

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

Appeal #	15-006-072-060
Appellant(s)	Weir's Construction
Respondent / Authority	Digital Government and Service NL (Service NL)
Date of Hearing	July 8, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Paul Boundridge, MCIP

Also in Attendance

Appellant(s)	William Weir, Owner; Cabot Ready Mix
Representatives for the Appellant(s)	Thomas Kendall, P.Eng.
Representatives for the Authority	Karen Tucker, Regional Support Supervisor, Digital Government and Service NL
Secretary to the Boards	Robert Cotter
Developer:	Cathy Davis, Butler Sand and Stone
Technical Advisor to the Boards	Keith Batstone, MCIP
Start/End Time	2:00 pm – 3:10 pm

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 (the "Board") is to determine if the decision of Digital Government and Service NL (Service NL) (The Authority) made on February 28, 2022 to use its discretionary authority to grant an Approval in Principle to Butler Sand and Stone for a mineral working operation located approximately two (2) kilometres north of White Hill near the Town of Conception Bay South, did so in accordance with the Urban and Rural Planning Act, 2000 and the Butterpot-Witless Bay Environs Development Control Regulations, the St. John's Urban Region Regional Plan, 1976 and the Quarry Materials Regulations.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- St. John's Urban Region Regional Plan, 1976
- Butterpot-Witless Bay Line Environs Development Control Regulations
- Quarry Materials Regulations

Background:

On February 28, 2022, Service NL used its discretionary authority to grant an Approval in Principle to Butler Sand and Stone for a mineral working operation located approximately two (2) kilometres north of White Hill near the Town of Conception Bay South. On March 7, 2022, Cabot Ready Mix filed an appeal against Service NL's decision of February 28, 2022.

Presentations During Hearing

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

The Board heard from the following:

Technical Advisor:

Chronology assembled from the material submitted by the Appellant, and the Authority.

July 27, 2021 The Authority (Service NL) received a Development Permit application (dated July 15, 2021) for a 'Mineral Workings' operation in the Butterpot–Witless Bay Line Environs area at approximately 2km north of White Hill, near the Town of Conception Bay South NL.

July 30, 2021 The Authority reviewed the application and circulated referral packages to Provincial Departments requesting comments on the proposed development.

December 22, 2021 The Applicant published a Discretionary Use Notice in The Telegram newspaper, as notice of an application for a Development Permit in the 'Rural' Use Zone.

February 12, 2022 The Authority received correspondence from the Appellant in response to the Discretionary Use Notice advertisement for the proposed 'Mineral Workings' land use.

February 28, 2022 The Authority delivered a letter to the Applicant, as notice of a decision to issue an Approval-in-Principle, subject to conditions to be met prior to the issuance of a Development Permit.

March 1, 2022 The Appellant received an email confirming the Authority's decision to approve the Applicant's Development Permit application (File No. MP-2021-105700).

March 7, 2022 The Appellant submitted an Appeal Application Form to the Secretary of the Eastern Newfoundland Regional Appeal Board

March 7, 2022 Appeal registered by the Secretary of the Eastern Newfoundland Regional Appeal Board.

March 16, 2022 The Authority sent email correspondence to the Applicant as confirmation of the filing of a third-party Appeal related to Development Permit application MP-2021-105700.

March 24, 2022 The Authority provided an Appeal Submission Package to the Secretary of the Eastern Newfoundland Regional Appeal Board, which established:

- chronology of events
- relevant application materials
- relevant planning regulation documents

Grounds of Appeal

The Appellant is appealing the decision of Council to issue an Approval-in-Principle to Butler Sand and Stone for a 'Mineral Workings' operation at approximately 2km north of White Hill, near the Town of Conception Bay South NL, based on the following grounds:

- I would like to formally object to the quarry permit application from Butler sand and stone for the quarry located 2km North of White hill as shown in a notice from the Telegram.
- We have been in application process with a quarry permit in this same area for almost 14 years and still have not made any headway in this process. Not only in this location but in several other locations...
- This quarry application by Butlers (...) also infringes on the physical location of what we are currently in the application process trying to obtain. We have rights in this area and do not understand how another company can apply for a permit within our boundaries.

