

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

Appeal # : 15-006-077-026

Adjudicator: Lorilee A. Sharpe

Appellant(s): Justine Hurst Ackerman

Respondent / Authority: Town of Gambo

Date of Hearing: June 19, 2025

In Attendance

Appellant: Justine Hurst Ackerman

Appellant Representative(s): Self & Jennifer Ackerman

Respondent: Town of Gambo

Respondent Representative(s): Lorne Greene and John Baird

Appeal Officer: Robert Cotter & Sarah Kimball, Municipal and Provincial Affairs

Technical Advisor: Setare Vafaei

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Town of Gambo Municipal Plan and Development Regulations 2014-2024* and applicable zoning maps when it refused permission to operate a sawmill at 525 JR Smallwood Boulevard in the Town of Gambo.

Hearing Presentations

Planner's Presentation

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness.

Under the Rules of Procedure:

(a) there shall be a technical advisor to the Board who shall provide data relative to the Municipal Plan or other Scheme in effect and an interpretation on whether or not the proposal

under appeal conforms, is contrary to, or could be discretionarily approved pursuant to the Municipal Plan, Scheme or Regulations.

The Planner from Municipal and Provincial Affairs shall provide the framework with respect to the appeals process under the *Urban and Rural Planning Act, 2000* and provide an overview of how an application was received from a developer and processed by Council as prescribed in their roles and responsibilities.

The Adjudicator heard from the planner that this appeal relates to an application to operate a commercial sawmill in a mixed development zone. The planner advised that the Town had previously refused to issue a permit and on appeal before the Central Newfoundland Regional Appeal Board, the Town's decision was reversed and sent back to the Town for reconsideration. The Town published a public notice of the proposed development pursuant to section 30 of the Town of Gambo Development Regulations and received written correspondence expressing various concerns from some Town residents. The Town at that time had only three councilors who could vote, as one was in a conflict of interest, so did not have the required quorum. As such, the Town arranged and received the required permission from the Minister as required by the Municipalities Act for the remaining councilors to vote with respect to the Appellants commercial sawmill application. Motion was made at the August 30, 2022 meeting to reject the Appellants application and the motion passed unanimously. September 6, 2022 the Town issued a refusal letter to the Appellant which the Appellant has now appealed. Following the Appellant filing the appeal, the Town has attempted to resolve the matter by exploring with the Appellant other locations for the commercial sawmill, but ultimately none were suitable to the Appellant and so a date was set for the hearing of this Appeal for a commercial sawmill to be located at 525 JR Smallwood Boulevard.

The Appellant's Presentation and Grounds

The Appellants grounds for appeal may be summarized as follows:

- 1) That their business would promote economic growth;
- 2) That their road is classified as a highway and their proposed use would not interfere with the dynamics when you drive through town;
- 3) There are no immediate neighbours to their garage and noise from the sawmill is negligible and would not disturb neighbours;
- 4) There is an illegal scrap yard on another property and a garage on the opposite side of the road with broken down cars and equipment;
- 5) The sawmill will not cause any noise, fumes, or odours and will not cause refuse, litter or environmental issues;
- 6) They have adequate parking in their driveway and will not have a lot of people attending at once;
- 7) They will not cause electrical interference as they will not be using electrical for their business; and

- 8) They approached their neighbours about their proposal to operate a commercial sawmill on their property and no concerns were expressed to them directly by the neighbours.

The Appellant and her representative submitted at the hearing that they are only bordered by houses on one side, and adjacent to Crown land. They advised that there are businesses in the area already and that there will not be much wood stored on site. Ms. Ackerman testified that they have plenty of parking space on their land so there will be no need for customers to park on the road and she believes the complaints from neighbours regarding parking was likely due to their child's birthday party. She also advised that there would not be any noise from the sawmill. It is located outside their children's bedroom and cannot be heard there. She also attended a neighbours property and confirmed the sawmill could not be heard there. The Appellant provided photos of other properties to illustrate that there are other businesses that would in her opinion have a greater impact on residences in the area than the operation of their proposed commercial sawmill.

Authority's Presentation

The Town provided an overhead photo of the area showing locations of several residential homes in close proximity to 525 JR Smallwood Boulevard delineated by yellow pins and a business nearby shown by a red pin. Mr. Green testified that the Town received 6 submissions following their section 30 public notice advertisements and they all objected to the proposed development. Five of the notices were received from addresses in the direct neighbourhood of the proposed development. The submissions received were provided in the appeal package and they cover a wide range of concerns from tourism and indigenous rights, to decrease in residential property values, environmental concerns, concern respecting unkept properties, noise, pollution, odours, traffic congestion, inability for the commercial sawmill activities to be contained within the property boundaries, vehicles spilling out onto the road and reports of having to close windows due to disturbance from noise and odours.

