

# HOW TO IDENTIFY THE PROPER USE UNDER MUNICIPAL BY-LAWS: RECAP OF APPLICABLE GUIDELINES

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A recent decision of the Quebec Court of Appeal<sup>[1]</sup> revisits certain guidelines for linking the activities carried out on a given site with a use class under municipal by-laws.

In this matter, a company and the municipality of Saint-Apollinaire disagreed on how the use being made of the company's premises should be characterized. The municipality maintained that the use corresponded to "Recovery and sorting of various products" while the company maintained that the proper characterization was "Sale of heavy-gauge metals and minerals (except petroleum products and scrap)".

This characterization was crucial for the company, as another business was already carrying on activities characterized as "Recovery and sorting of various products" and only one use of this class was allowed in the zone concerned.

The Court of Appeal rejected the conclusion of the trial judge, who had decided in favour of the company. Primarily on the basis of its own jurisprudence, the Court outlined the procedure to be followed when characterizing activities on a given site.

[TRANSLATION] ... the Court should have "... assembled the facts and examined them in light of the use classes provided for in the applicable zoning by-law." It should have considered the company's activities on the whole rather than just its "sale" activity. Had it done so, it would have concluded that the metals sold by the respondent are scrap.

... It is impossible in this instance not to characterize these materials as "scrap". This does not mean that scrap cannot have value. In fact, several types of scrap can be given added value in one way or another, such as for the production of energy, and the content of scrap can have a certain economic value.

... the use class cannot depend on the subjective value given to property by a person who uses it on its premises. Just because a business assigns value to scrap or waste does not mean it can avoid its activities being characterized as recovery or management of residual materials.

... it is the actual use of the lot that is determinative for classifying a use in a category provided for in a zoning by-law, and not the final destination of the property used thereon.

An important factor in this decision was that the company's contracts with its suppliers identified the nature of its services as the disposal of scrap.

The consequences for the company were significant: the Court of Appeal ordered it to cease its recovery and sorting activities on the site in question immediately, and to remove all materials stored on it.

Similar questions regarding the characterization of activities involving waste materials are likely to arise again soon, given the increasing importance attributed to recycling and reclaiming such materials instead of sending them to landfill. With respect to such reclamation projects, we hope municipalities will show willingness to making the zoning changes that may be required to welcome such activities, which are an integral part of the circular economy. Finally, this decision illustrates the power exercised by some municipalities to limit the number of businesses engaged in a given use in a particular zone.

[1] *Municipalité de Saint-Apollinaire c. 6669174 Canada inc.* 2023 QCCA 30

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### **Cautionary note**

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