Legislation and Regulations

The applicable legislation, policies, and regulations with respect to this appeal are:

- Urban and Rural Planning Act, 2000
- St. John's Urban Region Regional Plan, 1976
- Butterpot–Witless Bay Line Environs Development Control Regulations CNLR 1084/96
- Quarry Materials Regulations CNLR 804/96

Land Use Planning

The following is a summary of development planning regulations and other technical information relevant to the evaluation of this appeal for the purpose of informing the Board's consideration of:

- the decision of the Authority
- the grounds of appeal of the Appellant

Development Regulations

The St. John's Urban Region Regional Plan came into legal effect in 1976.

The Butterpot–Witless Bay Line Environs Development Control Regulations, as amended, came into legal effect on June 20, 1997.

The subject property is located in the 'Rural' land designation, as established in the Regional Plan Map.

The Regional Plan outlines a general policy goal for the 'Rural' land designation at Section F (b) to: "...make provision for the demand for residential and other forms of development in the rural areas. The main objective is to provide for such demand while still retaining the qualities of a rural environment".

The Regional Plan contemplates development regulation standards implemented to alleviate concerns about compatibility of uses in the 'Rural' land designation:

Certain industrial uses such as sand and gravel extractive operations, asphalt and concrete plants (...) may be established in the rural area in accordance with standards established in the Development Regulations provided that:

- a) it is clearly demonstrated that a rural, rather than an urban, location is necessary for the proposed industrial operations;
- b) no municipal services are needed;

- c) the amenity of the surrounding rural areas are adequately protected;
- d) adequate open space is provided around any industrial use so that a buffer of trees, shrubs or fencing is provided;
- e) all such industrial sites shall front on public roads and they shall have only a limited number of openings for vehicle exists and entrances; and
- f) any proposed industrial location shall be subject to approval by the Department of Health.

The Development Regulations provide for various land uses in the 'Rural' use zone consistent with the policies of the Regional Plan including:

- Permitted Uses (Agriculture, Forestry, Accessory Building), and
- Discretionary Uses (e.g. General Industry, Mineral Working, etc.).

The regulations establish standards for Mineral Workings operations (Schedule 'B'). The Authority included in the Approval-in-Principle (File MP-2021-105700), the following condition to be met prior to the issuance of a Development Permit:

Ensure compliance with schedule B of the Butterpot–Witless Bay Line Environs Development Regulations.

Decision of the Authority

The Authority's appeal package outlines that Service NL received a development permit application for a 'Mineral Workings' operation located 2km north of White Hill, near Conception Bay South NL on July 27, 2021. The Authority's package further specifies that Service NL subsequently: initiated referral to Provincial departments; ensured the placement of a Discretionary Use Notice in a local newspaper; evaluated objections from the notification process; and, finally, considered Provincial interests and the Regional Plan and Development Control Regulations, prior to rendering a decision to issue a conditional Approval-in-Principle.

The Authority provided to the Applicant (Butler Sand & Stone) written confirmation on February 28, 2022 that the application had been conditionally approved subject to conditions to be met prior to issuance of a Development Permit. Service NL planning approval documents clarify that Approval-in-Principle (File MP-2021-105700) resulted in the following corresponding approvals:

- issuance of a Quarry Permit (ML 71111746), in accordance with the Quarry Materials Regulations
- release of an Environmental Assessment (EA Registration 1889), per the Environmental Protection Act

The Authority provided to the Appellant (Spencer Chislett / Cabot Ready Mix) written confirmation, dated March 1, 2022, that Service NL issued an Approval-in-Principle for Spencer Chislett v Digital Government and Service NL 15-006-072-060

Principle, and also notified of the right of appeal for third parties by email on March 16, 2022.

The Appellant's Appeal

The Appellant filed an appeal with the Secretary of the Eastern Regional Appeal Board on March 8, 2022. The Appellant contends that it is pertinent to the Board's consideration of the appeal matter that:

- The Appellant objects to the location of the Quarry Permit application, at a location and near locations where they have applied for permits to no avail.
- The quarry application by the Applicant infringes on a location that is coincident with the area that is the subject of an existing application by the Appellant.
- The Appellant has exploration rights in the area and they do not understand how another company can apply within those boundaries.

