

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**  
**URBAN AND RURAL PLANNING ACT, 2000**

Appeal #	15-006-072-063
Appellant(s)	Kerry Butt
Respondent / Authority	Town of Salmon Cove
Date of Hearing	March 8, 2023

**Board Members**

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Paul Boundridge, MCIP

**Also in Attendance**

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Patricia Hickey
Representatives for the Authority	Diane Peach, Deputy Mayor; Stephen LeGrow, Councillor
Developer/Applicant	Nathan Graham
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Victoria Akerele, Planner III, Municipal and Provincial Affairs
Interested Parties	Lewis Slade
Start/End Time	9:00 am – 10:43 am

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

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### **Board's Role**

The role of the Regional Appeal Board (the Board) is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000, the Municipalities Act, 1999 and the Town of Salmon Cove Municipal Plan and Development Regulations, 2020 when it conditionally approved the application of Mr. Graham to develop a building for a Sawmill operation at 110 Main Street East, on March 15th, 2022, pursuant to Motion 2022-056.

### **Presentation's During the Hearing**

The following is a synopsis/summary of the verbal presentations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant, the Applicant and the Authority.

The Board heard from the following:

#### Planner's Presentation

The Appellant (Kerry Butt) is an interested third party who has indicated that the conditional approval of a sawmill operation at 110 Main Street East, Salmon Cove will impact neighbouring properties negatively. The applicant submitted an application to the Authority (Town of Salmon Cove) to develop a new building for a sawmill operation on the subject property. The application raised many concerns and saw many written objections. The Authority granted Mr. Graham a conditional approval to develop a new building for sawmill during the public meeting of Council. The Appellant was informed of Council's decision at the public meeting where the decision was made. The Appellant is appealing the decision on the grounds that Council did not follow the procedure stipulated for similar applications in the past.

- March 2021: Previous Town Council provided support for the development of a proposed saw mill by the Applicant.
- February 2022: The Applicant (Nathan Graham) submitted an application and a business plan to the Authority (Town of Salmon Cove) to develop a building for the purpose of saw mill at 110 Main Street East Salmon Cove.
- February 15, 2022: The Authority examined the submissions and asked Mr. Graham questions about the proposed operation as recorded in the Motion of Council 022-036. Council moved a motion to seek planning advice from the Town's Planner.
- February 18, 2022: The Town's planning consultant, Reginald Garland interpreted the proposed saw mill as a commercial use and recommended that an amendment will be

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required to the Town's Municipal Plan and Development Regulations. The Town's consultant prepared a procedure for the amendment of a Development Regulations.

- February/March 2022: The Town received unsolicited letters and petitions (opposing and in-favour) from residents regarding the proposed application.
- March 1, 2022 : The Authority held a public meeting. During the meeting Graham expressed concerns that his submitted documents is being shared around the community. During this meeting, members of the public expressed concerns about the negative impact of the proposed sawmill on their properties.
- March 8, 2022: The Environmental Assessment Division contacted the Town to inform the Town that a sawmill operation may require an Environmental Assessment.
- March 12, 2022: Council had a private meeting to review all the submissions pertaining to the subject application.
- March 15, 2022: The Appellant wrote a letter to the Town Council detailing all the concerns regarding the saw mill and asking Council to address all concerns in a public meeting for the benefits of the public who may have similar concerns or questions.
- March 15, 2022: The Authority granted Graham a conditional approval pending Environmental Assessment and Rezoning of the Town's Municipal Plan and Development Regulations. Note: permit was not granted neither was a letter of approval issued until the conditions are met. The conditional approval was confirmed by a Motion of Council 022-056.,
- March 25, 2022: The Appellant submitted a third party appeal to the Department of Municipal and Provincial Affairs.

This appeal is based on the following section of the Act: Section 42 (1)(a) with respect to the application to undertake a 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.



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 March 25, 2022 and the decision was made on March 15th, 2022. The Appellants submission included all required articles under Section 42 (5) of the Urban Rural Planning Act, 2000.

## LAND USE PLANNING

The Town of Salmon Cove Municipal Plan and Development Regulations came into legal effect on November 13th, 2020. Under the Town's Municipal Plan and Development Regulations the subject property is located in a Residential Land Use Designation as defined by the Future Land Use Map and Residential Land Use Policy. The Plan Policy for the Residential Land Use is outlined by Section 4.2.1 of the Town's Municipal Plan which states:

Residential - RES:

Policy RES-1: It is a policy of Council to permit residential uses in the form of single dwellings as the primary use within the Residential designation.

Policy RES-2: It is policy of Council to permit on a discretionary basis, double dwelling, row dwelling, apartment, mini-home or modular home as defined in Schedule A, subject to terms and conditions as outlined in Schedule C of the Development Regulations.

Policy RES-3: It is a policy of Council to permit on a discretionary basis, place of worship, education, convenience store, restaurant, child care, home occupation, special care institutional, utilities, antenna, traditional agriculture, and recreation open space subject to terms and conditions as outlined in Schedule C of the Development Regulations.

