

# West Newfoundland Regional Appeal Board Decision

Appeal #	15-006-067-019
Appellant(s)	Douglas Sheppard
Respondent / Authority	Town of Cormack
Board Members	Chair: Lloyd Walters Member: Derrick House Member: Boyd Noel
Date of Hearing	October 21, 2020

## Also in Attendance

Appellant	Douglas Sheppard, Appellant Peggy Sheppard Michael Sheppard Mark Sheppard
Representatives for the Authority	Tracey Hewitt, Town Clerk/Manager Councillor Robert Coles
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	Jessica Murphy, Applicant Gail Roberts

The provision for appeal is enabled under s. 42 of the *Urban and Rural Planning Act, 2000* (The Act).

## Board's Role

The role of the West Newfoundland Regional Appeal Board is to determine if the Town of Cormack acted in accordance with the *Urban and Rural Planning Act, 2000* and the Cormack Municipal Plan and Development Regulations when it approved an application for a livestock barn and manure pit at 366 Veteran's Drive, Cormack.

A third party filed an appeal.

## Background

The applicant submitted an application to the Town of Cormack seeking a permit to build a livestock barn measuring 60 feet by 100 feet and an asphalt manure pad measuring approximately 120 feet by 120 feet at 366 Veteran's Drive, Cormack on June 25, 2020.

Council approved the application at its July 9, 2020 regular meeting.

The Appellant filed a third party appeal on July 22, 2020.

## Validity

Section 42 (4) and (5) of the Act state:

*42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.*

*42. (5) An appeal shall be made in writing and shall include*

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

According to the documents provided, the appeal was filed on July 22, 2019. Council's decision was made on July 9, 2020 at a regular meeting of Council and the applicant was informed of Council's decision in a letter dated July 13, 2020. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

## Grounds of Appeal

This appeal is based on the following section of the Act: Section 42.(1)(a) (an application to undertake a development).

*42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to*

- (a) an application to undertake a development;*
- (b) a revocation of an approval or a permit to undertake a development;*
- (c) the issuance of a stop work order; and*
- (d) a decision permitted under this or another Act to be appealed to the board.*

The Appellant is appealing the decision to approve an application for a beef barn and manure pad based on the following grounds:

1. The development is within the 600 metre buffer prescribed for livestock structures in section 37-3 of the Cormack Development Regulations;
2. The Cormack Municipal Plan calls for Council to ensure that new development will not affect existing land uses by creating a hazard or nuisance; and
3. The Town did not apply the 600 metre livestock buffer to the detriment of the Appellant.

## Planner's Technical Analysis

### Legislation and Regulations

The applicable legislation with respect to this appeal is:

*Urban and Rural Planning Act, 2000*

*Cormack Municipal Plan and Development Regulations*

### Land Use Planning

The Cormack Municipal Plan and Development Regulations came into legal effect on November 23, 2007.

According to the Cormack Municipal Plan, the subject site is designated Agriculture. Municipal Plan policy 6.7 indicates that the Agricultural designation is to accommodate agricultural and forestry uses and that all uses in this designation are subject to approval by the Agrifoods Division.

*The Agriculture designation accommodates agricultural and forestry uses together with uses that complement these primary uses and/or are essential to the primary uses. Other uses can be allowed as permitted or discretionary uses provided that they do not negatively affect the agricultural use and potential of this designation.*

*All uses in this designation are subject to the approval of the Agrifoods Division of the Department of the Natural Resources.*

Municipal Plan policy 6.1.6 states that agricultural uses are regulated by the Town and the Provincial Government, subject to the Farm Practices Act, and must be approved by both authorities.

*Agricultural uses are regulated by the Town and the Provincial Government, subject to the Farm Practices Act and other relevant legislation. Agricultural uses shall be approved by both the Department of Natural Resources and the Town, together with other appropriate agencies.*

Municipal Plan policy 6.1.3 (4) states that Council shall ensure, as much as possible, that new development does not negatively affect existing uses.

