

**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

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

Appeal # : 15-006-087-017

Adjudicator: Lorilee A. Sharpe

Appellant(s): Lynn Halfyard

Respondent / Authority: Town of Woody Point

Date of Hearing: February 8<sup>th</sup>, 2024

Start/End Time: 9:00 a.m.

**In Attendance**

Appellant: Lynn Halfyard

Appellant Representative(s): Self-Represented

Respondent/Authority: Town of Woody Point

Respondent Representative(s): Sherry Avery, Town Clerk

Interested Parties: Bruce White & Judy Parsons Kirby

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

Technical Advisor: Faith Ford

**Adjudicators Role**

Part VI of the *Urban and Rural Planning Act, 2000* authorizes adjudicators to hear appeals and establishes the powers of adjudicators. 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 Woody Point Municipal Plan and Development Regulations* when it issued an Order to remove waste materials at 190 Main Road on August 31, 2023.

## **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.

Rule 10 (a) of the Rules of Procedure provides that there shall be a technical advisor 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 provides the framework with respect to the appeals process under the Urban and Rural Planning Act, 2000 and 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 Order issued by the Town of Woody Point to the owner of property at 190 Main Road to remove fish offal waste from their property.

### **The Appellant's Presentation and Grounds**

The Appellants' grounds for appeal are set out in the written appeal and were summarized in the technical advisors' report as follows:

- The property has been used for residential use and organic growing of vegetables and fruits since the 1940s;
  - Composting is the traditional way of gardening, and the Appellant and other residents can get crab shells from the local fish plant to use in composting and growing organic food; and
- The Appellant feels she is being singled out.

In support of her grounds of appeal, the Appellant appeared at the hearing and made oral submissions. In addition to the information previously submitted in the appeal package, the Appellant also provided a written submission, photos of her property, four letters of support, a survey of her property, and a copy of her Aquatic Invasive Species Control Licence from the Department of Fisheries and Oceans for harvesting green crab. The Respondent did not object to submission of any of the additional documentation at the hearing.

The Appellant submitted that her property at 190 Main Road has been utilized for vegetable gardening by her family for over 75 years and composting has been a part of their traditional organic gardening methods. She submitted a number of photos showing her success in producing organic vegetable produce on the property. She advised that the procedure for

growing vegetables in the raised beds is to place a weed barrier, then some compost which she described in her written submissions as *“a generous layer of any organic material available (ie. Fish offal, green crab, crab shells, kelp and more)”* followed by a layer of topsoil. For her open garden areas the Appellant described using compost and crab shells and tilling it into the soil. The Appellant readily admitted that the materials used in her composting efforts contained fish offal and crab shells. She also admitted that the materials had been kept in an uncovered oil tank in a manner that was not airtight and was accessible to wildlife such as birds. She also admitted that the materials on her property emanated unpleasant odours, particularly in warmer temperatures. In her written submissions she stated *“It is normal to upon decay enriching the grounds, certain times of the year and certain temperatures can create odours for short periods of time”*.

In addition to the Appellants submission that she is making a valuable contribution to society and to her community by growing organic vegetables on her property, she also submitted that:

- she holds a licence from the Department of Fisheries and Oceans to assist with invasive species by harvesting green crab and the fish offal is utilized for catching the green crab which DFO advises her to then compost;
- at least two of the letters of support she submitted were from adjacent property owners, one of whom operates a B&B business on their property;
- most of the complaints have come from people who are summer residents; and
- she has been singled out because other people in the community compost in the same manner and the fish plant causes more foul odors than those which emanate from her property;

### **Authority's Presentation**

At the hearing, the Respondent Town of Woody Point submitted that it did not object to the concept of residents composting generally, but that it needed to be done in a manner that did not disturb the use and enjoyment of other residents on their properties. The Town also confirmed that the Order that had been issued following the privileged meeting of council had been ratified at a public meeting on December 6, 2023.

In the written submissions provided by the Respondent in its appeal package, it shows that the Town had received a number of detailed written complaints from various residents and an email from an Environmental Protection officer with the Government of Newfoundland and Labrador. The letters advised the Town of a noxious smell emanating from the subject property at 190 Main Road and the negative impact it was having on use and enjoyment of their properties.

The residents described an open oil tank and open trailer filled with decaying fish parts/fish offal that was causing noxious fumes to emanate onto their properties and into their homes. Residents complained that they could not open the windows in their homes and sheds due to

the smell and they could not enjoy their gardens or have company in their homes. One resident described it as a suffocating foul stench. Another resident who operated a Bed and Breakfast business advised that the stench was impacting his business and one of his guests had become physically ill from the noxious fumes. The Town was also informed that flies were swarming around the open oil tank and trailer and swarming residents' homes and that the smell was attracting crows and rodents. One resident described the open trailer as a "feeding ground for crows" and provided the Town with photographic evidence of the open oil tank and trailer with crows sitting about. Another resident advised that the stench had been unbearable for the past "few weeks".

The Respondent advised that the Appellant refused to comply with requests to remove the waste from her property so on August 29, 2023, Council held a privileged meeting. Residents who had submitted complaints attended this meeting. The Appellant had been advised of the meeting but chose not to participate. At this meeting, Town Council approved a motion to issue the Stop Work/Removal Order that is the subject of this Appeal. The Order was sent to the Appellant via registered mail on September 1, 2023, and was received by the Appellant on September 7, 2023. The Respondent provided proof of delivery by Registered Mail in the appeal package.

