

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeals #: 15-006-082-022 and 15-006-083-023

Adjudicator: Clifford Johnston

Appellants: Isadore and Jacqueline Gambin

Respondent /Authority: Town of Long Harbour-Mount Arlington Heights

Date of Hearing: February 27, 2024

Hearing Location: Beothuk Building, St. John's

Start/End Time : 9am to 10:15am

In Attendance

Appellants: Isadore and Jacqueline Gambin

Respondent/Authority: Juanita Gosse, Town Manager

Respondent Representative: Josh Merrigan, Legal Counsel for the Town

Appeal Officer: Robert Cotter, Departmental Program Coordinator, Department of Municipal and Provincial Affairs

Technical Advisor: Faith Ford, MCIP, Planner III, Department of Municipal and Provincial Affairs

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, the Municipalities Act, 1999 and the Town of Long Harbour-Mount Arlington Heights Municipal Plan and Development Regulations when the Town issued an Order on May 31, 2023 to the Appellants to remove all solid waste, abandoned materials, and any and all unregistered, derelict and/or scrapped vehicles and vehicle parts from the property at No. 594 Main Street in the Town of Long Harbour-Mount Arlington Heights within sixty (60) days. The role of the Adjudicator is also to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000, the Municipalities Act, 1999 and the Town of Long Harbour-Mount Arlington Heights Municipal Plan and Development Regulations when the Town issued an Order on May 31, 2023 to the Appellants to remove all solid waste, abandoned

materials, and any and all unregistered, derelict and/or scrapped vehicles and vehicle parts from the properties at Nos. 531 Main Street, 2 Gambin's Lane and 743 Main Street in the Town of Long Harbour-Mount Arlington Heights within sixty (60) days.

Note: As the appointed Adjudicator for these two appeals, I made the decision to hear both the appeals under one combined appeal hearing and to prepare one written decision covering both appeals given that the two appeals were submitted by the same Appellants, all properties subject of the appeals are owned by the same Appellants and much of the information provided in the appeal packages applies to both appeals. Both the Appellants and the representatives for the Town of Long Harbour-Mount Arlington Heights were advised of my procedural decision regarding the hearing of the appeals under one single hearing at the beginning of the appeal hearing on February 27, 2024. No objections to this procedural decision were presented by either party.

Hearing Presentations

The following is a synopsis/summary of the verbal presentations made to the Adjudicator at the Appeal Hearing on February 27, 2024. In addition, the Technical Advisor prepared a Technical Report for the appeals and both the Appellants and the Legal Counsel for the Respondent/Authority prepared written briefs for the appeals. These documents were all reviewed by the Adjudicator as part of the process of writing this appeal decision.

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 Ms. Ford, Planner that these two appeals relate to the two Orders issued to the Appellants on May 31, 2023 to clean up the Appellants' properties noted above under the heading of "*Adjudicator's Role*". The Appellants are appealing the two Orders on grounds which are outlined in the Appellants' submitted appeal form, including disputing that there is no solid waste, noxious substances and substances or things which may be a hazard to

public health and safety or which affect surrounding properties which need to be removed from the subject properties; and the issuance of the Orders was not procedurally compliant because they were signed by the Town's Chief Administrative Officer.

-The Planner provided a detailed chronology of the events occurred up to and including the issuance of the Orders to the Appellants.

-The Planner advised that the properties located at Nos. 531 Main Street, 2 Gambin's Lane and 743 Main Street are residential properties and the property at No. 594 Main Street is utilized as a commercial garage which has been in operation for a number of years.

-The Planner advised that the two Orders issued by the Town to the Appellants on May 31 2023 were issued under Section 404(1)(l) of the Municipalities Act, 1999. This section of the Act gives a council the authority to make an order requiring a property owner to remove solid waste, noxious substances or things which may be a hazard to public health or safety or adversely affect surrounding properties. Section 404(4) of this same Act authorizes a council to specify a time within which there must be compliance with an Order issued under Section 404(1)(l) of the Act.

The Appellant's Presentation and Grounds

-The Town's evidence lacked justification for its determinations to issue the two Orders and failed to demonstrate a thorough investigation of the properties or the relevant legislation. Despite the Appellants' efforts to address the Town's concerns and requests for clarification, communication with the Town remained inefficient and unproductive. The Town also failed to engage in meaningful discussion with the Appellants during scheduled meetings.

-The items contained on the Appellants' residential property have been erroneously classified by the Town. The vehicles on the property are not scrapped or wrecks and should not be classified under Section 404(1)(l) of the Municipalities Act.

-With regards to the commercial garage property, the items on the property have been erroneously classified by the Town as solid waste and/or noxious substances. Many of the items being described by the Town as solid waste are not waste but are part of the daily garage operations.

-The issuance of the two Orders by the Town was not procedurally compliant as they were signed by the Town Manager rather than the Mayor who has been delegated by the Town Council to issue an order of Council. The Town has not provided evidence that the Town Manager was delegated by Council to issue an order.

-Other businesses in the Town openly store machinery and scrapped vehicles contrary to the applicable regulations, yet zero enforcement has been undertaken by the Town. The Town's selective enforcement is an act of bias and of bad faith.

-Ms. Gambin presented a signed letter from the Town's Fire Chief dated February 23, 2024 advising that in his time with the Town's Fire Department that there have never been any

concerns raised about fire fighting or fire fighter safety at the Gambin residence at 531 Main Street nor has the Town of Long Harbour-Mount Arlington Heights contacted the Fire Department to consult about this property.

-Ms. Gambin also presented a signed petition with a number of names noting that the persons who signed the petition confirm that Isadore Gambin has continuously operated a garage at 594 Main Street in the Town and there has always been scrapped vehicles and vehicles parts stored outside on the garage property.

