

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-064-016
Appellant(s)	Leonard Pittman
Respondent / Authority	Town of Marystown
Board Members	Chair: Clifford Johnston Member: Carol Ann Smith Member: Robert Warren
Date of Hearing	September 8, 2020

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	
Representatives for the Authority	Alje Mitchell, Director Planning and Control
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Kim Blanchard for Victoria Akerele
Interested Parties	

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



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## 1. Board's Role

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Marystown acted in accordance with the *Urban and Rural Planning Act, 2000* (the Act), *Municipalities Act, 1999* and the Town of Marystown's Development Regulations when it ordered Leonard Pittman to clean up his properties located at 124 Columbia Drive and 108-112 Ville Marie Drive.

## 2. Background

On June 14, 2019, the Town Council (the Authority) issued a Clean-Up Order (the Order) to Pittman's Auto Repair L.N.J. LTD under the *Municipalities Act, 1999*. The Order was issued sequel to a complaint that was received about waste on the 124 Columbia drive. The Order outlined the following:

- The addresses of two properties belonging to the Appellant and the time set to carry out the Order;
- That section 404(1)(L) of SNL 1999 Chapter M-24, Municipalities Act, 1999, section 2(d) of the Nuisance Regulations and section 13 of the Anti-Litter Regulations give Council, the authority to order "the owner 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 consequences of not complying with the Order under sections 408(1) and 420 of the Municipalities Act 1999; and
- The Appellant's right to appeal the Order and timeframe required to file an appeal.

## Chronology

Date unknown (10:27am)	Nora Butler received a complaint of waste on Pittman's Automotive located on 124 Columbia Drive, Marystown. The complainant asked to remain anonymous.
June 13, 2019	The Protection to Persons & Property Committee considered the complaint received and raised by Councillor Tremblett and recommended the issuance of a Clean-Up Order requiring the owner of the subject property to remove solid waste, noxious substances from the property on Columbia drive and Ville Marie Drive.
June 14, 2019	The Authority issued a Clean-Up Order which was personally delivered to Leonard Pittman by Cathy Murray, a process server.
June 17, 2019	An affidavit of service was sworn by Cathy Murray as evidence of personally serving the order to Leonard Pittman.
June 18, 2019	Through MMC 2019 06 18/021R, the Authority, during a regular council meeting, ratified the issuance of a Clean-Up Order to the



	appellant with respect to properties located at 108 – 112 Ville Marie Drive and 124 Columbia Drive.
June 25, 2019	The Appellant wrote a letter to the secretary of the Appeal Board to notify of his intention to appeal a Clean Up Order issued by the Town of Marystown.
July 09, 2019	Mr. Pittman completed an appeal form.
November 15, 2019	Appellant submitted additional information obtained from the Town of Marystown through ATIPPA request.

### 3. 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 initiated on June 25, 2019. The Appellant's subsequent submission included the grounds of appeal, an appeal summary form and the required fee.

### 4. Grounds of Appeal

This appeal is based on the following section of the Act: Section 42.(1)(c) (the issuance of a stop work order).

*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 stop work order based on the following grounds:

1. The Order was served by a local sheriff in front of clients in an embarrassing way. The way the Order was served shows it is a personal attack on the Appellant, noting that previous orders did not involve a sheriff.
2. Council has a long-standing practice of not acting upon anonymous complaints but didn't follow the established practice when it considered an anonymous complaint regarding his



property at 124 Columbia drive but issued an Order for both his properties located at different civic addresses.

## 5. Planner's Technical Analysis

### Legislation and Regulations

The applicable legislation with respect to this appeal is:

*Urban and Rural Planning Act, 2000*

*Municipalities Act, 1999*

*Town of Marystown's and Development Regulations*

### Land Use Planning

The subject properties are zoned Commercial under the **Town of Marystown's** development regulations. An automobile repair use is permitted within the Commercial Zone and the storage building is permitted within the Rural Zone. The development regulations, however indicates that outdoor storage of inoperable vehicles and scrap vehicles are not permitted.

### Procedural Compliance

As per section 2.8.3 of the Town's development regulations, every inspector shall keep record of any violation to the regulations and report such violation to Council. While the Authority's submission only noted it was an anonymous complainant, ATIPP submission show that the complaint of waste on 124 Columbia Drive was from a member of the public whose property was adjacent to Pitman's Auto.

