

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-026
Appellant(s)	Irene Taylor
Respondent / Authority	Town of Pouch Cove
Date of Hearing	May 12, 2021

## Board Members

Chair	Cliff Johnston
Member	Paul Boundridge
Member	Carol Ann Smith

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Irene Taylor
Representatives for the Authority	Brian Peach, CAO - Town of Pouch Cove
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Tolulope Victoria Akerele
Interested Parties	

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 is to determine if the Town of Pouch Cove made errors when it issued an order to Irene Taylor on August 7, 2020 ordering the removal of a trailer at 52 – 74 Connor's Lane, Pouch Cove. The Board must determine if the Town of Pouch Cove acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Pouch Cove Municipal Plan and Development Regulations when the Town made the decision.

# Presentations During the Hearing

## 1. Planner's Presentation

Irene Taylor (the Appellant) received a 'Stop Use and Removal Order' from the Town of Pouch Cove (the Authority) on August 13, 2020. The Authority issued the Order on August 07, 2020 (the Order) to remove a trailer from the property located at 52-74 Connor's Lane. The Order outlined the following:

- That the Order was made pursuant to s.404 of the *Municipalities Act, 1999* and s.102(1) of the *Urban and Rural Planning Act, 2000*.
- That the Appellant parked a trailer on the vacant plot at 52-74 Connor's Lane with the intention of occupying the plot of land without permit from the Town Council of Pouch Cove;
- That the Appellant immediately cease all ongoing occupancy and development activity and remove the trailer from the property within 30 days.
- That the non-compliance is addressed in the Occupancy and Maintenance Regulations and Town of Pouch Cove Development regulations 2003 -2013 under of the *Urban and Rural Planning Act, 2000*, and the Town of Pouch Cove Commercial Vehicle and Parking Lot Regulations.
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

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

September 02, 2019	The Authority provided a picture of the trailer parked on the subject property taken on September 2, 2019.
June 8, 2020	The Town amended the Commercial Vehicle and Parking Lot Regulations made under s 414 of the Municipalities Act, prohibiting the parking of trailer on the property.
July 27, 2020	The Authority provided a picture of the trailer parked on the subject property taken on July 27, 2020. Appeal submission shows that the Authority advised the appellant to remove the trailer from the subject property.
August 04, 2020	The Town Council at a public Council Meeting approved the issuance of the Stop Use/Removal Order for the trailer on the subject property.
August 07, 2020	The Authority issued the Order concerning the parking of trailer at 52 – 74 Connor's Lane and sent the order via email and registered mail.
August 13, 2020	The Appellant received the Order via Canada Post.

August 14, 2020	The Appellant sent an email to the Town seeking clarification on communications regarding a previous proposal for a hobby farm and the trailer parked on the property.
August 14, 2020	The Town responded to the Appellant' inquiry via email.
August 26, 2020	Appellant completed the appeal summary form.
August 28, 2020	The appeal form was received by the Secretary to the Eastern Newfoundland Regional Appeal Board

The Appellant is appealing the stop use and removal order based on the ground that:

- It is an illegal order prejudiced by the accusation that the trailer was parked with the intention of occupying the plot of land without permit.

## 2. Appellant's Presentation

- The recreational trailer placed on the subject property in 2019 was a replacement for a trailer that had been placed on the property in 2010 and had become deteriorated over time. The trailer is used several times a year for berry-picking and is never occupied as a residence, even on a temporary basis.
- Allegedly, verbal permission to place the recreational trailer on the land had been given in 2010 by a former senior member of the Town staff; however, written permission from the Town to place the trailer(s) on the subject property had not been obtained by Ms. Taylor in 2010 or 2019.
- The property is currently zoned Agricultural, which could allow a trailer as accessory to an agricultural use. She had submitted to the Town a proposal for development of a "hobby farm" on her property to which she did not receive a formal response; but she did not submit a formal development application to the Town.
- There are "seasonal cabins" in unserviced areas in the Town and she is not aware of the Town having issued orders for these to be removed. She is concerned that she is being treated in an arbitrary manner by the Town.

## 3. Authority's Presentation

The Town's CAO's presentation and written submission to the Secretary of the Appeal Board reflected the occurrence of events as set out in the Planner's Technical Report in regard to the placement of the recreational trailer on the subject property, and the enactment and implementation of the *Town of Pouch Cove Commercial Vehicle and*

*Parking Lot Regulations.* Under said Regulations, the placement of a recreational trailer on vacant land is not permissible.