Policy RES-4: In evaluating proposals for new development in Residential areas, it is a policy of Council to pay particular attention to the compatibility of uses such that non-residential uses shall

not create excessive noise, pollution or a hazard to adjoining properties and, if necessary, must be adequately separated and buffered from surrounding residential development in the form of side-yards, screening, or landscaping buffers.

Policy RES-6: Notwithstanding the foregoing policies, it is a policy of Council to not issue a permit where it is of the opinion that the proposal will have an adverse or detrimental effect on adjacent properties.

The Town's Development Regulations, 2020, Schedule "C" Use Zone Tables provides a list of Permitted and Discretionary uses within the Residential Land Use Class as follows:

Permitted: single dwelling and recreational open space.

Discretionary: Double dwelling, row dwelling, apartment, mini home and modular home, place of worship, educational, convenience store, restaurant, child care, home occupation (see Schedule A), special care institutional uses (seniors living and long term care home), utilities, antenna, and traditional agriculture (see condition)

The Town's Development Regulations, 2020, Schedule "A" Definitions provides direction on what constitute home occupation. The description of the proposed sawmill operation shows that the business does not fit the category of Home occupation. Also, the Town Council based on the interpretation of the Town's Planning Consultant have classified the proposed use as commercial. A commercial use is not a permitted use within the residential zone.

HOME OCCUPATION means the use of part of a dwelling or an accessory building for pursuits compatible with a domestic household and which is carried on by members of the one family residing in the dwelling house provided that the uses permitted in a residential area are: office including services performed by a professional lawyer, accountant, architect, engineer, planner, insurance agent, realtor; salon including services provided by a hairdresser, barber, esthetician, beautician; medical such as services provided by a massage therapist, chiropractor, psychologist; light industrial uses related to arts, crafts and culture, including dressmaking, weaving, knitting, painting, sculpting, photography; small repair, woodworking and sign making; dog/cat grooming; instruction in arts, crafts, music and dance; and bed and breakfast operation. Other uses may be permitted at the discretion of council.

Sections 6 and 7 of the Town's Development Regulations, 2020, states that every development within the municipal planning area must be in accordance with the Regulations and that a permit is required before such development can proceed.

#### 6. Compliance With Regulations

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

#### 7. 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 Authority.

In line with permit requirement noted above, Section 194 of the Municipalities Act, 1999, prescribes the responsibility of Council as follows:

#### Building prohibition

194. A person shall not within a municipality

- (a) erect a building;
- (b) extend, repair, relocate or demolish an existing building;
- (c) change the use for which an existing building is or was last held or occupied; or
- (d) occupy a building that has been vacant for a period of 6 months or more or a newly constructed building, except in accordance with a written permit from the council.

Section 42(9)(10)(11) of the Urban and Rural Planning Act, 2000, states:

(9) A board shall consider and determine appeals in accordance with this Act and a plan, scheme and regulations that have been registered under section 24 and having regard to the circumstances and merits of the case.

(10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

(11) Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision.



## PROCEDURAL COMPLIANCE

Sections 6 and 7 of the Town's Development Regulations, 2020, gives direction regarding the compliance of new development in the planning area with the plan and regulations and the need for a permit.

Based on the submissions, the proposed use interpreted as commercial is not currently permitted within subject zone until a land use zoning amendment is made to bring the proposed use in compliance with the Town's Development Regulations.

Council has the powers to make a decision but must make such decision in line with the Town's Plan and Development Regulations. The plan policy RES 6 (above) states that Council may not approve a use where such use will negatively impact the neighbouring properties. Also the plan policy RES 4 (above) specifically direct Council to pay attention to the impact the development will have to the residential uses within the Residential zone while evaluating the proposals.

Appeal submissions show that while many objections were submitted by neighbouring properties owners, it is not clear that Council assessed the impact in line with RES policy 4. Although Council's decision is a conditional approval, it is not clear from the submission why Council made the decision prior to an amendment.

Council under Section 10. Discretionary Powers of Authority has the ability through a Motion of Council to conditionally approve or refuse an application for development on the condition Councils discretionary decision is in conformance with the Municipal Plan and Development Regulations in legal effect and the Urban and Rural Planning Act, 2000 and/or regulations made under the "Act". Section 10 of the Town's Development Regulations state:

### 10. Discretionary Powers of Authority

(1) In considering an application for a permit or for approval in principle to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) An authority may, in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed in the authority's regulations as discretionary, permitted or prohibited uses for that area. Based on the appeal submissions, the Authority granted a conditional approval during a public meeting as recorded in the motion of Council, but did not

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issue the developer an approval letter citing that the conditions of approval were not yet met. As such the Authority did not notify the Applicant in writing neither did Council issue a development permit.