Also, while the complaint was regarding the Appellant's property located on 124 Columbia drive, the Order issued included an additional property. From the submission, it is not clear why Council considered it necessary to include the address on Ville Marie where there was no record of violation or complaint.

Section 404 (1)(L) of the *Municipalities Act, 1999* states that Council may make an order

*404. (1)(L) 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.*

Section 107 (1) of the Act requires that an order be delivered personally or sent by registered mail. The affidavit of service in the appeal submission shows that the Order was personally served by Cathy Murray, a process server on June 14, 2020. The Appellant had claimed that the Order was served by a local sheriff. It is not clear from the submission if the process server is an employee of the Town or was just engaged to serve the Order.

*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.*

Furthermore, section 109 (3) & (4) of the Act requires that an Order issued by an employee of Council be confirmed by the majority vote of the members of council present at the next meeting. This is mirrored in section 2.8.1 of the Town's development regulations.

*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 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.*

***Evidence that the Order was ratified by Council during the regular Council meeting on June 18, 2020 was found in the information submitted to the Board.***

***The right to appeal was found in the Order.***

***It was not clear in the information submitted to the Board why Council considered it necessary to issue the Order as Council didn't note if the complaint was verified by the Town's inspector.***

***However, while it was not clear from the Authority's submission why Council considered it necessary to issue the Order for the property on Ville Marie Drive since the complaint was for the appellant's property on Columbia Drive, the ATIPP submission show that there have been previous orders and communication between the Town and the Appellant regarding the subject properties***

***Also, it was not clear in the information submitted to the Board if Council had verified the complaint before the Order was issued.***

Technical analysis prepared by:



**Tolulope Victoria Akerele**

Technical Reviewer for the Newfoundland and Labrador  
Regional Appeal Boards



## 6. Presentations during the Hearing

### Planner

There was no contesting of what was presented by Ms. Blanchard by the Appellant or the Authority. However, during the Board's deliberations, the Board noted that the Technical Analysis makes reference to a Stop Work Order. To be clear, this appeal hearing deals with an order for clean up as opposed to a stop work order for development.

### Appellant

- the Town has or had a policy not to accept or act upon anonymous complaints regarding conditions of properties.
- a sheriff appeared at his 124 Columbia Drive property and served the Town's Order, with employees and customers present; there was no previous correspondence via mail, phone, or electronic means.
- the Appellant questioned why the property located at 108-112 Ville Marie Drive was added to the Order when there were no issues with the state of this property.

### Authority

- The Authority did not communicate with the Appellant prior to issuance of the Order.
- The Authority only did a drive-by inspection of the subject properties. The Authority did not provide any photographic evidence or copies of inspection reports regarding the condition of the properties at the time of the issuance of the order.
- The Authority will act on anonymous reports of complaints regarding conditions of properties.
- The authority issued one Order for both properties "as a convenience" as they were both owned by the Appellant.
- The Town's current practice is to deliver Orders through the Sheriff to ensure the Orders are received and documented.
- The Authority confirmed that there is legislation in place to enable authorized Town staff to enter upon properties during reasonable hours for purposes of property inspections.

## 7. Conclusion

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.

The Board has determined that there was insufficient evidence provided by the Authority to confirm that the issuance of the clean up order on the two subject properties was warranted. It is the Board's position that the Authority should have ensured the possession and presentation of critical proof – such as date marked photos and inspection reports of said properties - which were the subject of the Order (clean up).



## Board's Order

Based on the information presented, the Board orders that the decision by the Town of Marystown on June 18, 2019 to clean up properties at 124 Columbia Drive and 108-112 Ville Marie Drive be reversed.

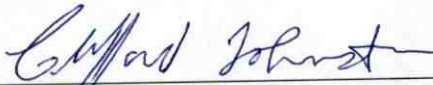
In accordance with 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent to pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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).



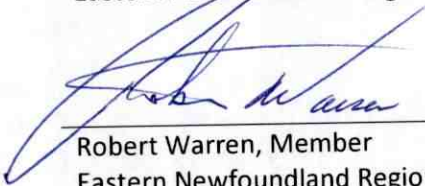
DATED at St. John's, Newfoundland and Labrador, this 8 of September, 2020.



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