

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Gideon Barker **Appellant**

**AND** Town of Witless Bay **Authority**

**RESPECTING** Matter under appeal – Respecting Order to remove a chicken coop and run on property situated at 5 Dunn’s Lane, Town of Witless Bay [15-006-054-027]

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Paul Boundridge  
Member - Robert Warren

**DATE OF HEARING** October 17, 2018

**IN ATTENDANCE**

**Respondent:** Town of Witless Bay – Geraldine Caul, Town Clerk/Manager

**Appellant:** Gideon Barker and Jaclyn Humphries

**Interested parties that presented at the hearing:** Gordon Vickers

**Robert Cotter**, Secretary to the Eastern Newfoundland Regional Appeal Board

**Kim Blanchard**, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

## DECISION

### Facts/Background

This appeal arises from the Town of Witless Bay issuing a Removal Order on November 17, 2017, to Gideon Barker and Jaclyn Humphries for a chicken coop and run on property at 5 Dunn's Lane, Witless Bay. The Town's Order outlined that:

“The Municipalities Act, Part VIII, Controls, Section 404 (1)(e)(1) provides that:

A Council may make an order that the person pull down, stop construction, remove, fill in, or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has (i) erected, extended, repaired, relocated or demolished a building without a permit as required under section 194; 1) That the owner or occupier of real property remove from that property solid waste, noxious substances and substances or things that may be hazard to public health and safety which adversely affects surrounding properties...”

On November 29, 2017 the Appellants filed an Appeal package with the Secretary of the Appeal Board. The grounds of appeal can be summarized as follows:

1. After researching the options for communities that supported a rural lifestyle, allowing and promoting hobby farming, the couple selected and purchased the property at 5 Dunn's Lane.
2. In many of its various forms, hobby farming takes place in the Town.
3. The couple assert they had no intention of defying Council. There was a lack of a quorum for a functioning Council to address their development application, and they felt pressured to get their hens removed from St. John's to their new home in Witless Bay.
4. On the issue of potential contamination of well-drinking water, they argue that they have a properly constructed chicken coop with stringent practices of daily waste disposal such

that their chicken coop would have less impact on groundwater than other free-roaming animals and pets in the Town.

5. On the issue of attracting rodents, they argue that rodents may be present anywhere in communities, especially where there are other animals. They assert that their well-kept premises and waste management approach will make their coop no more likely to attract rodents than residential waste in garbage bins.
6. The couple say they are not aware of any progress regarding the referral to provincial government departments to provide input to Council.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of appeal was published in The Telegram newspaper on September 28, 2018; and a notice of the time, date and place of the hearing was provided to the appellant and the authority as required by *the Urban and Rural Planning Act, 2000*.

**Legislation, Municipal Plans and Regulations considered by the Board**

*Urban and Rural Planning Act, 2000*

*Municipalities Act, 1999*

*Town of Witless Bay Municipal Plan and Town of Witless Bay Development Regulations*

**Matters presented to and considered by the Board**

**Q: Is hobby farming (Agriculture) allowed in the Residential Zone?**

A: Yes, as a Discretionary Use where they are associated with a residence.

**Q: Is an accessory building (Chicken Coop) a Permitted Use in the Residential Zone?**

A: Yes, subject to Zone Requirements and other requirements of the Development Regulations.

**Q: Was the accessory building (Chicken Coop) constructed following receipt of a valid Building Permit?**

A: No, a Permit has not been issued by the Town.

**Q: In the absence of a valid Building Permit, does the Town have the authority to order the removal of the accessory building (chicken coop and run)?**

**A:** Part I, Section 7 of the Town of Witless Bay Development Regulations states that “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.”

**A:** Section 194 of the Municipalities Act, 1999 (Building Prohibition) states:

“A person shall not within a municipality

(a) Erect a building.... Except in accordance with a written permit from the Council.”

Section 404(1) of the Municipalities Act, 1999 states

“A Council may make an order that the person pull down, stop construction, remove, fill in, or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has (i) erected, extended, repaired, relocated or demolished a building without a permit as required under section 194; 1) That the owner or occupier of real property remove from that property solid waste, noxious substances and substances or things that may be hazard to public health and safety which adversely affects surrounding properties...”

### **Conclusion**

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present along with the technical information and planning advice.

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.

Based on its findings, the Board determined that the Town was acting within its authority under the Municipalities Act, 1999 to issue the Removal Order of November 17, 2017. Therefore, the Board confirms the Respondent’s decision to issue the Removal Order.

**Order**

Based on the information presented, the Board orders that the decision of the Town of Witless Bay of November 17, 2017 ordering removal of the chicken coop and run on property at 5 Dunn's Lane, Witless Bay, be confirmed.

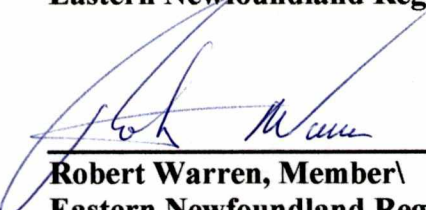
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 Mount Pearl, Newfoundland and Labrador, this 17<sup>th</sup> day of October, 2018.

  
\_\_\_\_\_  
**Cliff Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**

  
\_\_\_\_\_  
**Paul Boudridge, Member**  
**Eastern Newfoundland Regional Appeal Board**

  
\_\_\_\_\_  
**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**