

Central Newfoundland Regional Appeal Board

Appeal #	15-006-064-026
Appellant(s)	Stephen Gillingham
Respondent / Authority	Service NL, Darren Hart, Regional Support Supervisor
Board Members	Chair: Gerald Thompson (Acting) Member: David Oxford Member: William Carter
Date of Hearing	March 10, 2020

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	
Representatives for the Authority	
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	

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

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1. Board's Role

The role of the Central Newfoundland Regional Appeal Board is to determine if the Service NL acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Protected Road Zoning Regulations* when it issued an order to Stephen Gillingham on July 22, 2019 ordering the subject land be returned to its original state.

2. Background

Stephen Gillingham (the Appellant) applied to develop an ATV trail under the *Gander River Protected Area Regulations* on June 18, 2018. The application was refused because the Regulations prohibit the development of a road unless it is for forestry, agriculture, or mining. A field inspection was completed in June 2018 that revealed construction had been occurring within the 1 km buffer along the River. Crown Lands issued an order on July 22, 2019 (the Order) to return the subject land to its original state. The Order outlined the following:

- That the Appellant developed land within the Gander River Protected Area which is protected under the *Urban and Rural Planning Act, 2000*;
- That the Government Service Centre of Service NL is the Authority designated to administer the Gander River Protected Area Plan;
- That the *Protected Road Zoning Regulations* prohibits development without a permit within a protected area;
- That s.102(1) of the *Urban and Rural Planning Act, 2000* gives Service NL 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.";
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

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.*

According to the documents provided, the appeal was filed on June 3, 2019. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

4. Grounds of Appeal

This appeal is based on the following section of the Act: Section 42.(1)(c) (the issuance of a stop work order).

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 Appellant(s) is/are appealing the stop work order based on the following grounds:

1. The trail has existed for over 50 years and has been used by commercial wood cutters and others to access Second Pond,
2. There are signs on the trail indicating that ATVs may be used on it, and
3. The Appellant's parents may need to vacate their cottage in an emergency and therefore the road is a better way out than taking a boat. This is their "right of way".

5. Planner's Technical Analysis

Legislation and Regulations

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000

Protected Road Zoning Regulations

Gander River Protected Area Plan

Procedural Compliance

As per Section 108 of the Act, developments that existed before a plan comes into effect are permitted to continue provided those developments are not altered significantly (except as permitted by Section 108). Policy 2 of the Gander River Protected Area Plan similarly requires that such non-conforming uses not be expanded.

Technical analysis prepared by:



Christopher Hardy, MCIP

Technical Reviewer for the Newfoundland and Labrador
Regional Appeal Boards

6. Presentations during the Hearing

Planner

There was no contesting of what was presented by Mr. Hardy by the Appellant or Authority.

Appellant

Mr. Gillingham presented the following:

- Requesting that the hearing be postponed due to a Crown Land application that is being assessed. However, based on a brief recess, it was determined by the Board that this application had no bearing on this appeal hearing and the hearing could proceed.
- That trails similar to what he was proposing have been approved in the past by Crown Lands and he felt that he was being discriminated against.
- He felt that there were posted signs along the trail allowing ATVs, etc
- He felt that property owners have the right to access their properties by ways of trails.

Authority

Service NL, as represented by Darren Hart, presented the following:

- He could not answer to what was done in the past. He is tasked with maintaining the regulations on behalf of Crown Lands which prohibits further development of that protected area.
- He had no knowledge of who posted the signs
- People have the right to access their property but cannot change the landscape to do so unless it follows established regulations.

7. Conclusion

The Board determined that Service NL were following regulations when they issued a Stop Work and Restoration Order on July 22, 2019 in accordance with Section 2.6 of the Gander River Protected Area Plan and Section 7 of the Gander River Protected Area Regulations. As per Regulations, the road that Mr. Gillingham was requesting is not permitted as it is within 1 km of the Gander River.

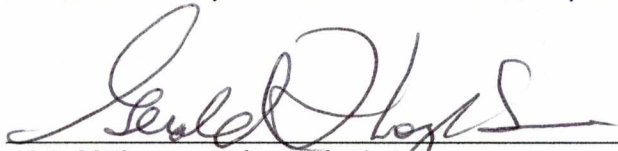
In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. The Board is bound by Section 42 of the *Urban and Rural Planning Act, 2000* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

Board's Order

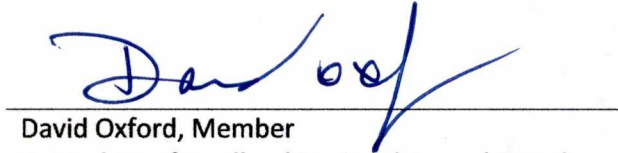
Based on the information presented, the Board orders that the decision by the Service NL on July 22, 2019 to issue a Stop Work and Restoration Order to Mr. Gillingham be confirmed.

The Respondent and the Appellant(s) are bound by this decision of the Central Newfoundland Regional Appeal Board. According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central 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 Gander, Newfoundland and Labrador, this 10 of March, 2020.



Gerald Thompson (Acting), Chair
Central Newfoundland Regional Appeal Board



David Oxford, Member
Central Newfoundland Regional Appeal Board



William Carter, Member
Central Newfoundland Regional Appeal Board