

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Bruce and Bonnie Roberts **Appellants**

AND Town of Happy Valley-Goose Bay **Respondent**

RESPECTING Order

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guincharde – Member
Bill Madore – Member

DATE OF HEARING April 8, 2015

IN ATTENDANCE

Ilene Watson – Authority
Bruce Roberts – Appellant
Solène Murphy – Appellants' lawyer
Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board
Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Happy Valley-Goose Bay issuing an Order to Bruce and Bonnie Roberts. On September 30, 2014, at a Regular Meeting of Council, the Town of Happy Valley – Goose Bay passed a motion to issue an Order to Bruce and Bonnie Roberts concerning their commercial greenhouse business at 24 Saunders Street. The Order required the appellants to cease operation of the business and remove all structures that were built without a permit from the Town. The Order was issued under the authority of section 102 of the *Urban and Rural Planning Act, 2000* and section 194 and 404 of the *Municipalities Act, 1999*. The Order dated October 15, 2014 was served to the appellants by registered mail on October 23, 2014.

On November 4, 2014, Kate O'Brien, on behalf of Mr. and Mrs. Roberts, filed an appeal with the West Newfoundland Regional Appeal Board against the Order issued on October 23, 2014. The grounds for appeal are summarized as follows:

- Section 102 of the *Urban and Rural Planning Act, 2000* does not provide the Town with the authority to order the cessation of commercial activities and the removal of the subject building;
- Section 194 and 404 of the *Municipalities Act, 1999* does not provide the Town with the authority to order the cessation of commercial activities and the removal of the subject building

If the Board finds that the Town had the authority to issue the Order, then the appellants argue that the subject structure is a non-conforming structure as defined in section 60 of the Town's Development Regulations and is therefore, not in violation of the Town's Development Regulations.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Labradorian* on November 24, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on March 6, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Happy Valley – Goose Bay Municipal Plan and Development Regulations, 2008

Matters presented to and considered by the Board

Did the appellants have permits from the Town for the greenhouses located at 24 Saunders Street?

The Town indicated at the hearing that it did not have a record of any permits for the greenhouses located at 24 Saunders Street. The Authority conceded that although it does not have a record of any permits for greenhouses at 24 Saunders Street that does not mean that permits were not issued. Mr. Roberts provided the Board with an affidavit stating that a building permit was obtained from the Town of Happy Valley-Goose Bay in 1987. Mr. Roberts also indicated in the affidavit that he informed the Town Clerk at the time that he intended to sell bedding plants from the greenhouse. He was also informed by the Town that agricultural operations were not taxed. According to the affidavit, the Town issued a permit to Mr. Roberts in 1987. Mr. Roberts started operating his commercial business from 24 Saunders Street in 1988. The affidavit also indicated that another permit was obtained in 1992 to replace the original greenhouse that burnt down. The appellant stated that he expanded his operation between 1998 and 2006 with no additional permits from the Town.

Was Council aware of the Mr. Roberts' agricultural operation?

The appellant provided copies of invoices that were issued to the Town of Happy Valley-Goose Bay for the purchase of horticultural products between June 14, 2007 and July, 2014. These were submitted as an appendix to the signed affidavit submitted to the Board by Mr. Roberts. While the Town's representative maintained at the hearing that the Town only became aware of Mr. Roberts' operation when it received an inquiry, the Board finds this unlikely considering it purchased products from the appellant since at least 2007.

Additionally, the Board learned at the hearing that Mr. Roberts met with the Tidy Towns Committee in the mid-1990s to discuss his agricultural operation, upon request from the Town.

Therefore, the Board accepts that the Town must have been aware of Mr. Roberts' operation since the mid-1990s.

Are agricultural uses permitted at 24 Saunders Street?

The subject site is zoned Residential Low Density (RLD) as well as Rural, according to the Town's Development Regulations, 2008. The Town stated at the hearing that the subject site is zoned RLD and has always been located in a residential zone. Agricultural uses are neither permitted nor discretionary in the RLD zone. Agricultural uses are listed as discretionary in the Rural zone. The greenhouses that are located in the RLD zone are currently not permitted and the greenhouses located in the Rural zone may be permitted at Council's discretion.

Did the Town have the authority to order Mr. Roberts' cease all work?