#### **Interested parties**

Two of the impacted residents made submissions at the hearing. Resident Bruce White described the smell as "excruciating". He advised that he could not use his patio or side deck and that one of his B&B guests had become physically sick from the smell. He advised that he is a long term resident of the property adjacent to the Appellants and that there has not been a smell such as this emanating from the property until this past summer which was the first time it had happened.

Judy Parsons Kirby advised that her property also borders the Appellants and that while she is in favour of composting generally, she cannot endure the odour that came from the new form of composting that happened on the Appellants property this past summer. She described getting violently ill, being unable to eat meals, and being unable to hang clothes on her clothesline to dry.

#### **Adjudicators Analysis**

I have reviewed the documents in the appeal package and submissions of all parties, as well as the applicable provisions of *The Urban and Rural Planning Act, 2000*, the *Town of Woody Point Municipal Plan and Development Regulations* and the *Municipalities Act*.

The Town's Order was issued under sections 404(1)(j) and 404(1)(l) of the *Municipalities Act* and s. 50 of the *Town of Woody Point Development Regulations* which read as follows:

## ***Municipalities Act***

### ***Council orders***

**404.** (1) *A council may make an order that*

*(j) a person who causes a nuisance contrary to the regulations of the council cease causing that nuisance;*

*(l) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.*

### ***Town of Woody Point Development Regulations***

#### ***50. Offensive and Dangerous Uses***

*No building or land shall be used for any purpose which may be dangerous by causing or promoting fires or other hazards or which may emit noxious, offensive or dangerous fumes, smoke, gases, radiation, smells, ash, dust or grit, excessive noise or vibration, or create any nuisance that has an unpleasant effect on the senses unless its use is authorized by the Authority and any other Authority having jurisdiction.*

Orders issued under s. 404(1) of the *Municipalities Act* are appealable to an adjudicator appointed under the *Urban and Rural Planning Act* in accordance with s. 408(1) of the *Municipalities Act* and the Adjudicator may make "an order with respect to the matter that appears just":

#### ***Appeal***

**408.** (1) *A person aggrieved by an order made under subsection 404(1) may, within 14 days of the service or posting of the order, appeal to an adjudicator appointed under the Urban and Rural Planning Act, 2000 and the adjudicator may make an order with respect to the matter that appears just.*

Stop work Orders issued under the Development Regulations of an Authority are also appealable in accordance with s.41 of the *Urban and Rural Planning Act, 2000*

#### ***Appeals***

**41.** (1) *A person or a group of persons aggrieved by a decision may appeal the decision to an adjudicator where*



- (a) the decision is permitted to be appealed to an adjudicator under this Act or another Act; or*
- (b) the decision is permitted to be appealed under the regulations and the decision relates to one or more of the following:*
  - (i) an application to undertake a development,*
  - (ii) a revocation of an approval or a permit to undertake a development, or*
  - (iii) the issuance of a stop work order.*

The powers of an adjudicator in deciding an appeal are set out in s.44 of the Urban and Rural Planning Act:

***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 and the applicable legislation, the Adjudicator concludes that the Town of Woody Point did not make any procedural error in exercise of its

discretion to issue the order to the Appellant dated August 31, 2023 to remove waste material at the property at 190 Main Road in the Town of Woody Point under sections 404(1)(j), and 404(1)(L) of the *Municipalities Act* and s.50 of the *Town of Woody Point Development Regulations*. The Town had received multiple detailed written complaints from a number of residents with sufficient information for the Town to conclude that the waste material was a nuisance that was adversely affecting surrounding properties and that it had an unpleasant effect on the senses. The Town made the Appellant aware of the concern and invited the Appellant to make submissions at a privileged meeting of Town Council prior to its motion to issue the Order. The Town ratified the Order from the privileged meeting at a subsequent public meeting as required by s.213(3) of the *Municipalities Act*. The Order was effectively served by Registered Mail in accordance with s. 406 of the *Municipalities Act*.

I would also like to add for the information of both parties, that there are provisions set out in the *Occupancy and Maintenance Regulations* under the *Urban and Rural Planning Act, 2000* that are specific to composting. While the *Occupancy and Maintenance Regulations* are not presently binding on the Town of Woody Point, the Town and the Appellant may benefit from considering the provisions set out therein as a general guidance document for conducting composting activity in residential neighbourhoods in a manner that does not create a nuisance for neighbouring properties.

### ***Occupancy and Maintenance Regulations:***

#### ***Definitions***

##### ***2. In these regulations***

(c) "composting" means the storage and controlled biochemical decomposition of vegetables, fruit or garden waste;

#### ***Composting container***

**38.** All composting must be carried out in a suitably maintained container which

(a) may be commercially or owner constructed;

(b) must be rodent proof; and

(c) must be properly vented.

#### ***Manner of composting***

**39.** All composting shall be carried out in a manner that neither attracts rodents, flies or animals nor causes an unpleasant odour and shall be maintained so as not to be a nuisance to neighbouring properties.

**Container location**

*40. Composting containers shall be located in the rear yard no closer than one metre to a lot line.*

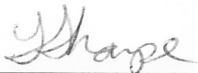
**Order**

As such, the Adjudicator orders that the Order of the Town of Woody Point for removal of waste material from 190 Main Road Woody Point is hereby 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 26<sup>th</sup> day of February, 2024.



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Lorilee A. Sharpe, Adjudicator  
Urban and Rural Planning Act, 2000