

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-049
Appellant(s)	Christa Barfett
Respondent / Authority	Town of Clarenville
Date of Hearing	March 17, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Paul Boundridge, MCIP

Also in Attendance

Appellant(s)	Not present
Representatives for the Appellant(s)	Not present
Representatives for the Authority	David Harris, CAO Town of Clarenville
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Keith Batstone, MCIP
Interested Parties	Joy Flemming, adjoining neighbour

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Clarenville (the Authority) to issue an Order is in accordance with the Urban and Rural Planning Act, 2000

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Municipalities Act, 1999
- Occupancy and Maintenance Regulations
- Town of Clarendville Municipal Plan and Development Regulations.

Background:

On May 13, 2021, the Authority (Town of Clarendville), received "...a noise complaint from a neighbouring property stating a chicken coop located in the backyard of 1 Gillett Place had roosters which was causing noise issues."

Upon investigation by the Authority (Town of Clarendville), it was determined that no permit application had been received for a chicken coop at 1 Gillett Place, and no permit had been issued.

Subsequent to discussions between the Appellant, Town Council and Town staff, on June 28, 2021, the Authority (Town of Clarendville) issued a letter as notice of a Council Order to remove all roosters from a property at 1 Gillett Place, Clarendville NL. On July 9, 2021 the Appellant (Christa Barfett) filed an appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board against the Town's decision to issue the Order.

Request for Postponement

Prior to the Appeal Hearing, the Secretary to the Eastern Newfoundland Regional Appeal Board, received an email on March 8, 2022 from the Appellant requesting a postponement. The Secretary read the entirety of her email to the Board at the hearing stating she was not available for the March 17, 2022 Appeal Hearing.

The Board requested the Town comment on the postponement request. The Town's CAO indicated that the Town's Council was not in agreement with a postponement given that this matter has been ongoing since May 2021 and the peaceful enjoyment of the neighbouring property was being denied.

After a short recess by the Board to consider the postponement request, the Board reconvened and advised that the Appeal Hearing would proceed.

Presentations During Hearing

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

Technical Advisor:

The Appellant(s) is appealing the Town of Clarendville's decision to issue a Council Order requiring the removal of roosters from the property located at 1 Gillett Place, based on the following grounds of appeal:

- “• When the municipal enforcement officer showed up to my residence, he provided me with the incorrect information and had to be corrected by the town manager. He informed me that it was an unenforceable bylaw, which was incorrect. He also didn't know who I should contact to sort the situation out. I wasn't aware that I was breaking any rules and was concerned and had questions that he couldn't answer.
- Suggest guidelines were given to me, not a copy of the actual bylaw. What was law and what wasn't was very confusing. I did manage to obtain a copy of the bylaw, via third party.
- Honestly, this entire situation has been a mess and I would like the situation reviewed by a third party. I would like someone to conduct a procedural review to determine whether the development decision/enforcement order was made in accordance with the applicable plan, development regulations, and legislation.”

The Town of Clarendville Municipal Plan and Development Regulations, 2010-2020 came into effect on July 30, 2010.

The subject property is located in the 'Residential' designation, as established in the Future Land Use Map (Municipal Plan) and Residential (RES) Use Zone, as established in the Zoning Map (Development Regulations).

The Municipal Plan outlines a general policy goal for the 'Residential' land designation at Section 3.3.4.1(1) to: "...accommodate new housing needs and preserve the amenity of existing residential areas". Section 3.3.4.3 of the Plan establishes policies that serve to limit the range of permitted land uses in the Residential designation to:

- Residential uses (ie. predominantly single detached)
- Conservation and open space
- Non-residential uses that are complementary (eg. recreational open space, walking trails, daycare centres, and certain types of shops).
- Home occupations

Interested Parties:

Joy Flemming, the adjoining neighbour, indicated that she and her husband were retired and had lived at that location for 40 years. She indicated that there are two crowing roosters on the Appellant's property which was disrupting the peaceful enjoyment of their property.

BOARD ANALYSIS

Q. What is the zoning of the subject property and does it permit a chicken coop and the keeping of roosters?

A. As per the Town of Clarendville Development Regulations, the property is zoned Residential. This zone allows kennels as a Discretionary Use. The Town's Development Regulations defines kennels to include keeping chickens. Chicken coops are considered as kennels. The Development Regulations strictly prohibit keeping roosters in the Residential Zone.

