

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-064-046
Board Members	Chair: Clifford Johnston Member: Carol Ann Smith Member: Robert Warren
Date of Hearing	October 8, 2020

In Attendance

Appellant(s)	Perry Langdon
Solicitor for the Appellant(s)	
Representative for the Appellant	
Respondent/Authority	Town of Seal Cove, Fortune Bay
Representative for the Authority	Keith Rideout, Mayor
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	

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

Land Use Planner's Technical Report

1. Board's Role

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Seal Cove acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Municipalities Act, 1999* when it issued orders to Perry Langdon at 57 Main Street on January 13, 2020 and January 15, 2020. The Orders required "the owner or occupier of real property remove from that property, which solid waste noxious substance and substance things [sic] which may a hazard to public health and safety or which adversely affects surrounding properties".

2. Background

The Town of Seal Cove received a complaint from the Appellant's neighbour concerning the items being stored on the Appellant's property and how that would affect the neighbour's property. The issue was raised at a Council meeting on January 9, 2020.

According to Perry Langdon (the Appellant), the Mayor of the Town hand-delivered an order to the Appellant's home on January 13, 2020. The Mayor delivered a second notice to the Appellant's home two days later, on January 15. The first Order outlined the following:

- That Council may make an order under section 404(1) of the *Municipalities Act, 1999*;
- That the Order was voted on by Council on January 9, 2020 at a regular meeting;
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

The second Order outlined similar information.

3. Chronology

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

January 9, 2020	Council meeting at which complaint was presented
January 13, 2020	First order hand-delivered to the Appellant
January 15, 2020	Second order hand-delivered to the Appellant
January 20, 2020	Appeal registered by the Secretary of the Regional Appeal Boards

4. 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.

Under the *Municipalities Act, 1999*:

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 Appellant is appealing the stop work order based on the following grounds:

1. The current uses have occurred at the subject property for approximately 20 years;
2. The Orders are not clear regarding what is to be done; and
3. Uses possibly being referred to in the Orders are long-standing (i.e., the storage of a boat), not the responsibility of the Appellant (i.e., asphalt resulting from work for the Town), or outside of the subject property (i.e., the shoreline or the adjacent property).

5. Validity

Under the *Municipalities Act, 1999*:

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.

According to the documents provided, the orders were delivered on January 13, 2020 and January 15, 2020 and the appeal was filed on January 20, 2020.

Section 42(5) of the *Urban and Rural Planning Act, 2000* states:

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.

The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

6. Legislation and Regulations

The applicable legislation with respect to this appeal is:

- *Urban and Rural Planning Act, 2000*
- *Municipalities Act, 1999*

Section 108 of the Act addresses non-conforming uses (uses that legally existed before the current plan was registered).

108. (1) Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to

continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.

There is no “plan, scheme or regulations” for the Town of Seal Cove therefore section 108 does not apply to this area.

Council may make orders under section 404(1) of the *Municipalities Act, 1999* and may set times for compliance in that order:

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

(c) the owner or occupier of a parking lot constructed or operated without a permit or not in accordance with the regulations of council and the terms of a permit, to stop operations and return the property to its original state or maintain it;

(4) A council may, in an order made under subsection (1), specify a time within which there shall be compliance with the order.

No permit for development or use of a parking lot was provided by the Appellant.

7. Land Use Planning

The subject land is within the community-infilling limit of the **Error! Reference source not found.** This area is not subject to zoning under the *Urban and Rural Planning Act, 2000* as the Town does not have an established land use planning area.

8. Procedural Compliance

The Town of Seal Cove is a town as per Town of Seal Cove Order under the *Municipalities Act* (O.C. 96-170). A town council may make orders as per section 404(1)(c) of the *Municipalities Act, 1999* (see above).

Technical analysis prepared by:



Christopher Hardy, MCIP

Technical Reviewer for the Newfoundland and Labrador
Regional Appeal Boards

6. Presentations during the Hearing

1. Planner's Presentation

The technical report prepared by the Technical Advisor was accepted by all parties. There were no questions on the report.

2. Appellant's Presentation

The Board learned that the Appellant filed an appeal because the parking of boats and trailers has occurred on the subject property for approximately 20 years without complaint or concern by area residents or the Authority; the Orders are not clear regarding what is supposed to be done; and the asphalt on the property which is subject to the Order, was not placed on the land by the Appellant.

3. Authority's Presentation

The Board heard that the Authority issued Orders under section 404(1) of the *Municipalities Act, 1999* as it was responding to a complaint by the neighbouring property owner.

The Authority advised that the Town wants their community to be kept neat and tidy and would prefer boats and trailers be stored close to the water.

The mayor verbally advised the Board at the Appeal Hearing that it is not the Town's practice or expectation that residents be required to obtain a permit from the Town to park boats and/or trailers on properties in the Town. Both the Appellant and the Authority acknowledged that the subject property has been used for storage for many years, including boats and trailers.

The Mayor advised that the residual asphalt in question may have been left on or near the subject property by the Department of Highways, who are responsible for the maintenance of the main road in the town.

7. Board's Analysis

Did the Authority have the jurisdiction to issue the Orders to the Appellant to remove the asphalt, boats and trailers?

The Board acknowledges that the Authority has the jurisdiction under Sections 404(1)(c) and (l) of the *Municipalities Act, 1999* to issue orders respecting the parking of vehicles and equipment and the general condition of properties including noxious materials and garbage which may affect surrounding properties.

Did the Authority correctly apply the provisions of the *Municipalities Act* pertaining to the property under appeal?

Based on the evidence provided by the Appellant and the Authority, including the Mayor's statement that it is not the practice of the Town to require residents to obtain permits for storage of boats and trailers in the community, the Board has determined the parking of boats and trailers on the subject property cannot

be categorized as noxious materials, solid waste or substances that can be a hazard to public safety; nor does it affect surrounding properties.

Should the Appellant be required to remove the asphalt from the subject property?

The Board has determined that the Appellant is not responsible for removing the asphalt from the subject property as the Board has been advised by the Authority that the asphalt is residual materials left behind by the Department of Highways during road maintenance/upgrading. The Board suggests the Authority contact the appropriate authority to arrange removal of said materials.

8. 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.

The Board acknowledges the Authority has jurisdiction under the Municipalities Act, 1999 respecting the storage of vehicles, equipment and materials on properties, and the maintenance of properties. The Board however, has determined that the Authority did not properly apply its jurisdiction in the matter of this appeal. The Board determined that the Order for Removal of boats and trailers was found to be not warranted based on the evidence presented to the Board, with particular reference to the Authority's past and current practise to not required permits for the storage of boats and trailers on properties in the town provided they are kept in good condition.

With respect to the matter of residual asphalt on the subject property, the Board has determined that this is not the responsibility of the Appellant.

9. Board's Order

Based on the information presented, the Board orders that the decision by the Town of Seal Cove, Fortune Bay on January 9, 2020 to order the removal of boats, trailers and residual asphalt at property located at 57 Main Street be reversed.

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

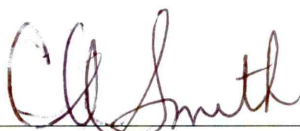
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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).

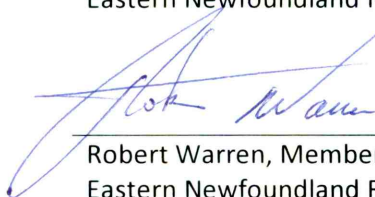
DATED at St. John's, Newfoundland and Labrador, this 8 of October, 2020



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