

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

West Newfoundland Regional Appeal Board

Appeal #	15-006-072-050
Appellant(s)	Gregory Johannesen
Respondent / Authority	Woody Point
Date of Hearing	May 11, 2022

Board Members

Chair	Lloyd Walters
Member	Helen Reid
Member	Derick House

Also in Attendance

Appellant(s)	Gregory Johannesen
Representatives for the Appellant(s)	Marcia Johannesen
Representatives for the Authority	Sherry Avery
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	

The authority for appeals comes from 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 The 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 refused the development of a boathouse and wharf at Fisherman's Road , Woody Point.

Presentations at the Hearing

Planner's Presentation

A license to occupy Crown Land for the purpose of building a boat house and a wharf, East of Fisherman's Road, was issued to Mr. Gregory Johannesen (the Appellant) by the Department of Forestry, Fisheries and Agriculture. The Appellant applied to the Town of Woody Point (the Authority) for a development permit. This application was refused by the Authority and the Appellant was informed of Council's decision in a letter dated November 22, 2021. Council reconfirmed its decision at a Council meeting held on December 7, 2021.

Appellant's Presentation

The Appellant stated that he followed proper process to receive approval from all Government Departments prior to making an application for development. He further stated that the Town made no opposition to his application to Crown Lands for approval to develop the site and in fact issued a letter of support.

The Appellant contends that the Town had multiple opportunities to contest the application when it was initially received by the Town and secondly when it was gazetted for public feedback.

He further stated that the development will be in full compliance with all Town regulations, that Armor Stone will be used to maintain the environmental integrity of the area and stabilize the shoreline as outlined in the proposed trail development plan.

In his written submission to the Board, the Appellant states that the development is below the high water mark, on our leased land from the Crown and will not interfere with future trail development. There will be no road construction and it will be in line with shoreline development.

Authority's Presentation

The new Town Manager, Ms. Sherry Avery, stated that part of the process had occurred prior to her employment. She explained the process Council followed in making it's decision. The Town Council reviewed all documents submitted and denied the application on the basis that the proposed development would impede public access and future development of the walking trails as per the Municipal

Plan. In making its decision, Council also felt that the previous Town Manager was in a conflict of interest when she issued a letter of support for the proposed development, to Crown Lands.

They further felt that existing road access would not support vehicle access required for the delivery of construction material. She recognized her error in not following due process when an application for discretionary use is received.

Board's Analysis

What is the matter under appeal?

Both parties confirmed that the matter under appeal is a refusal by the Town of Woody Point to Gregory Johannesen (the Appellant) on December 7, 2021 regarding the development of a boat shed and wharf near Fisherman's Road. The refusal was issued on the basis that the development would interfere with future development of Walking Trails in the area, obstruct public right of way and prevent public access to and around the shoreline.

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

The Town heard from the current Town Manager that Council reviewed the application and felt it would impede the planned trail development in this area. Specifically she indicated that development within 15 meters of trails should be prohibited. They also felt that Council did not approve support the initial application to Crown Lands. Therefore, they denied the application.

Did the Town make a discretionary decision appropriately?

While the Board recognizes that the Town has the authority to make a discretionary decision, it is incumbent on the Town to follow due process when considering any application for discretionary use.

Under Section 32, Town of Woody Point Development Regulations. Notice of Application

“(1) When a change in non conforming use is to be considered under Regulation 49 , or when the development proposed is listed as a discretionary use in Schedule C of the Regulations , the Authority shall, at the expense of the applicant, give notice of an application for a permit or for approval in principle, by

public advertisement in a newspaper circulating in the area"

The Town provided no evidence to indicate that due process was followed in this application.

Is the Discretionary Refusal issued by the Town valid?

As a result of the Town's failure to follow its own regulations, due process was not followed when considering this application. Therefore any decision made by the Town is invalid.

Further, the Town when it issued its letter of refusal, did not inform the Appellant of his right to appeal. This is a direct violation of applicable 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 refused the application for development of a boat house and wharf near Fisherman's Road.

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 refusal by the Town of Woody Point of an application for a boat house and wharf located near Fisherman's Road by Mr. Gregory Johannessen be reversed. That is to say, the refusal letter from the Town of Woody Point to Mr. Gregory Johannessen is reversed. The Board further orders that the Town of Woody Point begin the process of reviewing this application anew, following due process as outlined in its regulations.

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.

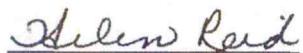
The Authority and the Appellant are bound by the decision of this Regional Appeal Board.

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 Appellant have received the Board's decision and Labrador, this 11th day of May 2022.



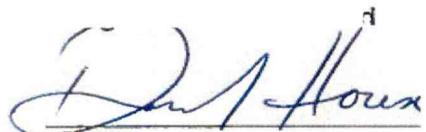
Lloyd Walters, Chair

West Newfoundland Regional Appeal Board



Helen Reid, Member

West Newfoundland Regional Appeal Board



Derrick House

West Newfoundland Regional Appeal Board