealed does not involve an application to undertake development or a decision to allow/approve 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.*

*42 (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.*

*42 (5) An appeal shall be made in writing and shall include*

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

## Board's Decision/Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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.

As per section 42 of the Act, a decision that can be appealed is limited to decisions based on an application. In this case, there was no application submitted to the Town. The support letter provided by Council does not constitute a written decision in response to an application.

The Board has determined that it has no jurisdiction to hear this appeal, as there is no formal development application nor has a formal development decision been made by the Authority.

The Board makes the following comments/observations:

1. The Board is of the opinion that because of the way the Town's letter of support of November 19, 2020 was written, it was confusing to the reader as it could be interpreted as conveying a level of development approval.
2. If the Town of Harbour Grace chooses to provide a letter of support to a possible developer, such a letter should clearly indicate that it does not represent any form of development approval from the Town; and the letter should clearly state that the developer will be required to submit a formal development application and receive municipal approval before commencing any development on a site. The letter of support should also indicate that if a development application is submitted, that it will need to be reviewed and processed by the Town against all applicable requirements of the Town's Municipal Plan and Development Regulations.
3. From comments made to the Board at the appeal hearing, it appears that development is taking place at the subject property in the absence of development approval or permits from the Town. The Board strongly recommends that Council take note of Section 7 and Section 8 of the Town of Harbour Grace Development Regulations. According to Section 7, no development shall be carried out within the planning area except in accordance with the subject regulations.

### ***7. Compliance with Regulations***

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

According to Section 8 of the subject regulations a person shall not carry out development without a permit.

### ***8. 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 Town.*

## Board's Order

The Board has determined that it has no jurisdiction to hear this appeal, as there is no formal development application on file with the Town of Harbour Grace respecting a proposed commercial bakery at 85-90 Harvey Street, nor has a formal development decision been made by the Authority.

The Respondent 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 Board's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 26 of January, 2021.



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Clifford Johnston, Chair  
Eastern Newfoundland Regional Appeal Board



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Carol Ann Smith, Member  
Eastern Newfoundland Regional Appeal Board



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Paul Boundridge, Member  
Eastern Newfoundland Regional Appeal Board