

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-064-038
Appellant(s)	Louise Markus
Respondent / Authority	Town of Pouch Cove
Board Members	Chair: Clifford Johnston Member: Carol Ann Smith Member: Paul Boundridge
Date of Hearing	November 2, 2020

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Grant Genova
Representatives for the Authority	Brian Peach, Chief Administrative Officer
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	Patricia Smith and Hubert Wells

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

Land Use Planner's Technical Report

Appeal #	15-006-064-038
Appellant(s)	Louise Markus
Respondent / Authority	Town of Pouch Cove

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Pouch Cove acted in accordance with the *Urban and Rural Planning Act, 2000*; the *Municipalities Act, 1999*; and the Town's municipal plan and development regulations when it issued an order to Louise Markus on October 28, 2019 regarding 15A Sullivan's Loop in the Town of Pouch Cove.

Background

This matter has been appealed in the past. The order of the Board resulting from the previous appeal was that the matter be reconsidered by the Town.

The Town of Pouch Cove, on October 28, 2019, ordered the appellant to cleanup the subject property under section 404 of the *Municipalities Act, 1999* and section 102 of the *Urban and Rural Planning Act, 2000*. The Order outlined the following:

- That the Appellant remove material from and clean up the subject property;
- The sections of legislation under which the Order was being filed;
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

Chronology

Chronology assembled from the material submitted by the Applicant, Appellant, and the Authority.

October 28, 2019	Original date of Order - returned to Town Office marked "return to sender"
November 15, 2019	The Order re-dated and was picked up by the Appellant from the Town Office
November 19, 2019	The fee to file an appeal was paid by the Appellant
December 5, 2019	Appeal registered by the Secretary of the Regional Appeal Boards

Grounds of Appeal

This appeal is based on the following section of the Act: Section 42(1)(d) (s. 408(1) of the *Municipalities Act, 1999*).

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
(d) a decision permitted under this or another Act to be appealed to the board.

The Appellant is appealing the Order based on the following grounds:

1. There is no solid waste, no noxious substances, and no things that are hazardous to public health and safety or adversely affect surrounding properties;
2. There is no garbage, debris, or loose material on the subject property (nothing that is not common on other properties in Pouch Cove); and
3. The subject materials are stored in "certified containers".

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 Appellant submitted the appeal form and grounds to the Secretary on December 5, 2019. The Appellant paid the required fee on November 18, 2019. The (revised) date of the Order was November 15, 2019.

Legislation and Regulations

The applicable legislation with respect to this appeal is:

- *Urban and Rural Planning Act, 2000*
- *Municipalities Act, 1999*
- *Town of Pouch Cove Municipal Plan and Development Regulations*
- *Occupancy and Maintenance Regulations*

The Order indicates that it was made pursuant to section 404 of the *Municipalities Act, 1999* and section 102 of the *Urban and Rural Planning Act, 2000*. Section 404(1)(l) of the *Municipalities act, 1999* reads:

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

The Province's *Occupancy and Maintenance Regulations* were made under the *Urban and Rural Planning Act, 2000* and the Town of Pouch Cove is subject to those Regulation as the Town is listed in the Schedule of the Regulations. As per section 5 of the Regulations:

5. All properties in the areas listed in the Schedule including land, buildings, structures, dwellings, fences, sheds, garages, parking lots, driveways, landscaping and all appurtenances shall be maintained in a state of good condition and repair in accordance with the standards set out in these regulations and as otherwise ordered by the enforcement authority.

As per sections 41 and 42 of the Regulations:

41. (1) The enforcement authority may direct the owner of a dwelling unit or building which does not conform to the standard

(c) to clean and paint as required to provide a satisfactory condition of appearance and cleanliness, within the time that the enforcement authority may specify.

42. (1) If an owner does not comply with the directions of the enforcement authority, the enforcement authority may

(a) order the necessary work to be done to make the dwelling or building conform to the standards...

Procedural Compliance

Section 107 (1) of the Act requires that an order be delivered personally or sent by registered mail.

107. (1) Unless otherwise stated in this Act, a notice, order or other document required to be given, delivered or served under this Act is sufficiently given, delivered or served where delivered personally or sent by registered mail addressed to the person at the latest known address of that person.

The Town sent the Order dated October 28, 2019 to the Appellant via registered mail. It was returned to the Town marked "return to sender". The Appellant went to the Town Hall on November 15, 2019 and received the Order. The date on the Order was revised to November 15, 2019 at that time.

Section 109 (3) of the Urban and Rural Planning Act states that an employee of Council may issue an order. Subsection (4) requires this order to be confirmed by the majority vote of the members of council present at the next meeting and the order is considered cancelled if it is not confirmed.

109.(3) An employee of a council or regional authority may issue an order under section 102.

(4) An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council

At a regular meeting of council on October 15, 2019, the Town Council carried a motion (#19-237) to issue the Order to the Appellant.

Technical analysis prepared by:



Christopher Hardy

Technical Reviewer for the Newfoundland and Labrador
Regional Appeal Boards

Presentations during the Hearing

During the hearing, the Board heard technical details about the subject property and the provisions from the Town's Occupancy and Maintenance Regulations and Development Regulations from the Planner's Technical Report. Neither the Appellant nor the Town questioned any aspect of the Technical Report and it was accepted as presented.