Procedural Compliance

The Butterpot–Witless Bay Line Environs Development Control Regulations provide the authority for the jurisdiction of responsibility (Service NL) to approve or refuse a development permit application for a discretionary use, in consideration of the current development regulation standards, including:

Factors to be considered:

6. (1) the authority shall, when considering an application for a permit to develop, be guided in his or her decision by the regional plan and Schedule A and shall consider
 - (a) the topography, physical condition and natural features of the land;
 - (b) the use or the proposed use of the land, and the use of the land in the immediate vicinity;
 - (c) the number, location, safety and convenience of accesses;
 - (d) the design, location and construction of the proposed development;
 - (e) the adequacy of the method and the suitability of the land for the type of water and sewage disposal required;
 - (f) the adequacy and suitability of the methods proposed for the disposal of waste material; and
 - (g) the shape and size of each lot or parcel of land.

(2) The authority shall consult with all government departments, agencies, officials and persons considered necessary with respect to the considerations referred to in subsection (1).

Requirements

7. A permit shall not be issued for development in the environs area unless that development conforms with

- (a) the policies and objectives for development as prescribed in the regional plan and these regulations and Schedule A; and
- (b) the National Building Code of Canada and ancillary codes.

Discretionary uses permitted

5. The uses that fall within the discretionary uses set out in the appropriate use zone table in this Schedule may be permitted in that use zone if the authority is satisfied that the development would not be contrary to the general intent and purpose of these regulations, the regional area plan or a further scheme or plan or regulations and to the public interest and if the authority has given notice of the application in accordance with section 6 and has considered objections or representations which may have been received on the matter.

The Butterpot–Witless Bay Line Environs Development Control Regulations also establish the statutory requirements for appeals of decisions by the Authority (Section 16). It is noted that the specific provisions of these Regulations for appeals, which came into legal effect in 1997, are subordinate to the current provisions of the Urban and Rural Planning Act, 2000, as established in Section 42 of the Act.

Finally, the development control regulations outline at Schedule A that the Authority, in processing an application for permit, is subject to a statutory requirement to notify the public of receipt of an application for a Development Permit:

Schedule A

Notice of Application

6. The authority shall, when the development is listed as a discretionary use in this Schedule, at the expense of the applicant, give notice of an application for a permit by public advertisement in a newspaper circulating in the area or by other means considered necessary.

The Authority contends that the development permit application was reviewed for regulatory compliance and Provincial interest, advertised as a proposed discretionary

use to the public, and, that a final decision was rendered in consideration of known relevant development factors.

The Authority's appeal submission package indicates that the consideration of the development permit application involved:

- Service NL's preliminary evaluation of the proposal and request for comments from Provincial departments
- Public notification of a Discretionary Use application and period for comment
- Issuance of a letter as confirmation of the Authority's decision to issue an Approval-in-Principle
- Notice of the right of appeal and the associated appeal application process to submit appeal to the Eastern Newfoundland Regional Appeal Board

The Appellant appears to contend that the Authority did not satisfy the requirements of the Urban and Rural Planning Act and the Butterpot–Witless Bay Line Environs Development Control Regulations for reasons that are not clear within the appeal submission package, as there are no direct references to any pertinent development control regulations, as stated within the grounds of appeal.

It may be that the Appellant contends that the proposed development is contrary to the requirements of the Quarry Materials Regulations, which do not provide any right of appeal to aggrieved parties.

The Board must contemplate whether the Authority, in carrying out the decision to issue an Approval-in-Principle for a development permit involving a proposed 'Mineral Workings' operation, did so in accordance with the provisions of the legislative, policy, and regulatory framework.

The Appellant:

- Mr. Weir advised the Board that he believes there is a miscommunication between the Provincial Government Departments regarding his application for a Quarry in the area of the subject property.
- Mr. Weir advised the Board he has had an application in place for a number of years to establish a quarry in the White Hill area. He fails to understand how Service NL could have granted an Approval in Principle for a quarry to Butler Sand and Stone earlier this year for Crown Land that he already has exploration rights for.
- Mr. Kendall advised the Board that Weirs only wishes to have their application for a quarry processed by the Provincial Government in a timely and fair manner.
- Mr. Weir and Mr. Kendall spoke to and reiterated the Grounds for Appeal that were included in the written appeal form.