The Appellant:

- The Appellant advised the Board that the Applicant is an employee of the Town of Salmon Cove and may have received preferential treatment in the Town's processing of his application.
- The Town has not carried out any public consultation as per the requirements of the Town's Development Regulations.
- The Appellant expressed concerns regarding potential negative impacts of the proposed sawmill development including noise, dust, traffic, decrease in property values and the impact on municipal revenues. The Appellant provided photographs of the proposed development site in relation to existing homes in the area.
- The Appellant indicated that in her opinion, the Town did not adequately take into account the applicable regulations and policies of the Town's Municipal Plan and Development Regulations in respect to this development application before making its decision to conditionally approve the application.
- There is a general absence of documentation regarding the application.
- The Appellant stated that she was a delegate at the March 15, 2022 Council Meeting, and was not provided the opportunity to speak to the application until after the motion was made and passed by Council for the development's conditional approval.

The Authority:

- The Town representatives stated that there was no favoritism shown to the Applicant regarding the development application.
- The Town's Municipal Plan encourages new businesses.
- The development application was given conditional approval only. No permits have been issued.
- The Town representatives indicated that they sought information from the Town's consulting planner who advised that a rezoning of the application site is required to allow the proposed sawmill. The Town representatives advised that the Town will initiate a rezoning process if required and if the Applicant so applies.
- When questioned, The Town representatives stated that they did consider relevant policies and regulations by requiring the Town's Maintenance Man to do a site inspection and verbally report back to Council. There is no written staff report of the site inspection presented to Council indicating that the application meets the Town's planning regulations and development standards.



### The Applicant

- The Applicant advised the Board that he has not received preferential treatment from the Town.
- The Applicant stated that he has not submitted a request to the Town for rezoning.
- The Applicant provided the Board with documentation from Service NL and a written release from Environmental Registration with the provincial Department of Environment and Conservation.
- The Applicant indicated that he was unfamiliar with development approval process and relied on the Town for direction.

### Interested Party

- Mr. Slade indicated that a large portion of the application site is a marsh.
- Mr. Slade questioned if the entire site would be considered for rezoning.

### Appeal Board Analysis

Q. What is the zoning of the development site?

A. The site is zoned as Residential under the Town's Development Regulations.

Q. Is the proposed commercial sawmill a use that is allowed in the Residential Zone?

A. No. A commercial sawmill is not listed as a Permitted Use or a Discretionary Use in the Residential Zone. Therefore, it is a Prohibited Use.

Q. Was the Town Council aware that the Town's Municipal Plan and Development Regulations would have to be amended in some fashion in order to allow the proposed commercial sawmill development before Council made its decision of March 15, 2022 to grant a conditional approval to the project?

A. Yes. In an email dated February 18, 2022 from the Town's Planning Consultant to the Acting Town Clerk, the Planning Consultant advised that in his opinion, a commercial sawmill would not conform to the Town's Municipal Plan or Development Regulations and an amendment would be required of the current Town Plan and Development Regulations.

Q. Did the Town Council properly exercise the authority to grant a Conditional Approval for the proposed commercial sawmill?

A. No. In consideration of sections 6, 7 and 10 of the Town's Development Regulations, it is the determination of the Board that Council prematurely exercised its Discretionary Powers of Authority. There was no evidence presented demonstrating Council's consideration of the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and and no evidence presented that Council assessed the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which were, in its opinion, material.

#### 6. Compliance with Regulations

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

#### 7. 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 Authority.

#### 10. Discretionary Powers of Authority

(1) In considering an application for a permit or for approval in principle to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) An authority may, in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed in the authority's regulations as discretionary, permitted or prohibited uses for that area

### **Appeal Boards' Conclusion**

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information and planning advice.

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.

Section 12 of the Urban and Planning Act, 2000 states:

#### **Application of plan**

**12.** A plan and development regulations are binding upon

(a) municipalities and councils within the planning area governed by that plan or those regulations; and

(b) a person undertaking a development in the area governed by that plan or those regulations.

The provisions of Section 12 of the Urban and Rural Planning Act, 2000 are reiterated in Sections 6, 7 and 10 of the Town of Salmon Cove Development Regulations.

The Board has determined that Town Council of Salmon Cove exceeded its discretionary authority in making its decision on March 15, 2022 to grant a conditional approval to Nathan Graham to develop and operate a commercial sawmill at 110 Main Street East, Salmon Cove.



## BOARD'S ORDER

The Board orders that the decision made by the Town of Salmon Cove on March 15, 2022 to grant a conditional approval Nathan Graham to develop and operate a commercial sawmill at 110 Main Street East, Salmon Cove, **be reversed**. The Board further orders that the Town advise Mr. Graham to submit a formal rezoning application to the Town should he wish to continue with his development application.

In accordance with section 44(3) of the Urban and Rural Planning Act, 2000, the Board further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

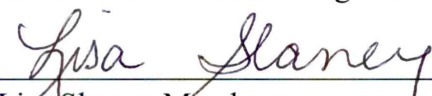
The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

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 Appellant have received the Board's decision.

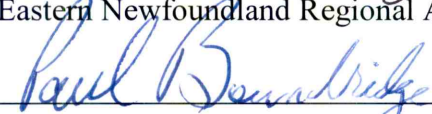
DATED at St. John's, Newfoundland and Labrador, this 8 of March, 2023.



Clifford Johnston, MCIP, Chair  
Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member  
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member  
Eastern Newfoundland Regional Appeal Board