The Town then outlined the applicable provisions of their municipal plan and development regulations that had been considered by council in making their decision and reaching the conclusion that it is not willing to issue a permit for a commercial sawmill on the property at 525 JR Smallwood Boulevard, particularly in light of the predominantly residential nature of the area.

Adjudicator's Analysis

I have reviewed all documents in the appeal package, along with the *Urban and Rural Planning Act, 2000* and the Town of Gambo's Municipal Plan and Development Regulations and the exhibit provided by the Town at the hearing. I have also reviewed the previous decision of the Central Newfoundland Regional Appeal Board Appeal #15-006-072-027.

The Application for development filed with the Town by the Appellant states the type of development for which they are seeking approval is a "Commercial Sawmill". The Appellant

also checked the box on the application form indicating they were applying for “Operation of a Home Based Business”.

Part V of the Town of Gambo Development Regulations sets out the regulations for Use Zones. Section 97 sets out a presumption that a Council must permit a use that is indicated as a permitted use in the use zone for a property, subject of course to other provisions in the regulations:

97. Permitted Uses

*Subject to these Regulations, the uses that fall within the Permitted Use Classes set out in the appropriate Use Zone Table in Schedule C **shall be permitted** by Council in that Use Zone. [Emphasis added]*

Section 98 provides that uses that are not listed as Permitted but are listed as Discretionary Uses in a particular Use Zone, **may** be permitted by Council, but Council is under no obligation to permit such uses. Further, prior to permitting a discretionary use, Council must give public notice of the application, consider any objections or representations received, and must determine that the proposed Use is not contrary to the public interest or the general intent and purpose of the Municipal Plan and Regulations:

98. Discretionary Uses

*Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C **may be permitted** in that Use Zone **if Council is satisfied** that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, **and if** Council has given notice of the application in accordance with Regulation 30 - Notice of Application **and has considered any objections or representations** which may have been received on the matter. [Emphasis Added]*

Section 99 provides that Uses that are not listed as Permitted nor Discretionary in a Zone may not be permitted in that zone:

99. Uses Not Permitted

*Uses that do not fall within the Permitted Use Classes or Discretionary Use Classes set out in the appropriate Use Zone Tables in Schedule C **shall not be permitted** in that Use Zone. [Emphasis Added]*

The property 525 JR Smallwood Boulevard is located in the Mixed Development (MD) Zone. Upon review of the Use Zone Table for the MD zone and the Schedule B Classification of Uses of Land and Buildings in the Town of Gambo Development Regulations, I note that Home Occupations are listed as permitted subject to the proposed home occupation meeting the requirements of Section 37 of the Development Regulations which states:

A home occupation will be permitted only if it meets the following conditions:

- (a) The home occupation will be clearly secondary to the residential use of the property.*
- (b) The home occupation will be located inside the dwelling or inside an accessory building on the same lot.*
- (c) The home occupation will employ one or more persons, who normally inhabit the dwelling and, in addition, may employ no more than two persons who do not normally inhabit the dwelling.*
- (d) The home occupation will occupy: • no more than thirty percent (30%) of the floor area of the dwelling unit; and, • no more than sixty-five (65) square metres of the total floor area of an accessory building.*
- (e) The home occupation will not include outdoor storage of materials or equipment unless approved at the discretion of Council.*
- (f) The home occupation will not use or keep in storage any hazardous materials.*
- (g) The home occupation will not use water or generate sewage in excess of what can be accommodated by the existing water supply and sewage disposal system.*
- (h) The home occupation will not cause noise, odours, fumes, electrical interference, or other nuisances that unreasonably affect neighbouring properties.*
- (i) Unless otherwise authorized by Council, sufficient off-street parking space shall be available on the lot for the parking needs of residents, employees, and clients.*
- (j) Council may require fencing, screening, and/or a minimum space separation to protect the amenity of adjacent uses.*
- (k) The home occupation will not create traffic safety or traffic congestion concerns.*
- (l) The home occupation will not include automobile repair, auto body repair, or automobile sales.*
- (m) The home occupation will adhere to any other conditions that Council deems necessary to protect the amenity of adjacent residential uses and the neighbourhood.*

However, that is not to say that Council may approve a home occupation that is a classification of Use that is not permitted in the MD zone. A proposed home occupation must first be assessed in light of whether or not the Use is one that is a Permitted or Discretionary Use in the MD zone. If it is neither, then Council may not approve it without rezoning. To find otherwise would make futile the listing of Permitted and Discretionary Use Classes in the Development Regulations. If the Town of Gambo intended the Home Occupation provision to usurp sections 97, 98 and 99 of the Development Regulations and the Use Zone Tables, then clear and unequivocal wording

would be required to do so, and I do not see any wording that would leave open such an interpretation.

