

## URBAN AND RURAL PLANNING ACT, 2000

### Section 40-46

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

Appeal #: 15-006-077-023

Adjudicator: Elaine Mitchell, RPP, MCIP

Appellant(s): Paul Jeans

Respondent / Authority: Town of Bay Roberts

Date of Hearing: Thursday October 12, 2023

#### In Attendance:

Appellant: Paul Jeans

Eva Jeans

Respondent/Authority: Nigel Black, Chief Administrative Officer, Town of Bay Roberts

Proponent/Developer: Lee Noseworthy, Premium Waste Services

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

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

Start Time: 9:05 am      End Time: 10:38 am

#### Adjudicator's Role

The role of the Adjudicator is to determine whether the Authority acted in accordance with the *Urban and Rural Planning Act, 2000* and Bay Roberts Municipal Plan and Development Regulations when it approved an application from Premium Waste Services to use an existing building located at 8 Bishops Road, Bay Roberts at a Council meeting held on September 13, 2022. The application was submitted to the Authority on July 19, 2022 and was accompanied by a letter from the Developer indicating that the application was to park and perform minor maintenance on equipment.

## Hearing Presentations

### Technical Advisor

The role of the planner is to act as a technical advisor to the appeal process and act as an expert witness as outlined in the Appeal Board (Rules of Procedure) Order, 1993.

10. The Hearing shall proceed in the following manner

(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 in effect ...

At the hearing, the Technical Advisor outlined her report noting that the appeal is with respect to the approval, with conditions, of an application to undertake development at 8 Bishop's Road, Bay Roberts. The subject property is designated and zoned Mixed Development. The Mixed Development use zone table identifies light industry and general industry as discretionary uses subject to condition 5 which restricts those uses to home occupations and imposes additional requirements. According to the Bay Roberts Development Regulations, Council must be satisfied that the proposed use does not negatively impact adjacent dwellings due to noise, traffic, or nuisance before approving any non-residential development. The Technical Advisor stated that discretionary uses must be advertised, and Council must consider any written representations received on the matter. The Technical Advisor raised possible deficiencies with respect to the advertisement related to the application.

The Technical Advisor outlined provisions from the *Urban and Rural Planning Act, 2000* with respect to non-conforming uses.

### Appellant

Mr. Jeans stated that a commercial waste disposal business is not appropriate in a residential area. He outlined his concerns with the Premium Waste Services operation and the impact that this use has had on his property. He explained that Premium Waste Management operated without a permit and was transferring garbage, storing large commercial garbage bins, and cleaning these bins outside at 8 Bishop's Road and that these activities negatively impacted his property because of noise, smell, safety, traffic, and rodents. He indicated that the Town did not respond to his complaints in a timely fashion. He explained that the conditions applied to the approval are inadequate to address his concerns.

Mrs. Jeans explained that there has been industrial activity at 8 Bishop's Road for many years and that this activity has affected her peace and quiet. Mrs. Jeans stated that the

Applicant failed to return phone calls or respond to her concerns. Mrs. Jeans shared photos of the use of 8 Bishop's Road by Can-Am Trailers. All parties viewed the photos at the hearing and Mrs. Jeans agreed to scan them and share them with the Appeals Officer for the record.

#### Authority

Mr. Black, Chief Administrative Officer, outlined the Authority's considerations with respect to decision to approve a development at 8 Bishop's Road. He noted that non-residential use of the property pre-dates the current Bay Roberts Municipal Plan and Development Regulations. He indicated that in the Bishop's Road Mixed Development zone, there are four non-residential properties and one property, owned by Mr. and Mrs. Janes, which is occupied by a dwelling.

Mr. Black stated that Can-Am Platforms has occupied this property since 2009 and that the Town has not received any correspondence indicating that they are no longer in business. Can-Am continues to be assessed and taxed on their continued occupancy of the site.

Mr. Black stated that when Council became aware that Premium Waste Services was operating at 8 Bishop's Road, a stop work order was issued. Following discussions, Premium Waste Services applied for a development permit. The Town advertised the application as discretionary use in the Shoreline newspaper for 10 days. The Planning and Development Committee and Council considered all representations received and determined the addition of the following conditions to the permit could mitigate resident concerns.

#### Applicant

Mr. Noseworthy stated that he had started a new business on an existing commercial property in 2019. He explained that concerns about this business were received via the Town and that, following discussions, he learnt that in order to operate a different business at 8 Bishop's Road, he needed a new approval. He subsequently made an application and intends to abide by the conditions of the permit. He noted that the application is to park and perform minor maintenance on equipment and that he has changed his business operations so that no waste or bins will be stored on-site.