*Compatibility of Uses, Buffers and Screening*

*Council shall ensure as much as possible that new development will not negatively affect existing and proposed land uses by creating a hazard or nuisance such as noise, dust, odour or unsightly appearance. Council may require a developer to provide appropriate screening or to undertake other measures to minimize negative off-site effects.*

According to the Cormack Development Regulations, the subject site is zoned Agriculture. Agricultural is listed as a permitted use in that zone. Condition 6 in the Agriculture use zone table refers to Regulation 37. Regulation 37 (1) states that agricultural uses are regulations by the Town and the provincial government and are subject to the Farm Practices Act. Subsection 2 states that any livestock structure containing five or more animal units must be located at least 600 metres from a non-farm dwelling unless otherwise determined upon referral to the Agrifoods Branch. The structure must be located at least 60 metres from the property boundary and 90 metres from the street centerline. The livestock structure must be approved by the Agrifoods Branch before the Town can issue a permit.

***Agriculture and Farming***

- (1) Agricultural uses are regulated by the Town and the Provincial Government, subject to the Farm Practices Act and other relevant legislation. Agricultural uses shall be approved by both the Agrifoods Development Branch of the Department of Natural Resources and the Town, together with other appropriate agencies.***
  
- (2) Except for infill development any residential development within 600 metres of structure containing more than five animal units must be referred to the Agrifoods Development Branch for a recommendation. The Town shall not issue a permit contrary to the recommendation.***
  
- (3) Any livestock structure (barn) containing five or more animal units must be located at least 600 metres from a non-farm dwelling, unless otherwise determined after referral to, and upon recommendation of, the Agrifoods Branch. The structure shall be at least 60 metres from the boundary of the property on which it is to be erected and shall be at least 90 metres from the centre line of a street. The erection of the structure shall be approved by the Agrifoods Branch before a permit is issued by the Town.***

Schedule A defines "animal unit" as meaning 1 cow (including calf).

## Presentations during the Hearing

### Planner

During the hearing, the Board heard technical details about the subject property and the provisions of the Cormack Municipal Plan and Development Regulations from the Planner. In particular, the Board was advised that the subject property lies in the Agriculture zone and agriculture is a permitted use. The Board was referred to section 37 of the Cormack Development Regulations which states any livestock structure containing five or more animal units must be located at least 600 metres from a non-farm dwelling unless otherwise referred to and approved by the Agrifoods Branch.

### Appellants

The Board learned that the Appellants filed an appeal on the grounds the development is within the 600 metre buffer prescribed for livestock structures in section 37-3 of the Cormack Development Regulations, that the Cormack Municipal Plan calls for Council to ensure that new development will not affect existing land uses by creating a hazard or nuisance; and that the Town did not apply the 600 metre livestock buffer

to the detriment of the Appellants. The Appellants further stated that they have lived at 4 Pine Avenue, across the road from the proposed development, since 1976 and have been actively involved in their community during that time. They further stated that there was no town plan at the time they built their home but it is now located in the Mixed Zone which runs along both sides of Veteran's Drive. They recognize the importance of agriculture in society and particularly to Cormack but they do not consider their residence to be a farm dwelling.

They stated that new, intensifying livestock operations are eroding the enjoyment of their property and threatening the value of their property. The Appellants main reason for filing the appeal was because there was no consultation with town residents and they were unable to obtain any information from the town about the proposed development. They feel that if approval is given for this development to take place with conditions or variances attached to the permit it should be moved as far from their property as possible.

## Authority

In its submissions and presentation at the appeal hearing the Town of Cormack states it followed appropriate procedure in approving the application for development and were within their rights to do so under the "Right To Farm" Policy.

## Considerations by the Board

### Did the Authority make the decision properly given its Town Plan and Regulations and Provincial Legislation affecting this application?

