

West Newfoundland Regional Appeal Board

Appeal #	15-006-072-009
Appellant(s)	Shawn Gillam
Respondent / Authority	Town of Woody Point
Date of Hearing	October 14, 2021

Board Members

Chair	Lloyd Walters
Member	Boyd Noel
Member	Derrick House

Also in Attendance

Solicitor for the Appellant(s)	James Goudie
Representatives for the Appellant(s)	Sharon Ryan
Representatives for the Authority	Irene Martin, Mayor
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Start/End Time	9:00 am - 9:34 am

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

Board's Role

The role of the West Newfoundland Regional Appeal Board(WNRAB) is to determine if Town of Woody Point (the Authority) acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999* and the Woody Point Municipal Plan and Development Regulations when it issued a Stop Work order to Mr. Shawn Gillam (the Appellant) on May 18, 2021 regarding the construction of a patio at 64 Crawley's Cove Road.

Presentations at the Hearing

1. Planner's Presentation

The technical advisor presented her report noting that, according to the Woody Point Municipal Plan and Development Regulations, the subject property at 64 Crawley's Cove Road is located in the Residential future land use designation and zone. The Woody Point Development Regulations establishes minimum side yard requirements of 2 metres and 4 metres for development in this zone. The *Development Regulations*, made under the *Urban and Rural Planning Act, 2000*, contains a definition of side yard depth which is measured from the building wall and side property boundary. The technical advisor noted that the order was issued under the *Municipalities Act, 1999* rather than the *Urban and Rural Planning Act, 2000* where section 102 allows Council to issue an order when a person has undertaken development contrary to a Municipal Plan or Development Regulations.

2. Appellant's Presentation

Mr. Goudie outlined several procedural issues with respect to the order; it was unsigned and undated, did not include the right of appeal and quoted incorrect legislation. He stated therefore, the order was inappropriate and should be declared invalid. In addition, Mr. Goudie noted that there is no reference in the Woody Point Development Regulations to the 15 foot separation requirement identified in the order.

Mr. Goudie further argued that the Appellant had been denied procedural fairness as he was not advised of his right of appeal when the order was issued.

Mr. Goudie noted that the patio does meet the minimum side yard requirement as outlined in the Woody Point Development Regulations but that this was not confirmed by the Town through a site visit.

3. Authority's Presentation

Mayor Martin explained that she was now mayor of the town and was a previous councillor and had knowledge of this matter. She stated that Council felt it was following regulations when it issued its order as the patio was not adequately separated from an existing shed. Mayor Martin stated that it was her assumption that the previous Town Manager or staff had carried out the measurements related to this matter but could not provide any evidence that it had been done.

Board's Analysis

What is the matter under appeal?

Both parties confirmed that the matter under appeal is a stop work order issued by the Town of Woody Point to Mr. Shawn Gillam (the Appellant) on May 18, 2021 regarding the construction of a patio at 64 Crawley's Cove Road. The order was issued under section 404 (1) (l) of the *Municipalities Act, 1999*. The order was issued on the basis

that the patio under construction at 64 Crawley's Cove Road was less than 15 feet from another structure on the adjacent property.

What regulations apply to this matter?

The Board determined that the side yard depth as established in the Woody Point Development Regulations apply to this matter. The *Development Regulations*, made under the *Urban and Rural Planning Act, 2000* and included in the Woody Point Development Regulations, define side yard depth as the measurement between the building wall and the side property boundary.

4 (1) Interpretation

(s) "side yard depth" means the distance between the side lot line and the nearest wall of a building on the lot;

According to the Residential use zone table in Schedule C of the Woody Point Development Regulations, the minimum side yard (minor) width is 2 metres and a minimum side yard (major) width is 4 metres.

The Board could not find any reference in the Woody Point Development Regulations pertaining to a 15 feet separation between buildings.

What process did the Town follow when deciding on this matter?

The Board learned from the material provided that the Town received a complaint with respect to this matter. At the hearing, the Town did not present any evidence regarding a site visit to conduct measurements with respect to compliance with the setback requirements. Council authorized the issuance of an order at the May 18, 2021 public Council meeting. A stop work order was hand delivered to the Appellant on May 19, 2021.

Is the stop work order issued by the Town valid?

No. The Board reviewed the order and found that it was undated and unsigned; referenced the *Municipalities Act, 1999* rather than the correct legislation, the *Urban and Rural Planning Act, 2000*, as the authority for issuing the order; and did not contain a statement regarding the right to appeal as required by section 5 of the *Development Regulations* made under the *Urban and Rural Planning Act, 2000*. In addition, the Board could not find any reference to the 15 feet separation requirement in the Woody Point Development Regulations which was quoted in the order.

While the Town attempted to resolve these issues in a subsequent letter, this letter did not form part of the order and was not received by the Appellant. Therefore, the Board did not consider this letter relevant to the matter under appeal.

On these grounds, the Board finds that the order is not in compliance with legislation.

Board's Decision

In arriving at its decision, the Board reviewed the submissions received from both parties before the hearing and comments given by the technical adviser and all parties present at the hearing.

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, it concludes that the Town of Woody Point did not act in accordance with its Municipal Plan and Development Regulations when it issued an Order to Mr. Gillam. That is to say, if Council wishes to pursue this matter, it must follow proper procedure by completing a site visit to confirm the side yard depth as established in the Woody Point Development Regulations.

If Council decides to issue a new order, the order must include a statement regarding the right to appeal, be dated and signed, and reference the correct legislation as outlined in this decision.

The Board's authority is established in section 42 (10) of the *Urban and Rural Planning Act, 2000*.

42. (10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

Board's Order

The Board orders that the stop work order issued by the Town of Woody Point on May 18, 2021 to Mr. Shawn Gillam be reversed. That is to say, the order is not valid and cannot be enforced.

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant within 30 days of receipt of this decision.

The Authority and the Appellant 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 Corner Brook, Newfoundland and Labrador, this 14th day of October, 2021 October 14, 2021.



Lloyd Walters, Chair
West Newfoundland Regional Appeal
Board



Boyd Noel, Member
West Newfoundland Regional Appeal
Board



Derrick House, Member
West Newfoundland Regional Appeal
Board