

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-064-051
Appellant(s)	T R Excavating - Tom Rennie
Respondent / Authority	Town of St. Lawrence
Date of Hearing	May 14, 2021

Board Members

Chair	Cliff Johnston
Member	Carol Ann Smith
Member	Robert Warren

Also in Attendance

Solicitor for the Appellant(s)	Justin King
Representatives for the Appellant(s)	Tom Rennie, Thomas Slaney, Mark Edwards, William Pike
Solicitor for the Authority	Giles Ayres
Representatives for the Authority	Andrea Kettle (Town Manager), (Did not speak: Amada Slaney (Councillor for the Town), Jack Welsh (Mayor), Rosalie Dupree (Councillor for St. Lawrence), Rodney Doyle (Deputy Mayor)
Secretary to the Boards	Robert Cotter
Technical Advisor	Christopher Hardy, MCIP
Interested Parties	Carl Slaney

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 Regional Appeal Board is to determine if the Town of St. Lawrence acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of St. Lawrence Municipal Plan and Development Regulations when it issued a Stop Work Order to Tom Rennie (T R Excavating) on March 6, 2020 relating to commercial activity at property located at 76-78 Fairview Avenue.

Presentations During the Appeal Hearing

The following is a summary of the key points of the verbal representations made to the Appeal Board at the Hearing. The Board has considered these verbal representations along with the written submissions from the Appellant and the Authority and the Technical Report in making its decision on this Appeal.

1. Planner's Presentation

On March 6, 2020, the Town of St. Lawrence issued a Stop Work Order to Thomas Rennie, TR Excavating Inc. (the Appellant). The Order was to address unauthorized commercial activity at 76-78 Fairview Avenue, that the use of the property was materially expanded so as to include a commercial garage operation and the operation of heavy equipment, and that the development is not permitted in the current zoning ('Residential', under the Town's Development Regulations).

The Order also outlined the following:

- That s. 102(1) of the Urban and Rural Planning Act, 2000 gives the Town the authority to order "that the person pull down, remove, stop construction, fill in, or destroy that building or development and may order that the person restore the site or area to its original state.";
- That, as per s. 404(1)(j) of the Municipalities Act, 1999, that "a person who causes a nuisance contrary to the regulations of the council cease causing the nuisance";
- The consequences of not following the Order; and
- That the Order could be appealed and how to file an appeal.

The subject land is zoned 'Residential' under the Town of St. Lawrence Development Regulations. A commercial garage is not a permitted nor a discretionary use within that zone type.

Section 108 of the Urban and Rural Planning Act, 2000 addresses non-conforming uses:

"108. (1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use."

The current Town of St. Lawrence Municipal Plan and Development Regulations have been in effect since late 2013. The previous version of the Town's plan was in place since approximately 1985 and was reviewed in approximately 1991. At the time of the review, the subject area was zoned 'R-1' and it is currently zoned 'Residential'.

2. Appellant's Presentation

The Solicitor for the Appellant posed a series of questions to the two (2) previous owners of the subject property and to the current owner of the property – Thomas Rennie. The Solicitor also posed a series of questions to a nearby long-term resident.

Thomas Slaney:

- Purchased the land from the Town in 1984
- Built storage shed for mini-buses
- Received Town approval for garage building
- Did minor repairs and general maintenance on mini busses in garage building
- In 1989, applied for and received approval/permit from the Town to change use to partial residential with a one-car bay garage.

Mark Edwards:

- Purchased property in 2004 from Mr. Slaney
- Stored and performed maintenance on 2-3 busses in garage building
- No heavy equipment was stored on property
- Never applied for an occupancy permit from the Town

Thomas Rennie:

- Owner of TR Excavating, current owner and occupant of property
- Purchased property in October, 2007 from Mr. Edwards
- For approximately first year of ownership, only stored his personal equipment in the garage building, including a boat and trailer
- In approximately in 2008 started storing construction equipment on site
- TR Excavating incorporated in 2010
- The majority of heavy construction equipment owned by TR Excavating is too large to fit into the garage building
- Majority of his heavy construction equipment is currently parked off-site, and occasionally heavy equipment brought to site for repair and maintenance
- Never has operated or operated a bus business on the site
- Engaged with Town and Council to investigate relocating to a commercially zoned property. Nothing materialized from these discussions.

William Pike:

- Nearby long term resident across from the subject property
- Has no complaints with current or previous uses of the subject property

Justin King, Legal Counsel for Appellant

- Cited case law from New Brunswick, specifically dealing with non-conforming use. Essentially, where the general nature of a non-conforming land use has not changed, even though the specifics and intensity of the use have been varied, the non-conforming use should be allowed to remain in operation.
- TR Excavating's operation is a non-conforming use as provided for under Section 108 of the Urban and Rural Planning Act, 2000 (URPA).

