

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Louise Markus **Appellant**

AND Town of Pouch Cove **Authority**

RESPECTING Order - Clean Up - Final Request
15A Sullivan's Loop
MAE File: 15-006-054-009

BOARD MEMBERS Chair – Cliff Johnston
Member – Carol Ann Smith
Member – Robert Warren

DATE OF HEARING October 24, 2018

IN ATTENDANCE

Appellant: Grant Genova – husband of Louise Markus, Appellant
Respondent: Town of Pouch Cove, Acting Town Clerk, Susan Arns

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 Pouch Cove issuance of a Clean Up – Final Request Order on July 6, 2017 to the Appellant, regarding requested clean – up of property located at 15A Sullivan’s Loop.

On September 1, 2015, the Town of Pouch Cove sent a clean-up order via registered mail to Louise Markus. On November 12, 2015 a second clean-up order was sent to the Appellant via registered mail and posted on the property as well. On July 6, 2017 the ***Clean Up Order – Final Request*** was hand delivered to the Appellant by the Town. On July 19, 2017, the Appellant initiated an appeal of the Town’s Final Order.

The Appellant appealed the Order on the following grounds:

- There is no solid waste, that are noxious substances, or things which may be a hazard to public health and safety, which adversely affects surrounding properties;
- There is no garbage, debris, loose materials that are not what you see on other properties in Pouch Cove;
- All our materials which are art-based materials are stored in certified containers.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* on September 28, 2018 and a notice of the time, date, and place of the Hearing was provided to the Appellant and Respondent.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Pouch Cove Municipal Plan and Development Regulations

Matters presented to and considered by the Board

Q: Does the Town have the authority to issue a Clean-Up Order?

A: Yes, the Town of Pouch Cove does have authority pursuant to the Municipalities Act, 1999, Chapter M24 Part XIV Orders and Permits, Section 404(1)L, 404(3), 404(4), 404(5).

Q: Did the Town correctly apply the provisions of the Municipalities Act as pertaining to the property which is the subject of this appeal?

A: Based on the evidence provided by the Appellant and the Authority, it is the Board's opinion that the Authority did not correctly apply the provisions of the Act. The sections of the Act quoted by the Town in their Final Order references matters of noxious materials, solid waste and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.

The evidence provided and presented by the Town to the Board does not clearly substantiate the presence of noxious materials, solid waste and substances as mentioned above. The evidence (verbal) provided by the Appellant's husband at the Appeal Hearing indicated that the materials on site were in fact recycled material, used by the Appellant for her artwork, and there was no garbage or noxious materials on the site. This evidence was not contradicted nor refuted by the Town's representative.

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.

It is the opinion of the Board that the Final Order for clean-up was not found to be warranted based on the evidence presented to the Board. Therefore the Board will reverse the Clean-Up Order Final Request dated July 6, 2017 that was issued to the Appellant.

ORDER

Based on the information presented, the Board orders that the Clean-Up Order-Final Request dated July 6, 2017 from the Town of Pouch Cove to the Appellant in relation to the property located at 15A Sullivan's Loop be reversed.

The Board further orders that the Town of Pouch Cove 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 29th day of October, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board