

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Fred Drover **Appellant**

AND Town of Bay Roberts **Respondent**

RESPECTING Order

BOARD MEMBERS Vicki Connolly – Chair
Mary Thorne-Gosse – Member
Bruce Strong – Member

DATE OF HEARING February 4, 2015

IN ATTENDANCE

Fred Drover – Appellant
Brian Drover – Support for Appellant
Nigel Black – Authority
Patrick Dawson – Interested party
Cindy Dawson – Interested party
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Bay Roberts issuing an Order to Fred Drover concerning the business related materials and equipment being stored on his property at 7-9 Dawson's Subdivision. The Town issued the Order pursuant to section 404(1)(f)(2-6) of the *Municipalities Act, 1999*, section 34 of the *Occupancy and Maintenance Regulations, (CNLR 1021/96)*, and definition (g) and section 3(a) of the Town's Commercial Vehicle Parking Regulations. The Order required Mr. Drover to remove all commercial materials and equipment from the property within thirty (30) days.

Mr. Drover initiated the appeals process on September 19, 2014. The grounds of appeal are based on the municipal regulation that permits outside storage. The appellant states in his grounds that he has used the subject property to store farming equipment for the past eighteen (18) years. Mr. Drover notes that his son, who lives on adjacent property, is also using the subject site to store his construction company's equipment during the off season. The appellant indicated that he is not operating a construction business on the property and is not moving equipment on or off his property on a daily basis.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Compass* on October 28, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on January 8, 2014.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Bay Roberts Municipal Plan and Development Regulations, 2010

Municipalities Act, 1999

Occupancy and Maintenance Regulations, (CNLR 1021/96)

Urban and Rural Planning Act, 2000

Town of Bay Roberts Commercial Vehicle Parking Regulations, 2010

Matters presented to and considered by the Board

Is the appeal valid?

The appellant received the Order on August 28, 2014 and initiated the appeals process with the Eastern Board on September 19, 2014, more than fourteen (14) days after he received the Order. The Board reviewed section 42(4) of the *Urban and Rural Planning Act, 2000*, which states that a person may appeal a decision “not more than 14 days after the person who made the original application appealed from has received the decision being appealed.” When an appeal is filed outside the 14 day requirement, as per section 6(5) of the *Minister’s Development Regulations, 2000*, the right to appeal is considered forfeited. However, the Board confirmed at the hearing that the Town incorrectly informed the appellant he had thirty (30) days to file an appeal. The Board learned at the hearing that the appellant was not aware of the fourteen (14) day requirement. Section 5 of the *Minister’s Development Regulations, 2000* outlines what information an authority must provide with respect to the right and process to appeal. The Board reviewed section 5 of the *Minister’s Development Regulations, 2000*, which states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) person’s right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

Since the Town failed to inform the appellant of the required time by which an appeal is to be made as defined in section 42(4) of the *Urban and Rural Planning Act, 2000*, the Board deems the appeal valid.

What uses are permitted on the appellant’s property?

The Board accepts that Mr. Drover’s property is located within a residential zone, specifically it is zoned Residential II (R2). The Board learned at the hearing that commercial storage uses may be approved in a R2 zone by Council if it is in conjunction with a home occupation. The appellant’s son, Brian Drover, stated at the hearing that he is not operating a commercial business from the subject property, only storing commercial related equipment and materials during the off-season.

Did the Town have the authority to issue the Order under section 404(1)(f) of the Municipalities Act, 1999?

The Board reviewed section 404(1)(f) of the *Municipalities Act, 1999*, which states:

404(1) A council may make an order that

(f) where a building is in a dilapidated state, or is, in the opinion of the council, unfit for human habitation, or another use for which it is then being used, or is a public nuisance, the owner or occupier is to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state, or make the disposition or alteration of the building that the order directs;

The Town confirmed at the hearing that the issue is with respect to the storage of commercial equipment and material on the appellant's property, not a particular building. Since section 404(1)(f) refers to a building, not equipment or material, the Board determined that the Town did not have the authority to issue the Order under section 404(1)(f) of the *Municipalities Act, 1999*.

Did the Town have the authority to issue the Order under section 34 of the Occupancy and Maintenance Regulations (CNLR 1021/96)?

The Board reviewed section 34 of the *Occupancy and Maintenance Regulations, (CNLR 1021/96) (OMR)*, which states:

34. On site storage

- (1) The storage of materials or equipment on the site of a building or dwelling unit shall be at the rear of the lot.*
- (2) All items shall be neatly arranged and shall not cause inconvenience or imposition to adjoining properties.*
- (3) Storage space on corner lots shall be screened.*

While the Board acknowledges section 34 outlines standards for the storage of equipment and materials on property within the Town of Bay Roberts, it does not provide the Town with the authority to issue an order.

Did the Town have the authority to issue the Order under the Town of Bay Roberts Commercial Vehicle Parking Regulations, 2010?

The Order referred to section 2(g) and 3 of the Commercial Vehicle Parking Regulations. Based on the information heard at the hearing, the Board learned that the subject property was not approved by Council for commercial purposes nor was it approved by Council to be used as a commercial parking lot. Therefore, while it appears the appellant is using his property in contravention of section 3 of the Town's Commercial Vehicle Parking Regulations, the Board

determined that Council does not have the authority to issue an order under the Commercial Vehicle Parking Regulations. According to section 5, “any person who contravenes or fails to comply with any provision of [the Commercial Vehicle Parking] Regulations, is guilty of an offence and is liable on summary conviction as per Section 420 of the [*Municipalities Act*].”

Was the Order issued properly?

A decision made by the Town of Bay Roberts that may be appealed to the Eastern Newfoundland Regional Appeal Board must indicate the right to appeal that decision in accordance with section 42(1) of the *Urban and Rural Planning Act, 2000*. While the Board accepts the right to appeal was noted on the Order issued to Mr. Drover, the Order incorrectly stated the appellant had thirty (30) days to appeal the decision. According to section 42(4) of the *Urban and Rural Planning Act, 2000*, an appeal may be made “not more than 14 days after the person who made the original application appealed from has received the decision being appealed.” Additionally, the Board reviewed section 5 of the *Minister’s Development Regulations, 2000* which states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) person’s right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

Therefore, the Board determined that since the appellant was not notified of the correct time by which an appeal is to be made, the Order was not issued in accordance with the *Minister’s Development Regulations, 2000*.

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 of Bay Roberts did not have the authority to issue the Order under section 404(1)(f) of the *Municipalities Act, 1999*, section 34 of

the *Occupancy and Maintenance Regulations, (CNLR 1021/96)*, and the Town of Bay Roberts Commercial Vehicle Parking Regulations, 2010.

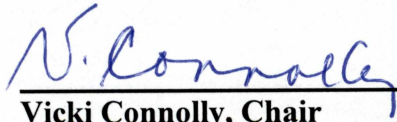
Order

Based on the information presented, the Board orders that the Order issued by the Town of Bay Roberts on August 5, 2014 to Fred Drover concerning business related materials and equipment stored on 7-9 Dawson's Subdivision, be vacated.

The Board further orders that the Town of Bay Roberts pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

The Town of Bay Roberts and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

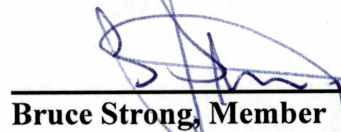
DATED at St. John's, Newfoundland and Labrador, this 4th day of February, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Mary Thorne - Gosse, Member
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board