Appellant

The Appellant stated that he and his wife (Louise Markus) have lived on the property for 17 years. He is an architect/urbanist who, with his wife, an artist, works with a variety of materials, including recycled materials. Mr. Genova advised the Board that there are no noxious substances or things which may be a hazard to public safety or residents of adjoining properties. Furthermore, "we have no garbage, debris loose materials that are not what you see on other properties in Pouch Cove. All our material which is art based materials are stored in certified containers".

The Appellant did not speak to the Occupancy and Maintenance Regulations which were the basis for the Clean-up and Removal Order of November 15, 2019.

Authority's Presentation

The Town's Representative advised:

- That the issue of the state of the subject property goes back to 2015 and that the Town has endeavored to work with Mr. Genova and Ms. Markus to have the property cleaned up.
- That the property is zoned Residential Serviced under the Town's Development Regulations and that there is no approval by the Town for the occupancy/use of the property for an "arts studio"; which would be classified by the Town as Home Based Business- a Discretionary Use in the Residential Serviced Zone.
- That there are several buildings on the property which are in a state of disrepair for which there has been no Order issued, but the November 15, 2019 Cleanup and Removal Order does apply to a trailer on the property.
- There have been complaints to the Town from other residents on the street about the state of the subject property which the occupancy and Maintenance Regulations(Regulations 34,35,36) are intended to address and these Regulations served as the basis for the November 15, 2019 Cleanup and Removal Order.

Other Parties

The Board learned from Patricia Smith and Hubert Wells, long-time community residents who live on the neighboring property, that they have no concern with the Appellants' using recycled materials so long as the subject property is kept tidy, which they indicated it clearly is not.

Board's Analysis

(Question/Response)

Q: Does a residential property owner in the Town of Pouch Cove have a right to store materials on the outside of a residential property?

R: The Town's Chief Administrative Officer advised the Board that the Town recognizes the right of property owners to store materials and equipment on a residential lot so long as the material and equipment are stored in the rear of a property and are neatly stored and/or screened.

Q. Has the Town approved the use of the subject property for an artist's studio and/or architect's office/studio which could involve the outside storage of material and/or equipment?

R: No, a Permit for a Home Based Business has not been issued by the Town for this property.

Q: How did the Town become aware of and establish that materials and equipment have been stored on the property in contravention of the Town's Occupancy and Maintenance Regulations?

R: Complaints were received from other residents on the street which prompted the Town to investigate. A Town representative visited the subject property and took a series of photographs (part of the Town's submission) which established that materials and equipment have been stored at various locations on the property in contravention of the Town's Occupancy and Maintenance Regulations.

Q. Is the Town Council's decision of October 15, 2019 to issue the Cleanup and Removal Order in conformity with the Occupancy and Maintenance Regulations and the Urban and Rural Planning Act?

R. Sections 41 and 42 of the Occupancy and Maintenance Regulations state:

"41. (1) the enforcement authority may direct the owner of a dwelling unit or building which does not conform to the standard

(c) to clean and paint as required to provide a satisfactory condition of appearance and cleanliness, within the time that the enforcement authority may specify.

42. (1) if an owner does not comply with the directions of the enforcement authority y, the enforcement authority may

(a) order the necessary work to be done to make the dwelling or building conform to the standards..."

Section 109 (3) of the Urban and Rural Planning Act states that an employee of Council may issue an order. Subsection (4) requires this order to be confirmed by the majority vote of the members of council present at the next meeting and the order is considered cancelled if it is not confirmed.

109.(3) An employee of a council or regional authority may issue an order under section 102.

{4} An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council

At a regular meeting of Council on October 15, 2019, the Town Council carried a motion (#19 - 237) to issue the Order to the Appellant.

On the basis of the foregoing, the Board has determined that the Town has the authority to issue the Cleanup and Removal Order and that it followed due procedure when it did.

Board's Decision

The Board has determined that the Town was within its authority to issue the Cleanup and Removal Order dated November 15, 2019 and exercised it appropriately.

In arriving at its decision, the Board reviewed the submissions and comments given by 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.

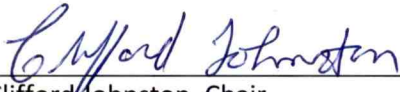
Board's Order

Based on the information presented, the Board orders that the decision by the Town of Pouch Cove Council of October 15, 2019 to issue the Cleanup and Removal order to the owners of 15A Sullivan's Loop, be confirmed.

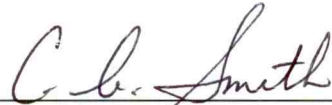
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland 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).

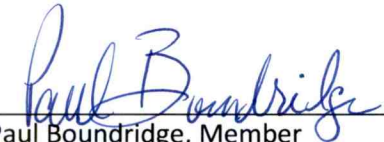
DATED at St. John's, Newfoundland and Labrador, this 2nd day of November, 2020.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Paul Bountridge, Member
Eastern Newfoundland Regional Appeal Board