On review therefore of the Use Zone Table and Schedule B Classification of Uses of Land and Buildings, I have not found any Permitted Uses that would accommodate a commercial saw mill in the MD zone. As such, Section 11(1) of the Development Regulations is not applicable to this proposed development. Section 11(1) gives discretion to Council to deny or add conditions to a permit for development where the development otherwise meets the requirements of the regulations:

*11. (1) In considering an application for a development permit or approval in principle, Council shall take into account the policies of the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development, the amenity of the surroundings, availability of utilities, public safety and convenience, and other considerations which are, in its opinion, material, and **notwithstanding the conformity of the application with the requirements of these Regulations, Council 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.***

Section 11 does not allow Council to issue a permit for a development that is not otherwise in conformity to the regulations, such as a Use that is not permitted in a zone.

Council does however, have other discretionary powers that are applicable to this application for development:

- 1) discretion to permit or not to permit a use that is listed as Discretionary in a zone pursuant to section 98 of the Development Regulations;
- 2) discretion to allow that use as a Home Occupation on a particular property pursuant to section 37 of the Development Regulations; and
- 3) discretion to deny a permit even if it is a permitted use pursuant to Condition 3(1) of the Mixed Development Use Zone Table if Council deems it to be incompatible with existing dwellings and the residential character of the area.

On review of the Discretionary Use Classes listed in the Use Zone Table for the MD Zone, the only discretionary use classification that a commercial saw mill may fit under is the Light Industry Classification. Light Industry is defined in the Development Regulations as follows:

LIGHT INDUSTRY means the use of any land or buildings for any general industrial use that can be carried out without hazard or intrusion and without detriment to the amenity of the surrounding area by reason of noise, vibration, smell, fumes, smoke, grit, soot, ash, dust, glare or appearance.

Some examples of Light Industry uses set out in Schedule B of the Development Regulations include workshops, light industry, indoor storage centres, warehouses, and general garages.

If the commercial saw mill does not fit under the Light Industry Classification, it would be neither permitted nor discretionary in the MD Zone and as such Council would not be able to issue a permit for it under the current MD use zone.

In the mixed development zone, the Town may approve a mix of only compatible residential, commercial, light industrial, and institutional uses in accordance with 5.5.1 of the Town of Gambo Municipal Plan. The Town may not however approve other Uses in the MD Zone that are not listed as Permitted or Discretionary in the MD Use Zone Table. Further, pursuant to 5.5.3 (3) of the Town of Gambo Municipal Plan, if *“an area within or adjacent to the Mixed Development designation is predominantly residential in character, proposed non-residential uses will not be approved if they are considered incompatible with that character”*.

The question of whether or not the commercial sawmill would meet the definition of Light Industry is debatable. The Appellant presented evidence that the sawmill would not cause any hazard or intrusion to the use and enjoyment of surrounding properties and that its operations would be without detriment to the amenity of the surrounding area. The Appellant testified that the sawmill was quiet, free of any fumes, and the dust would be contained. The Town on the other hand led evidence that they had received input from neighbouring property owners that sawmill operations have caused intrusion and detriment to the enjoyment of their residential properties. If the use is a Light Industrial one, the Town may issue a permit as it would be a Discretionary Use in the MD Zone. The Town is however under no obligation to do so.

The Town's duty in considering whether or not to approve a Discretionary Use is to follow the requirements prescribed in section 98 of the Town of Gambo Development Regulations to:

- 1) Satisfy themselves that the development would not be contrary to the general intent and purpose of the Town of Gambo Development Regulations and the Municipal Plan;
- 2) Satisfy themselves that the development would not be contrary to the public interest;
- 3) Give notice in accordance with Regulation 30 providing 7 days for persons to respond; and
- 4) Consider any objections or representations that they have received on the matter.