The Authority:

- Ms. Tucker outlined for the Board's information the legislative requirements and processing procedures that were followed for the application for a quarry to be operated by Butler Sand and Stone at the proposed site.
- The Application was sent out by Service NL to a number of referral agencies for their review and comment. All referral agencies, including Transportation and Works as well as Mineral Lands, approved the application.
- The Application was also publicly advertised by Service NL for public review and comment. The written submission received from Weirs on the proposed quarry was reviewed and considered by Service NL prior to its decision of February 28, 2022 to grant an Approval in Principle to Butler's Sand and Stone.
- In response to a question from the Board, Ms. Tucker advised that the Mineral Lands Office did not reference that Weirs had an active interest in this area (Exploration Permit).

The Developer

- Ms. Davis advised the Board that her company, Butler Sand and Stone, submitted their Application to Mineral Lands. This was not an application for a new quarry operation, but rather renewal of a licence/permit for an existing quarry operation at the subject property.

BOARD ANALYSIS

Q. What is the zoning of the subject property?

A. The subject property is located in the Rural Land Designation as established in the St. John's Urban Region Regional Plan, 1976.

The property is zoned as Rural under the Butterpot-Witless Bay Line Environs Development Control Regulations. This zone allows mineral workings as a Discretionary Use.

Q. Did Service NL process and approve the subject application in accordance with the requirements of the Urban and Rural Planning Act and the Butterpot-Witless Bay Line Environs Development Control Regulations?

A. The Board has determined that the Appellant has not established any clear arguments that Service NL did not process and approve the subject application in accordance with the requirements of the Butterpot-Witless Bay Line Environs Development Control Regulations; specifically Section 5, 6 & 7. There are no clear reasons in the Appellant's Submission Package and there are no direct references to any pertinent development control regulations as stated in the grounds of appeal.

The Authority's appeal submission package indicates that the consideration of the development permit application involved:

- Service NL's preliminary evaluation of the proposal and request for comments from Provincial departments
- Public notification of a Discretionary Use application and period for comment
- Issuance of a letter as confirmation of the Authority's decision to issue an Approval-in-Principle
- Notice of the right of appeal and the associated appeal application process to submit appeal to the Eastern Newfoundland Regional Appeal Board.

Q. The Appellants have indicated to the Board a long standing interest in establishing a quarry operation in the subject area. Does this interest have any bearing on the Appeal?

A. The Board has been advised that neither Mineral Lands nor Service NL felt the Appellant's prior interest had any bearing on the decision to grant an Approval in Principle to Butler Sand and Stone for their quarry operation.

BOARD'S CONCLUSION AND DETERMINATIONS

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.

Based on its findings, the Board has determined that Service NL applied its discretionary authority in the proper manner and did so in accordance with the provisions of the applicable legislative, policy, and regulatory frame work in making its decision of February 28, 2022 to grant an Approval in Principle to Butler Sand and Stone for a mineral workings operation located 2 km north of White Hill, near the Town of Conception Bay South.

It may be that the Appellant contends that the proposed quarry development by Butler's Sand and Stone is contrary to the requirements of the Quarry Material Regulations. The Board understands that decisions made under those Regulations do not provide any right of appeal to aggrieved parties to the Regional Appeal Boards.

BOARD'S ORDER

The Board orders that the decision made by Digital Government and Service NL on February 28, 2022 to grant an Approval in Principle to Butler Sand and Stone for a mineral working operation, located 2km north of White Hill, near the Town of Conception Bay South, 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 Appellant have received the Board's decision.

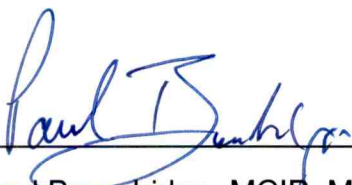
DATED at St. John's, Newfoundland and Labrador, this 12th of July, 2022.



Clifford Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member
Eastern Newfoundland Regional Appeal Board