#### Adjudicator's Analysis

##### Is the use at 8 Bishop's Road non-conforming?

At the hearing, the Adjudicator learnt the Authority granted Can-Am Platforms approval to establish a general industry use to construct modular trailers at 8 Bishop's Road on

February 25, 2009. On January 20, 2012, the current Bay Roberts Municipal Plan and Development Regulations came into legal effect. The 2012 Bay Roberts Development Regulations restricts general industrial uses to home occupations and imposed conditions. As a result, the existing general industry use does not conform to the Bay Roberts Development Regulations.

Section 108 (1) of the *Urban and Rural Planning Act, 2000* states:

- 108.** (1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.

The general industry use was established in 2009 when the Authority issued an approval. Although this use does not conform with the current Bay Roberts Development Regulations, in that the general industry use is not a home occupation, it is allowed to continue as it legally existed prior to the Bay Roberts Municipal Plan and Development Regulations coming into effect in 2012. The general industry use at 8 Bishop's Road is a non-conforming use in accordance with section 108 (1) of the *Urban and Rural Planning Act, 2000*.

Can an existing non-conforming use be varied?

Section 108 (3) (d) of the *Urban and Rural Planning Act, 2000* gives the Authority the discretion to vary the existing use of a non-conforming building, structure or development provided the use is, in their opinion, more compatible with the Bay Roberts Municipal Plan and Development Regulations.

- 108.** (3) A building, structure or development that does not conform to a scheme, plan or regulations made under this Act that is allowed to continue under subsection (1) ...

(d) may have the existing use for that building, structure or development varied by the appropriate council, regional authority or authorized administrator to a use that is, in their opinion more compatible with a plan and regulations applicable to it ...

Did the Authority make any procedural errors processing the application?

At the hearing, the Authority stated that the advertisement was placed in the Shoreline on August 19, 2022, and indicated a deadline for submissions of August 29, 2022. This provided a response deadline which is not in accordance with the 14-day notice period

specified in section 12 of the Bay Roberts Development Regulations. Section 12 of the Bay Roberts Development Regulations requires that a notice of application with respect to a change in a non-conforming use or a discretionary use to be advertised for 14 days.

## 12. Notice of Application

(1) The Authority shall provide public notice for a period of not less than: ...

b) 14 days - when considering a change in non-conforming use in accordance with Section 15 of Part I; or development which is listed as a Discretionary use in Schedule C of these Regulations ...

In addition, the notice advertised a discretionary use rather than a change of a non-conforming use.

### Did the Authority address resident concerns?

At the hearing, Mr. and Mrs. Jeans outlined their concerns with respect to the operations of Premium Waste Service at 8 Bishop's Road. Other residents submitted written concerns. The Authority stated the Council considered all submissions and that the conditions were added to the permit to mitigate resident concerns while balancing the rights of the non-residential property owner.

An adjudicator cannot insert their discretion for that of the Authority. The Authority assessed resident concerns and imposed conditions on the permit which it considered to be appropriate. Section 44 (2) of the *Urban and Rural Planning Act, 2000* states that an adjudicator cannot overrule a discretionary decision.

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

### Adjudicator's Conclusion

After reviewing the information presented, the Adjudicator concludes that the Authority erred when it considered the establishment of Premium Waste Services at 8 Bishop's Road, Bay Roberts, to be a discretionary use and advertised it as such. In addition, the notice period did not fulfill the requirements of section 12 of the Bay Roberts Development Regulations. That is to say, there is a legally existing non-conforming general industry use at 8 Bishop's Road and the Authority should have processed the application on this basis and should have ensured that the notice period was at least 14 days to meet the requirements of section 12 of the Bay Roberts Development Regulations.

Section 44 of the *Urban and Rural Planning Act, 2000* outlines the actions of an adjudicator in deciding an appeal.

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.

## Order

The Adjudicator orders that the decision of the Town of Bay Roberts to be reversed.

The Adjudicator further orders that the Town of Bay Roberts re-advertise the application made by Premium Waste Services as an application to vary an existing non-conforming general industry use at 8 Bishop's Road, Bay Roberts, and to provide a 14-day notice period for written representations and submissions.

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

In accordance with section 45(2) of the Urban and Rural Planning Act, 2000, the Adjudicator further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the 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 Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 17<sup>th</sup> day of October 2023.

A handwritten signature in dark ink, appearing to read 'Elaine Mitchell', with a stylized flourish at the end.

Elaine Mitchell, RPP, MCIP  
Adjudicator  
Urban and Rural Planning Act, 2000