3. Authority's Presentation

Andrea Kettle, Town Clerk/Manager

- Advised Board that the subject property is currently zoned "Residential" and was also zoned "Residential" when the property was sold by the Town to Thomas Slaney in 1984
- Town received numerous complaints regarding TR Excavating's heavy equipment stored and maintained on the subject property - such as noise, fumes, etc.
- There is no heavy equipment on the site at the present time; however there were 6-10 excavators on site when the Stop Work Order was issued.
- The Town has considered establishing an industrial park for uses such as the Appellants, however the Town does not have sufficient funds at this time.

Giles Ayres, Legal Counsel for Authority

- In 1989, a permit was issued by the Town to Mr. Slaney, the original owner of the property, to convert the existing building on subject property for a residential dwelling with a one-vehicle bay garage. No other permits have since been issued by the Town for the property.
- Under Section 108 (3) of URPA, a non-conforming use shall not be internally or externally varied, extended or expanded, unless otherwise approved by the appropriate Authority, in this case the Town of St. Lawrence.
- The Town never issued a permit to TR Excavating to store and maintain/repair heavy construction on subject property.
- TR Excavating's operation at the subject property is not a legal non-conforming use.

4. Interested Parties

Carl Slaney, owner of property adjacent to property under appeal

- Lived for a number of years adjacent to the TR Excavating. Recently moved to Marystown; however still owns the property, currently trying to rent it.

- TR Excavating does a lot of maintenance/repairs to heavy equipment outdoors – this work could be done any hour/day of the week. This causes problems for nearby residential uses.
- His property and TR Excavating property are both zoned “Residential” under the Town’s Development Regulations. They are incompatible land uses, and have conflicting needs.
- Mr. Slaney argues he pays taxes to the Town for a residential environment and he is not getting it.

Board’s Analysis

Q. What is the zoning of the property that is subject of this appeal?

A. The Town has advised the Appeal Board that the property is zoned “Residential” under the Town’s Development Regulations.

Q. Are the activities associated with the TR Excavating operations allowed in the “Residential” Zone?

A. Storage, maintenance and repair of heavy construction equipment is not allowed in a “Residential” Zone.

Q. How did TR Excavating come to be established at the subject property?

A. The property has been used for commercial purposes since the Town sold the property to Thomas Slaney in 1984. It has been used for commercial purposes since that time. The Board was advised by the Town that a residence was approved for the property in 1989. It is the Board’s understanding from the material and representations provided by the Appellant and the Authority that no permit was ever issued by the Town to TR Excavating to operate from the site.

Q. Is the TR Excavating operation a legal non-conforming use as considered under URPA?

A. There has been no evidence presented by either the Appellant or the Authority to the Board to demonstrate that a permit was ever issued by the Town for TR Excavating to operate from the site. It appears to the Board that the property has been allowed by the Town to operate for commercial uses under different ownerships without the appropriate permits from the Town.

Q. What are the provisions under URPA for non-conforming uses?

A. Section 108(3) of URPA states that a non-conforming use shall not be internally or externally varied, extended or expanded unless approved by the appropriate authority.

Q. Did the Town of St. Lawrence have the Authority to issue a Stop Work Order to TR Excavating?

A. The Order was made under *section 404(1)(j) of the Municipalities Act, 1999* and also under *section 102(1) of the Urban and Rural Planning Act, 2000*.

*"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";*

"102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state."

Q. Was the Stop Work Order issued correctly by the Town?

A. The Board has determined that the Order was issued correctly. At the Town Council Meeting of March 3, 2020, Council approved a Motion to issue the Order. The Order was subsequently issued on March 6, 2000.

Board's 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.

The Board has determined that TR Excavating's operation is not a legal non-conforming use as appropriate permits for its occupancy and use of the subject property were never issued by the Authority. Further, it is also the Board's determination that TR Excavating operations are significantly more intense than those of any previous owners/operators. In essence, the TR Excavating operation is not the same use as originally allowed by the Town in 1984 under the first owner. A fundamental principle of municipal planning is that properties containing a non-conforming use should gradually transition to a use(s) conforming to the zoning assigned to that property. That has not been the case of this subject property.

In conclusion, the Board has determined that the Town of St. Lawrence was within its authority to issue a Stop Work Order on March 6, 2020 to TR Excavating to cease and desist all commercial activity including the operation of heavy equipment and the operation of a commercial garage located at 76-78 Fairview Avenue.

Board's Order

The Board orders that the Stop Work Order issued by the Town of St. Lawrence on March 6, 2020 to TR Excavating to cease and desist all commercial activity including the operation of heavy equipment and the operation of a commercial garage located at 76-78 Fairview Avenue, 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 Board's decision has been received by the Appellant(s).

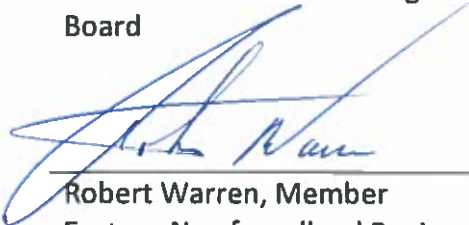
DATED at St. John's, Newfoundland and Labrador, this May 19, 2021.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal
Board