The Order required Mr. Roberts' "cease operation of a commercial greenhouse at 24 Saunders Street". However, the Order was issued under section 102 of the *Urban and Rural Planning Act, 2000* and section 404 of the *Municipalities Act, 1999*, which does not provide the Town with the authority to issue a stop work order. While the Town did not state where it derived its authority to order the appellant to cease operation, the Board acknowledges that the Town has the authority to issue a stop work order under section 26 of the Town's Development Regulations. Section 26 states:

- (1) Where a person begins a development contrary or apparently contrary to these Regulations, the Town may order that person to stop the development or work connected therewith pending final adjudication in any prosecution arising out of the development.*
- (2) A person who does not comply with an order made under Regulation 26(1) is guilty of an offence under the provisions of the Act.*

Did the Town have the authority to order Mr. Roberts' to remove any building constructed without the required permits?

The Town issued the Order under section 102 of the *Urban and Rural Planning Act, 2000* and section 404 of the *Municipalities Act, 1999*. The Board accepts that section 102(1) of the *Urban and Rural Planning Act, 2000* provides the Town with the authority to issue an order to remove a building when development exists contrary to the Town's Municipal Plan or Development Regulations. Additionally, the Board accepts that section 404(1) of the *Municipalities Act, 1999*

(specifically, 404(1)(e)) allows the Town to issue an order to remove a building if it was constructed without a permit as required under section 194 of the *Municipalities Act, 1999*.

The Board learned from the Town that the Authority is of the opinion the appellant does not have the necessary permits for the existing greenhouses and thus has the authority under the *Urban and Rural Planning Act* and the *Municipalities Act* to issue a removal order to Mr. Roberts. The Board is unable to confirm whether the Town issued a permit to Mr. Roberts in 1987 or 1992 since neither the appellant nor the authority presented the subject permits at the hearing. However, the appellant conceded in the affidavit submitted to the Board that the additional greenhouses built between 1998 and 2006 were completed without permits from the Town. Therefore, the Board determined that in accordance with section 102 of the *Urban and Rural Planning Act, 2000* and section 404 of the *Municipalities Act, 1999* that the Town had the authority to issue a removal order to Mr. Roberts regarding buildings constructed without a permit.

What prompted the Town to issue the Order to Mr. Roberts?

The Town maintains that the Order was issued to Mr. Roberts in a matter of fairness. The Board learned during the hearing that the Town received inquiries from other similar businesses within the Town regarding business taxes. Upon investigating local businesses, the Town discovered that Mr. Roberts' was operating a business that was not being taxed as a commercial operation. In an effort to be fair to all business owners in the Town as well as in accordance with the responsibilities outlined in the *Urban and Rural Planning Act, 2000* to enforce the Town's Municipal Plan and Development Regulations, the Town issued the Order to Mr. Roberts.

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by Section 42 of the *Urban and Rural Planning Act* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

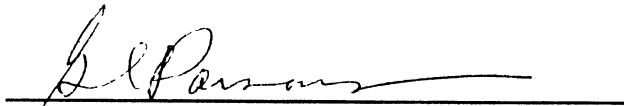
Based on its findings, the Board determined that the Town of Happy Valley-Goose Bay has the authority to issue an order for the removal of a building as well as the cessation of a business that does not comply with the Town's Municipal Plan or Development Regulations. The Board believes the Town was aware of the agricultural operation since 2007. Despite the Town's long-standing awareness of the appellants' operation, it was demonstrated to the Board that the Town has the responsibility to act fairly and in the public interest by enforcing the Town's Municipal Plan and Development Regulations. Therefore, the Board found that the Town of Happy Valley – Goose Bay used its discretionary authority appropriately when it issued the Order to Bruce and Bonnie Roberts regarding the commercial operation at 24 Saunders Street.

ORDER

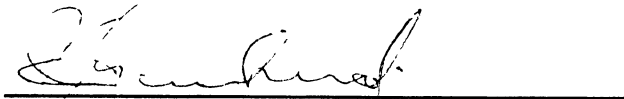
Based on its findings, the Board orders that the Order dated October 15, 2014 issued by the Town of Happy Valley – Goose Bay to Bruce and Bonnie Roberts, be confirmed.

The Town of Happy Valley-Goose Bay is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

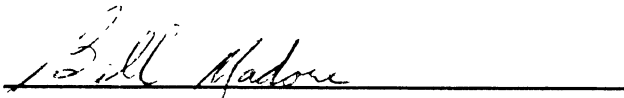
DATED at Deer Lake, Newfoundland and Labrador, this 8th day of April, 2015.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Joseph Guinchard, Member
West Newfoundland Regional Appeal Board



Bill Madore, Member
West Newfoundland Regional Appeal Board