

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

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

Appeal #: 15-006-083-016

Adjudicator: Clifford Johnston

Appellant: Aloysius Carey

Respondent / Authority: Town of Witless Bay

Date of Hearing: January 12, 2024

Start/End Time : 2:00 pm/3:15 pm

In Attendance

Appellant: Aloysius Carey

Respondent/Authority: No members of the Town Council or Town staff were in attendance.

Respondent /Authority Representative: Stephen Jewczyk, FCIP,
Planning Consultant to the Town of Witless Bay

Interested Parties: Gordon Crocker, Martina Aylward

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

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

Adjudicator's Role

The role of the Adjudicator is to determine if the Authority, in this case, the Town of Witless Bay, acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Witless Bay Municipal Plan 2013-2023 and Development Regulations 2013-2023 when it issued an Order on May 9, 2023 to Aloysius Carey to stop all farming and construction activities on property located on John C's Grove Road, Witless Bay.

Hearing Presentations

The following is a synopsis/summary of the verbal representations made to the Adjudicator at the appeal hearing on January 12, 2024. The Adjudicator also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

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 Adjudicator 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.

At the request of the Adjudicator, the Planner provided a verbal summary of the Technical Report which she had prepared for this appeal, and which was provided to the Adjudicator, the Appellant and the Authority prior to the appeal hearing. The Adjudicator heard from the Planner that this appeal relates to an appeal filed by Aloysius Carey on May 23, 2023, against an Order issued to Mr. Carey on May 9, 2023 by the Town of Witless Bay to stop all farming and construction activities on a property located at John C. Grove's Road, Witless Bay.

The Planner advised that in May of 2022, the Town of Witless Bay became aware of agriculture activity (growing of hay and spreading of manure) occurring on the subject property at John C. Grove's Road. No Development Permit had been issued by the Town for an agriculture use on the subject property. The Town issued a Stop Work Order on May 25, 2022, to the Appellant to cease farming activity on the subject property.

The agriculture use continued and on May 9, 2023, the Town issued a second Stop Work Order to the Appellant to stop all farming activity and construction at the subject property. The Appellant filed their appeal against the May 9, 2023 Stop Work Order on May 23, 2023.

The Planner advised that the property which is the subject of the appeal appears to be zoned as "Residential" under the Town of Witless Bay Development Regulations 2013-2023. The Residential Zone allows "Agriculture" as a Discretionary Use subject to Condition 15 of the Town's Development Regulations which limits agriculture uses in this zone to home-based agriculture activities that do not present a nuisance or disturbance to surrounding properties.

The Planner advised that the Appellant is appealing the Town's decision of May 9, 2023, to issue a Stop Work Order to the Appellant on the grounds that he was clearing the subject property to grow hay for his personal use.

The Appellant's Presentation

-The Appellant advised the Adjudicator that he did not realize he was required to apply to the Town of Witless Bay for a permit to clear and farm the subject property before he commenced to clear and farm the property.

-The Appellant advised the Adjudicator that this is not proposed to be a commercial farming operation. It is only growing hay for his personal use. He intends to farm approximately 2.5 hectares of land. The land was cleared in 2021. There is a fire pit on the property.

-There is currently no activity/development taking place on the subject property. The Appellant advised that he does not, in the future, intend to spread manure on that portion of his property which is near the adjoining property owned by the Crocker family. (See notes below under "Presentations from Interested Parties").

-The Appellant advised the Adjudicator that he did not receive a Stop Work Order from the Town of Witless Bay in 2022. However, the Appellant did acknowledge to the Adjudicator that he did receive the Stop Work Order of May 9, 2023, issued by the Town to him.

The Authority's Presentation

-Mr. Jewczyk, the Town of Witless Bay's Planning Consultant advised the Adjudicator that the Appellant has not made application to the Town to clear and/or farm the subject property. He further confirmed that no approvals/development permits have been issued by the Town to the Appellant to clear and/or farm the subject property.

-The Planning Consultant confirmed for the Adjudicator that the property which is the subject of the appeal is zoned as "Residential" under the Town's Development Regulations and that "Agriculture" is a Discretionary Use in this zone.

-The Planning Consultant could not locate Town records/or minutes to confirm if the Town's Stop Work Order of May 9, 2023, issued to the Appellant, was subsequently ratified by the Town Council.

Interested Parties

Gordon Crocker

-Mr. Crocker resides adjacent to the property which was cleared/farmed by the Appellant, and which is the subject of this appeal.

-Mr. Crocker and his family are very concerned that if manure is spread by the Appellant on the property which is the subject of this appeal, that the manure will seriously harm the water quality of his subsurface well which is quite close to the property which is under appeal. In Mr. Crocker's opinion there is not an adequate buffer between the cleared land where the manure is spread and his well.

-Mr. Crocker advised that his driveway to his home now washes out. This did not happen before the Appellant cleared the land which is the subject of this appeal.

-In Mr. Crocker's opinion, Mr. Carey, the Appellant, is proposing/operating a commercial farming operation.

Martina Aylward

-Ms. Aylward is a friend of the Crocker family.

-Ms. Aylward advised that the Crockers are very concerned about the spread of manure on the subject property as it could seriously compromise the water quality of the Crocker's subsurface well. As well, the Crockers are concerned that the spread of manure on the property next to their own property could cause offending odors and could well

attract rodents.