## **Board's Analysis**

**Q: How is the subject property zoned and does the zoning allow the proposed development – the parking of the trailer on vacant land?**

**R:** The Appellant stated that the property is in the Agricultural Zone. Neither a recreational trailer nor a dwelling is allowed as a standalone use in this zone; it could only be allowed as accessory to a Permitted Use.

**Q: Was a Permit obtained from the Town for the placement of the current recreational trailer on the subject property?**

**R:** No, the Appellant did not apply to the Town for a Permit for the placement of the trailer. A trailer was initially placed on the property in 2010, allegedly with verbal permission from a former senior staff member. The Appellant assumed that a Permit would not be required for the new trailer placed on the property in September 2019.

The Appellant has not made a development application to the Town for approval of a use which could allow the placement of the trailer on the subject property as an accessory or associated use.

**Q: Did the Town have the authority to issue the Stop Use/Removal Order of August 7, 2020?**

**R:** The Board has determined that the Town did have authority to issue the Stop Use/Removal Order.

Under s.102 of the Urban and Rural Planning Act, the Pouch Cove Town Council has the authority to issue an order where a person has undertaken development contrary to a plan or development regulations. Section 102 of the Act states:

*“102. (1) 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 that building or development and may order that the person restore the site or area to its original state.*

(2) A person ordered to carry out an action under subsection (1) shall be served with that order and shall comply with the order at the person's own expense.

(3) An order made under this section continues in force until revoked by the council, regional authority, authorized administrator, or minister that made the order.

(4) A council, regional authority, authorized administrator or the minister may, in an order made under this section, specify a time within which there shall be compliance with the order.

(5) Where a person to whom an order is directed under this section does not comply with the order or a part of it, the council, regional authority, authorized administrator or minister may take the action that it considers necessary to carry out the order and any costs, expenses or charges incurred by the council, regional authority, authorized administrator or minister in carrying out the order are recoverable against the person against whom the order was made as a debt owed to the council, regional authority, authorized administrator or the Crown."

According to section 1(g) of the Act, parking a trailer for living accommodation development. Section 1(g) of the Act states:

"(g) "development" means 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 and the

(i) making of an access onto a highway, road or way,

(ii) erection of an advertisement or sign,

(iii) construction of a building,

(iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,"

Based on the foregoing, parking a Recreational Vehicle/Camper Trailer for living accommodation is regarded as a development. The Town's Development Regulations requires all persons wishing to carry out a development to obtain a permit issued by council prior to the commencement of such developments (s.7).

*"7. Permit Required*

*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."*

The Town of Pouch Cove Municipal Plan and Development Regulations 2003 were in effect when this Stop Use/Removal Order was issued. As set out in

Section 12 of the Act, the Town's Municipal Plan and Development Regulations are binding upon

- a) *"Municipalities and councils with the planning area governed by that plan or those regulations; and*
- b) *A person undertaking a development in the area governed by that plan or those regulations"*

## **Board's Conclusion**

After reviewing the information presented to this Board, the Board has determined that the Town of Pouch Cove had the authority under the Urban and Rural Planning Act, 2000 and the Town of Pouch Cove Municipal Plan and Development Regulations when it decided on August 7, 2020 to issue the Stop Use/Removal Order to Irene Taylor to remove the existing recreational trailer on property located at 52-74 Connors Lane, Pouch Cove. Furthermore, the Board has determined that the Town exercised its authority in the manner provided for under the Urban and Rural Planning Act, 2000 and the Town of Pouch Cove Municipal Plan and Development Regulations.

## Board's Order

Based on the information presented, the Board orders that the decision by the Town of Pouch Cove Council of August 7, 2020 to issue the Stop Use/Removal Order to Irene Taylor to remove the recreational trailer on land at 52-74 Connors Lane, Pouch Cove, be confirmed.

The Respondent and the Appellant 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 12<sup>th</sup> day of May, 2021.



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Clifford Johnston, Chair  
Eastern Newfoundland Regional Appeal  
Board



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Paul Boundridge, Member  
Eastern Newfoundland Regional Appeal  
Board



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Carol Ann Smith, Member  
Eastern Newfoundland Regional Appeal  
Board