

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-064-029
Appellant(s)	Town of Port Blandford
Respondent / Authority	Service NL
Board Members	Chair: Cliff Johnston Member: Carol Ann Smith Member: Robert Warren
Date of Hearing	September 9, 2020

## Also in Attendance

Solicitor for the Appellant(s)	Danielle Somerton
Representatives for the Appellant(s)	.
Representatives for the Authority	Peter Ralph, Solicitor, Dept. Justice and Public Safety Darrin Hart, Manager, Government Service Centre, Gander Mike Duff, Manager Operations, Government Service Centre Clareville Tim Andrews, Fisheries, Forestry and Agriculture District Ecosystem Manager
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	

The provision for appeal is enabled under s. 42 of the *Urban and Rural Planning Act, 2000* (The Act).

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## 1. Board's Role

The role of the Eastern Newfoundland Regional Appeal Board is to determine if Service NL acted in accordance with the *Urban and Rural Planning Act, 2000*; the Town of Port Blandford's development regulations; and the *Protected Road Zoning Regulations* by not issuing a permit to the Department of Fisheries and Land Resources related to the use of an unnamed road near Port Blandford, NL.

## 2. Background

According to the Appellant, on September 3, 2019, Service NL advised the Department of Fisheries and Land Resources (FLR) that a development permit would not be required under the *Protected*

*Road Zoning Regulations* relating to the use of an unnamed road located approximately 280 metres north of Middle Brook on the Trans-Canada Highway. The unnamed road is used to access transmission lines west of the Town of Port Blandford. Approximately 90% of the ~3,800 m road is within the planning area of the Town.

The Department of Fisheries and Land Resources issued permits for commercial timber harvesting west of the Town (outside of the Town's planning area). Those areas are accessed by using the unnamed road.

### Chronology

November 6, 2017	Service NL issued an access permit to FLR related to the unnamed road
September 11, 2019	Appeal registered by the Secretary of the Regional Appeal Boards

### 3. Validity

Section 42 (4) and (5) of the Act state:

*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.*

The provision for appeal is enabled under section 42 of the *Urban and Rural Planning Act, 2000* (the Act). Section 42(5) of the Act requires that an appeal must be made in writing and shall include a summary of the decision being appealed, the grounds for the appeal, as well as the required fee.

The appellant's submission did not include the decision being appealed (as there was no decision to appeal). The submission did include the grounds for appeal and an appeal summary form.

### 4. Grounds of Appeal

The Appellant is appealing by way of a legal representative on the grounds that Service NL's not issuing a permit is contrary to section 4(1) of the Protected Road Zoning Regulations.

Section 4(1) of the Regulations reads:

*A person, corporation, partnership, association or other organization shall not carry out development of land within building control lines unless a permit for the development has been issued by the authority.*

The definition of development in those Regulations is:

*"[D]evelopment" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and specifically includes*

- (i) *the making of an access onto a highway, road or way,*
- (ii) *the erection of an advertisement or sign,*
- (iii) *the parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,*  
*and excludes*
- (iv) *the 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,*
- (v) *the 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,*
- (vi) *the 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 a street or other land for that purpose,*
- (vii) *the 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;*

## 5. Planner's Technical Analysis

### Legislation and Regulations

The applicable legislation with respect to this appeal is:

*Urban and Rural Planning Act, 2000*  
*Town of Port Blandford's Municipal Plan and Development Regulations*  
*Protected Road Zoning Regulations*

### Land Use Planning

The use of a road does not meet the definition of development.

Prepared by:



**Christopher Hardy, MCIP**

Technical Reviewer for the Newfoundland and Labrador  
Regional Appeal Boards

August 25, 2020

Date

## 6. Presentations during the Hearing

### Planner

The Board learned from the technical report given by the planner at the hearing that use of an existing road is not considered “**Development**” as it is defined under the Urban and Rural Planning Act, 2000.

### Appellant

The Board learned that the Appellant filed an appeal on the grounds that Service NL’s not issuing a permit is contrary to Section 4(1) of the Protected Roads Regulations.

### Authority

The Board learned that the access road was built by Nalcor as part of the Labrador/Newfoundland transmission line project. The Board also learned that the purpose of the access road will also be to allow logging trucks to harvest timber in an approved Forest Management Zone.

## 7. Conclusion

The Board has reached a consensus that it is unable to meet its mandate to confirm, reverse, or vary the subject decision as per s. 42 of the Act and this hearing is therefore cannot proceed.

Section 42 (1) of the Urban and Rural Planning Act states:

*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.*

The Appeal Board determined that the decision being appealed did not meet section 42 (1) of the Urban and Rural Planning Act because the use of a road does not meet the definition of ‘**Development**’.

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.

### Board’s Order

Based on the information presented, the Board has determined that it does not have the jurisdiction to hear the appeal filed by the Town of Port Blandford against Service NL.


The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland 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 9 of September, 2020.

  
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Cliff Johnston, Chair

Eastern Newfoundland Regional Appeal Board

  
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Carol Ann Smith, Member

Eastern Newfoundland Regional Appeal Board

  
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Robert Warren, Member

Eastern Newfoundland Regional Appeal Board