Q. Is the existing chicken coop located at the subject property in compliance with the Town's Development Regulations?

A. The Town has not issued a permit for the chicken coop prior to its construction and use. The subject property is not in compliance with the Town's requirements for minimum lot size for kennels in the Residential Zone.

Q. Is the construction of a chicken coop "development" as defined under the Urban and Rural Planning Act and the Town of Clarendville Development Regulations?

A. The Urban and Rural Planning Act and the Town's Development Regulations, define "development" to mean the carrying out of any building, engineering, mining or other operations in, on, over, or under land, or the making of any material change in the use, or the intensity of use of any land, buildings, or premise.

The Board has determined that the construction of the chicken coop at the subject property is "development" as defined under the Act and the Town's Development Regulations.

Q. Does the construction of the chicken coop and its continued use without a permit from the Town, comply with the Town's Development Regulations?

A. No. Regulation 7 of the Town's Development Regulations ("Compliance with Regulations") directs that no development shall be carried out in the Town's Planning Area except in accordance with the Development Regulations. Regulation 8 of the Town's Development Regulations ("Permit Required") further directs that no person shall carry out any development within the Town's Planning Area where otherwise provided in the Regulations unless a permit for the development has been issued by Council.

Q. Did the Town have the authority to issue a "Stop Work Order" regarding the chicken coop to the Appellant?

A. Yes. Section 102 of the Rural and Urban Planning Act provides the authority to the Clarendville Town Council to issue a Stop Work Order where land use development is contrary to the Town's municipal regulations. Further, Regulation 33 of the Town's Development Regulations ("Stop Work Order and Prosecution") indicates that where a person begins a development contrary or apparently contrary to the Town's Development Regulations, that Council may order that person to stop the development or work connected therewith pending final adjudication in any prosecution arising out of the development.

Q. Was the Town's Order issued in accordance with the Urban and Rural Planning Act and the Town of Clarendville Development Regulations?

A. The Board has determined that the Town's Order was issued in compliance with the applicable requirements of the Urban and Rural Planning Act and the Town's Development Regulations. The Authority's appeal submission package indicates that enforcement investigation proceedings initiated as a result of a resident complaint, involved:

- Town inspection, discussion with Appellant and Council evaluation
- Council determination of non-conforming land use development (ie. Rooster)
- Issuance of a Council Order by hand delivery
- Specification of a 14 day time period within which there shall be compliance
- Notice of the right of appeal and the associated application process for the Eastern Newfoundland Regional Appeal Board

BOARD'S CONCLUSION AND DETERMINATIONS

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information and planning advice.

The Board is bound by section 42 of the Urban and Rural Planning Act, 2000 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 Clarendville had the authority to issue a Stop Work Order to Christa Barfett on June 28, 2021 to remove all roosters on the property at 1 Gillett Place and did so in accordance with the Urban and Rural Planning Act, 2000 and the Town of Clarendville Municipal Plan and Development Regulations.

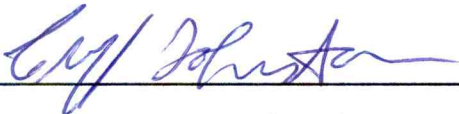
BOARD'S ORDER

The Board orders that the decision made by the Town of Clarenville on June 15, 2021 to issue a Stop Work Order to Christa Barfett for the removal of all roosters at 1 Gillett Place, be confirmed.

The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

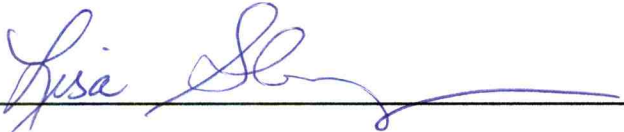
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this March 17, 2022.



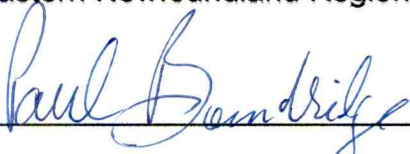
Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board



Paul Boudridge, MCIP, Member

Eastern Newfoundland Regional Appeal Board