The town received the application and dealt with it at a public meeting as required by The Municipalities Act, 1999. The council approved the application subject to the approval of the Government Service Center for water and sewage design and all government departments necessary for this development. A further condition stated was compliance with the town's development regulations and the National Building Code. The Board was not provided with any evidence that the Town has yet fully complied with Municipal Plan policy 6.1.3 (4) which states that Council shall ensure, as much as possible, that new development does not negatively affect existing and proposed land uses by creating a hazard or nuisance such as noise, dust, odour or unsightly appearance. Council may require a developer to provide appropriate screening or to undertake other measures to minimize negative off-site effects as per the town's development regulations. Sections 12 and 13 of the Town's Development Regulations state;

*12.(1) Where an approval or permit cannot be given by an authority because a proposed development does not comply with development standards set out in development regulations, an authority may, in its discretion, vary the applicable development standards to a maximum of 10% if, in the authority's opinion, compliance with the development standards would prejudice the proper development of the land, building or structure in question or would be contrary to public interest.*

*(2) An authority shall not allow a variance from development standards set out in development regulations if that variance, when considered together with other variances made or to be made with respect to the same land, building or structure, would have a cumulative effect that is greater than a 10% variance even though the individual variances are separately no more than 10%.*

*13. Where an authority is to consider a proposed variance, that authority shall give written notice of the proposed variance from development standards to all persons whose land is in the immediate vicinity of the land that is the subject of the variance.*

The board was informed that this development must be approved by the Department of Fisheries, Forestry and Agriculture before a permit can be issued. A letter of support for the development from the

manager of the Agriculture Lands Section was included in the town's supplementary documentation supplied to the board. That letter of support did not include any indication that a thorough review of the location of the development has been completed by the Department of Fisheries, Forestry and Agriculture or that any approvals for development, with or without conditions, had been provided by that Department.

What is the zoning of the subject property?

The Board learned the subject property is zoned Agriculture according to the Town of Cormack's Development Regulations.

Is the proposed use permitted?

The Board accepts the argument by the Authority that the proposed beef barn is a permitted use in the Agriculture zone.

Does the proposed development meet all of the other requirements of the Development Regulations?

The Board reviewed section 37 of the Town of Cormack's Development Regulations with respect to requirements for livestock structures.

*Agricultural uses are regulated by the Town and the Provincial Government, subject to the Farm Practices Act and other relevant legislation. **Agricultural uses shall be approved by both the Department of Natural Resources and the Town, together with other appropriate agencies.***

*Any livestock structure (barn) containing five or more animal units **must be located at least 600 metres from a non-farm dwelling, unless otherwise determined after referral to, and upon recommendation of, the Agrifoods Branch.** The structure shall be at least 60 metres from the boundary of the property on which it is to be erected and shall be at least 90 metres from the centre line of a street. The erection of the structure shall be approved by the Agrifoods Branch before a permit is issued by the Town.*

## Decision

In arriving at its decision, the Board reviewed all submissions received prior to the hearing and presentations given by all parties present at the hearing, along with the technical information. 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.

It is the decision of this Board that the town of Cormack acted appropriately and within its authority when it received the application for development at 366 Veterans Drive, Cormack and granted approval with conditions. The application was referred to the Government Service Center for approval of the water/sewer design. It is the understanding of the Board that the development has been referred to the Department of Fisheries, Forestry and Agriculture for determination and no permit for development has been issued by the town at this time. The board did not receive any information regarding the final review of this development by that department or the town and whether it has been approved with or without conditions attached. Therefore, since it is exclusively within the authority of that department to make a decision on whether to vary the 600m buffer zone, be at least 60m from the boundary line and at least 90m from the center line of a street, the Board cannot make a determination on the "reasonableness" of that review and any variances allowed at this time.

## Board's Order

Based on the information presented, the Board orders that the decision by the Town of Cormack to approve the construction of a livestock barn and manure pad at 366 Veterans Drive, Cormack on July 9, 2020 be confirmed.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the 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 Board's decision has been received by the Appellant(s).

DATED at Deer Lake, Newfoundland and Labrador, this . OCTOBER 23, 2020



Lloyd Walters, Chair  
Western Regional Appeal Board



Boyd Noel, Member  
Western Regional Appeal Board



Derrick House, Member  
Western Regional Appeal Board