Authority's Presentation (made by the Town's Legal Counsel)

-The Appellants' written submissions indicate that they disagree with the Town Council's opinion, and do not believe that the materials on the Appellants' subject properties are solid waste, noxious substances and substances or things which may be a hazard to public health and safety, or which adversely affects surrounding properties. They also suggest the Town's issuance of the Orders was procedurally deficient and that the Town is "unfairly targeting" them. However, the Appellants' disagreement with the Town Council's opinion is irrelevant. The appeal process is not a forum for agreeing or disagreeing with the Town Council's decision and the Appellants are not entitled to substitute their own analysis or opinion for that of Council.

-Evidence presented by the Town indicates that it thoroughly considered the nature, appearance and history of the subject properties and fairly concluded that the things on their properties are solid waste, noxious substances and substances or things which may be a hazard to public health and safety, or which adversely affects surrounding properties.

-The Town Council has the discretion to issue Orders under Section 404(1)(1) of the Municipalities Act, 1999.

-The Town Council soberly considered the deteriorated nature of the materials on the subject properties and determined that they may pose a hazard to public health and safety and that they were adversely affecting surrounding properties. The Town is not required to engage expert witnesses to determine what is and what is not materials that are a hazard to public health and safety.

-The Town made a concerted effort over a period of time to work with the Appellants for arrangements to clean up the properties to no avail. The Town made the decision to issue the Orders only after the Appellants failed to work with the Town to clean the properties up.

-There is no evidence of an abuse of statutory authority, misconduct on the part of the Town, failure to act in good faith, or improper motive or illegality, as such, the Town Council is entitled to a high degree of deference. It is clear that the Council acted within its discretion when issuing the two Orders.

-The Town's issuance of the Orders was procedurally compliant.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000, the Municipalities Act, 1999 and the Town of Long Harbour-Mount Arlington Heights Municipal Plan and Development Regulations along with the information provided by the Technical Advisor, the Appellants and the Respondent/Authority and determined the following:

Q. Does the Town Council of Long Harbour-Mount Arlington Heights have the authority to issue an Order to a property owner to clean up a property within a specified period of time if the Town Council believes this is necessary in the interests of public safety and health?

A. Yes. The Town Council has the discretionary authority under Section 404(1)(l) of the Municipalities Act, 1999 to issue Removal Orders if the Council determines that there is solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties. Section 404(4) of this same Act permits the Council to impose a time limit on which clean up work must be completed. The Act does not specify any requirements for a council to engage outside experts to validate/substantiate its opinion/conclusion that the clean up of a specific property is necessary in the interests of public safety and health or to prevent adverse effects on surrounding properties.

Q. Has any evidence been presented by the Appellants that the Town Council acted in an unfair or biased manner towards them in making its discretionary decision to issue the Orders on May 31, 2023 for the clean up of the subject properties?

A. No. As the appointed Adjudicator, based on the information and evidence that has been provided to me, I conclude that the Appellants have not provided any evidence of an abuse of authority by the Town Council or any bias by the Town Council towards them. In my view, based on the evidence and materials provided, the Town Council treated the Appellants with due regard and attempted over an extended period of time to work with the Appellants to have the subject properties cleaned up without the necessity of issuing Removal Orders. Only after earlier efforts had failed to have the Appellants clean up their properties did the Town determine that it had no other recourse than to issue the Removal Orders.

With regards to the Appellants' opinion that the Town is selective in enforcing municipal regulations regarding other properties in the town which also have outside storage, the Appellants presented no firm evidence in this matter. In any event, the appeals that I have been appointed as the Adjudicator to hear deal solely with the properties which are owned by the Appellants and which are subject of their appeals.

Adjudicator's Conclusion

Urban and Rural Planning Act, 2000

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.

(3) An adjudicator shall not make a decision that does not comply with

- (a) this Act;
- (b) a plan and development regulations registered under section 24 that apply to the matter being appealed; and
- (c) a scheme, where adopted under section 29.

(4) An adjudicator shall, in writing, notify the person or group of persons who brought the appeal and the council, regional authority or authorized administrator of the adjudicator's decision.

After reviewing the information presented, I conclude, as the appointed Adjudicator, that the Town of Long Harbour-Mount Arlington Heights was fully within its discretionary authority when it issued Orders on May 31, 2023 to the Appellants to clean up the properties owned by the Appellants at Nos. 531 Main Street, 2 Gambin's Lane, 743 Main Street and 594 Main Street in the Town of Long Harbour-Mount Arlington Heights. I concur with the Town's legal counsel's point made at the appeal hearing that the Appellants' disagreement with the Town Council's decision on the necessity to issue the Orders is irrelevant. The appeal process is not a forum for agreeing or disagreeing with the Council's decisions to issue the Orders and neither the Appellants nor the Adjudicator through the appeal process are entitled to substitute their own analysis or opinions for that of the Council.

ORDER

The Adjudicator orders that the issuance of two Orders on May 31, 2023 by the Town of Long Harbour-Mount Arlington Heights to Isadore and Jacqueline Gambin to remove all solid waste, including abandoned material, any and all unregistered, derelict and/or scrapped vehicles from the residential properties at Nos 531 Main Street, 2 Gambin's Lane and 743 Main Street in the Town of Long Harbour-Mount Arlington Heights and from the commercial property commonly known as "Gambin's Garage at No. 594 Main Street in the Town of Long Harbour-Mount Arlington Heights , **be confirmed. The two appeals filed by the Appellants Isadore and Jacqueline Gambin are both thereby rejected.**

The Authority and the Appellants are bound by this decision.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Adjudicator 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 Appellants.

DATED at St. John's, Newfoundland and Labrador, this 1st day of March 2024.



Clifford Johnston

Adjudicator

Urban and Rural Planning Act, 2000