Adjudicators Conclusion:

Upon review of the documents provided in the Appeal package and the evidence provided at hearing, it is evident that prior to making their decision to deny the permit for a commercial sawmill at 525 JR Smallwood Boulevard , the Town of Gambo:

- 1) gave due consideration to the provisions of their Development Regulations and Municipal Plan;
- 2) provided notification of the proposed use and at least 7 days for persons to provide input; and
- 3) considered the objections and representations that they received.

Following this, the Town decided approval of the commercial sawmill would be contrary to the public interest and the elected members of Town Council voted unanimously to deny the permit. As such, the Town has met the procedural requirements incumbent on them in deciding a Discretionary Use application pursuant to Section 98 of the Development Regulations and it is not necessary to proceed with a Home Occupation analysis under Section 37. However, even if the Town were to approve the commercial sawmill as a Discretionary Use in the MD Zone and deny approval of it on this particular property as a Home Occupation, the Town also duly and properly followed all required procedures and made the required considerations in denying the Appellants application for approval of a Home Occupation. The MD Use Zone Table Condition #6 requires the Town to follow Regulation 37 which states that a Home Occupation will be permitted only if it meets the list of conditions enumerated in that section. Council for the Town of Gambo duly considered that list and were concerned that several of the criteria (section 37 (e) , (h) & (k)) would not be met based on submissions they had received from their constituents. Condition 3(1) of the MD Zone also provides an overriding discretion for Town Council to deny a permit even where the proposed development is a Permitted Use if Council deems it to be incompatible with existing dwellings and the residential character of the area. Condition 3(1) states:

3. Mixing of Residential and Non-Residential Land Uses

(1) Non-Residential Development in Residential Areas A proposed non-residential development may be subject to conditions set by Council to ensure it is compatible with neighbouring residential uses. Notwithstanding the Permitted Uses listed in the Use Zone Table, where an area within the Mixed Development designation is predominantly residential in character, a proposed nonresidential use will not be approved if it is deemed by Council to be incompatible with existing dwellings and the residential character of the area.

As such, even if the development had passed the first two steps of Discretionary Use approval and Home Occupation approval, Council would still be well within their discretionary authority to deny the permit on the basis of Condition 3(1). The aerial photograph and submissions from residents alone clearly evidenced the predominantly residential character of the area of the proposed development. Town Council for the Town of Gambo properly exercised its discretionary authority in consideration of those submissions prior to determining that the use would not be compatible with the existing residential dwellings.

Pursuant to section 44 (2) of the Urban and Rural Planning Act, 2000, an adjudicator does not have authority to overrule a discretionary decision of council:

Decisions of adjudicator

44. (1) In deciding an appeal, an adjudicator may do one or more of the following:

- (a) confirm, reverse or vary the decision that is the subject of the appeal;
- (b) impose conditions that the adjudicator considers appropriate in the circumstances; and

(c) direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have the adjudicator's decision implemented.

(2) Notwithstanding subsection (1), a decision of an adjudicator shall not overrule a discretionary decision of a council, regional authority or authorized administrator.

[Emphasis added]

An adjudicator would only have the ability to send a matter back to a Town Council for reconsideration and that would only occur in certain instances where there has been a flaw in the Town's decision making process such as lack of procedural fairness, improper bias, errors, or bad faith. No such abnormalities were evident in this matter.

As such, after reviewing the information presented and finding that the Town of Gambo properly exercised their discretion under the Town of Gambo Development Regulations to:

- 1) refuse approval of the commercial sawmill as a Discretionary Use pursuant to Section 98 of the Town of Gambo Development Regulations;
- 2) refuse approval of the Home Occupation pursuant to section 37 of the Town of Gambo Development Regulations; and
- 3) deem the commercial sawmill to be incompatible with existing dwellings and the residential character of the area pursuant to Condition 3(1) of the Mixed Development Use Zone Table of the Town of Gambo Development Regulations

the Adjudicator confirms the decision of the Town of Gambo to deny a permit to the Appellants for operation of a commercial sawmill at 525 JR Smallwood Boulevard in the Town of Gambo.

Order

The Adjudicator orders that the decision of the Town of Gambo be confirmed.

The Authority and the Appellant(s) are bound by this decision.

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 Adjudicator's decision has been received by the Appellant(s).

DATED at Corner Brook, Newfoundland and Labrador, this 9th day of July, 2025.



Lorilee A. Sharpe, Adjudicator

Urban and Rural Planning Act, 2000