Adjudicator's Analysis

The Adjudicator reviewed The Urban and Rural Planning Act, 2000 and the Town of Witless Bay Municipal Plan 2013-2023 and Development Regulations 2013-2023 and determined the following:

Q. What is the current zoning of the property on John C. Grove's Road which is the subject of this appeal?

R. The Town's Planning Consultant has confirmed to the Adjudicator that the subject property is currently zoned as "Residential" under the Town of Witless Bay Development Regulations 2013-2023.

Q. Does the "Residential Zone" allow agriculture uses?

R. Yes. The Planner's Technical Report prepared for this appeal and the Town's Planning Consultant have confirmed to the Adjudicator that the "Residential Zone" will allow agriculture uses as a Discretionary Use subject to Condition 15 of the Town's Development Regulation which limits such agriculture uses to home-based agriculture that does not present a nuisance or disturbance to surrounding properties.

Q. Is the clearing of land and /or farming of land for hay considered "Development" under the Urban and Rural Planning Act, 2000?

R. Yes. The definition of "Development" as set out in Section 2(g) of the Urban and Rural Planning Act, 2000 is very inclusive: the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises. The Planner's Technical Report

prepared for this appeal notes that the excavation or preparation of land for farming purposes and the use of the land for farming (in the case of this appeal, growing hay) does meet the definition of “Development” as contained under the Act. As the appointed Adjudicator for this appeal, I concur that the Appellant’s clearing and preparation of the subject property for farming and the subsequent growing of hay on the property do indeed constitute “Development” as it is defined under the Act.

Q. Was Town approval/issuance of a permit from the Town of Witless Bay required by to be applied for by the Appellant before commencing work to clear/prepare the subject property for farming and the subsequent growing of hay on the property?

R. Yes. Section 6 of the Town’s Development Regulations (“Compliance with Regulations”) states that: *“No development shall be carried out within the Planning Area except in accordance with these Regulations.”* Section 7 of the Town’s Development Regulations (“Permit Required”) states that: *“No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.”*

Q. Has the Appellant applied for and/or received Town approval/a permit from the Town of Witless Bay to clear/prepare /excavate and/or farm (in this case grow hay) on the subject property?

R. No. The Town’s Planning Consultant confirmed to the Adjudicator at the appeal hearing that the Appellant did not apply for or receive any approvals/permits from the Town to clear/prepare/excavate and/or farm the subject property.

Q. Did the Town of Witless Bay have the authority to issue a Stop Work Order on May 9, 2023, to the Appellant to stop all farming and construction activity on the subject property?

R. Yes. Section 102(1) of the Urban and Rural Planning Act, 2000 provides that where a person has commenced development without a permit contrary to the Town of Witless Bay Development Regulations, 2013-2023, that the Town can issue a Stop Work Order. Section 102(1) states that”

“Where contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction, fill in or destroy the building or development and may order that the person restore the site or area to its original state.”

Q. Was the Stop Work Order issued to the Appellant on May 9, 2023, issued in accordance with the requirements of Sections 107 and 109 of the Urban and Rural Planning Act?

R. The Planner’s Technical Report prepared for this appeal notes that no Town of Witless Bay Council meeting minutes or Council minutes pertaining to the Stop Work Order were included in the Town’s original appeal submission, so it is not clear whether the Stop Work Order was ordered by or ratified by the Council. However, there is no clear indication from the information provided to the Adjudicator that the Stop Work Order was not approved or not ratified by the Council. Further, the Stop Work Order did include notice of the right of the Appellant to appeal the Order and information on how to file an appeal. As well, the Appellant did verify for the Adjudicator at the appeal

hearing that he did receive the Stop Work Order dated May 9, 2023, issued by the Town. Based on the information provided, the Adjudicator will go proceed on the basis that the Stop Work Order issued on May 9, 2023, to the Appellant was processed in accordance with all applicable requirements of the Urban and Rural Planning Act, 2000.

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.

As the appointed Adjudicator, I have reviewed the written information provided to me, as well as the verbal representations from the Planner, the Appellant, the Planning Consultant for the Town of Witless Bay and the interested parties, as well as the Urban and Rural Planning Act, 2000 and the Town of Witless Bay Municipal Plan 2013-2023 and Development Regulations 2013-2023. Upon review of the all the applicable information , I have determined as the appointed Adjudicator, that the Town of Witless Bay was justified and within its authority under

the Urban and Rural Planning Act, 2000 and the Town of Witless Bay Municipal Plan 2013-2023 and Development Regulations 2013-2023 when it made issued a Stop Work Order on May 9, 2023 to Aloysius Carey to stop farming and construction activities at property located at John C's Grove Road, Witless Bay.

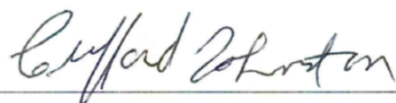
ORDER

The Adjudicator orders that the decision of the Town of Witless Bay of May 9, 2023 to issue a Stop Work Order to Aloysius Carey to stop all farming and construction activities at property located at John C's Grove Road, Witless Bay, **be confirmed.**

The Authority and the Appellant 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 Appellant.

DATED at St. John's, Newfoundland and Labrador, this 17th day of January 2024.



Clifford Johnston

Adjudicator

Urban and Rural Planning Act,