

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-034
Appellant(s)	Chris Warren
Respondent / Authority	Town of Paradise
Date of Hearing	June 7, 2021

Board Members

Chair	Clifford Johnston
Member	Carol Ann Smith
Member	Robert Warren

Also in Attendance

Appellant	Chris Warren
Representatives for the Appellant(s)	
Representatives for the Authority	Alton Glenn, Director of Planning and Protective Services, Steve Batten, Foreperson Municipal Enforcement
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	Fred Woolridge, Bill Woolridge

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 Paradise made errors when it issued an order to Chris Warren on September 17, 2020 ordering a nuisance caused by lighting at 63 Round Pond Road in the Town of Paradise be addressed. The Board must determine if the Town of Paradise acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Municipalities Act, 1999* when the decision was made.

Presentations

The following is a summary of the key points of the verbal representations made to the Appeal Board at the Hearing. The Board has considered these verbal representations along with the written submissions from the Appellant and the Authority and the Technical Report in making its decision on this Appeal.

1. Planner's Presentation

The Appellant, Chris Warren, applied to develop the subject property (63 Round Pond Road) and was granted a permit to do so in 2019.

After the installation of lights for security purposes on the subject accessory building, a neighbour complained to the Town regarding the lights being a nuisance. The Town issued an order to the Appellant on September 16th 2020 under the *Town of Paradise Noise and Nuisance Regulations, 2013* and the *Municipalities Act, 1999*.

The Order outlined the following:

- The Town has the authority to address nuisance within the Town;
- The subject lights are a nuisance and that under the Town's nuisance regulations "the lights on the rear of the garage are not to be illuminated at any time and/or the lights re-located on the building to prevent the nuisance from occurring";
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

This appeal is based on the following section of the Act: Section 42(1)

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: The subject lighting does not impact the neighbour's property.

The applicable legislation with respect to this appeal is:

- *Urban and Rural Planning Act, 2000*
- *Municipalities Act, 1999*
- *Town of Paradise Noise and Nuisance Regulations, 2013*

The *Town of Paradise Noise and Nuisance Regulations, 2013* were adopted under the *Municipalities Act, 1999* on July 5th, 2013.

Section 404(1)(j) of the *Municipalities Act, 1999* gives a council authority to issue orders regarding nuisance:

*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;*

Section 408(1) of the *Municipalities Act, 1999* gives a recipient of an order made under section 404(1) the right to appeal the order:

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 the appropriate regional appeal board established under the Urban and Rural Planning Act, 2000 and the board may make an order with respect to the matter that appears just.

The Order was delivered by a municipal enforcement officer for the Town on September 17, 2020.

Section 109 (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 (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 or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.

The Order was confirmed by Council on October 6, 2020.

2. Appellant's Presentation

- In Mr. Warren's view, his lights do not affect or impede Mr. Fred Woolridge's property
- There is approximately 50 ft. of distance between his lights and Mr. Woolridge's boundary.
- Mr. Warren ultimately intends to make his lights motion sensitive, pending appeal results.

- Mr. Warren advised the Board that Fred Woolridge has an extensive history of making complaints to the Town of Paradise, regarding his property.
- Mr. Warren noted that a Town's Municipal Enforcement Officer (MEO) visited the Woolridge property when the subject lights were activated, and noted in their subsequent report that "they (the lights) are somewhat bright, but to me they are not intrusive".

3. The Authority

- Mr. Glenn and Mr. Batten advised the Board that a Town MEO visited Fred Woolridge's property when the Warren lights were turned on. A report was subsequently prepared for the Town's Planning and Protective Services Committee who agreed to make a recommendation to the Town Council that the lights on the rear of the garage at Chris Warren's property are not to be illuminated at any time and/or the lights relocated on the building to prevent the nuisance from occurring. The order was served to Marilyn Warren on September 17, 2020 by a Town MEO and the order was confirmed by Council on October 6, 2020.
- Mr. Glenn advised, it is at Council's discretion, or any person authorized by Council, to determine whether something is a *nuisance*, as defined in the Town of Paradise Noise and Nuisance Regulations, 2013. Based on the information submitted by Mr. and Mrs. Woolridge, and after conducting several site visits over several months, the Town deemed the lights a nuisance.

4. Interested Parties

- Fred Woolridge advised the Board that he can no longer enjoy his backyard patio because of the lights on the garage on the Warren property. These lights shine unto the patio deck and into his bedroom.
- Bill Woolridge advised the Board that the lights in question are interfering with the quality of life for his brother and sister-in-law, and that the lights are not motion activated and are on all night.

Board's Analysis

Q. Does the Town of Paradise have the authority to issue an Order respecting light spillage?

A. The *Town of Paradise Noise and Nuisance Regulations, 2013* were adopted under the *Municipalities Act, 1999* on July 5th, 2013.

Section 404(1)(j) of the *Municipalities Act, 1999* gives a council authority to issue orders regarding nuisance.

*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;*

Q. How does the Town of Paradise define “nuisance”?

A. “Nuisance” is defined in the Town’s Noise and Nuisance Regulations as follows:

“Nuisance means anything, in the opinion of Council or any person authorized by Council, that endangers life or health, gives offense to the senses, violates the laws of decency or obstructs reasonable and comfortable use of property in any way, and includes any obnoxious substances, smoke, animal waste or unsanitary matter or noise that has an unpleasant effect on the senses”.

Board's Decision

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.

After reviewing the information presented to this Board, the Board concludes that the Town of Paradise had the authority under the Town of Paradise Noise and Nuisance Regulations, 2013 to issue an Order to Chris Warren on September 17, 2020, respecting the lights on his accessory building at his property at 63 Round Pond Road and that the Town used this authority appropriately.

Board's Order

The Board orders that the decision of the Town of Paradise to issue an Order on September 17, 2020 (and confirmed by the Town Council on October 6, 2020) to Chris Warren respecting the lighting on his accessory building at his property located at 63 Round Pond Road in Paradise, 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 Board's decision has been received by the Appellant(s).

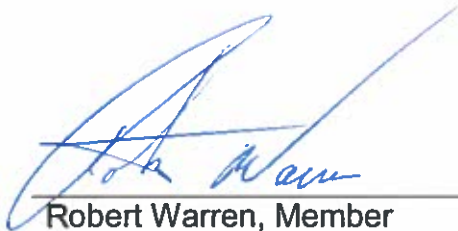
DATED at St. John's, Newfoundland and Labrador, this June 7, 2021.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal
Board