

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Norman Andrews **Appellants**

AND Town of Happy Valley-Goose Bay **Respondent**

RESPECTING Approval

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guinard – Member
Walter Sheppard – Member

DATE OF HEARING October 29, 2015

IN ATTENDANCE

Norman Andrews – Appellant
Sylvia Bursey – Developer
Wyman Jacque – Authority
Douglas Foster – Authority
Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board
Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Happy Valley – Goose Bay issuing a permit to Mr. Daniel Burse for the construction of a new mini home at 7 Paddon Road. The property owners of the neighbouring lot located at 5 Paddon Road learned of the construction on July 16, 2015. On August 14, 2015, Norman Andrews, resident of 5 Paddon Road, initiated the appeals process with the West Newfoundland Regional Appeal Board against the Town's issuance of the aforementioned permit.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Labradorian* on October 12, 2015, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 5, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Municipalities Act, 1999

Town of Happy Valley – Goose Bay Municipal Plan and Development Regulations, 2008

Matters presented to and considered by the Board

Does the Board have the jurisdiction to hear the appeal matter?

The Board considered the following:

1. Can the Board hear an appeal regarding an approved building permit?
2. Was the appeal filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*?

1. Can the Board hear an appeal regarding an approved building permit?

The Board reviewed section 42(1) of the *Urban and Rural Planning Act, 2000* which outlines what decisions may be appealed:

A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

- (a) an application to undertake a development;*
- (b) a revocation of an approval or a permit to undertake a development;*
- (c) the issuance of a stop work order; and*
- (d) a decision permitted under this or another Act to be appealed to the board.*

In accordance with section 42(1)(d), the Board may hear appeals where the decision was permitted under the *Urban and Rural Planning Act, 2000* or another Act. The Board understood the decision under appeal to be with respect to the issuance of a building permit. The Board recognizes that the Town derives its authority to issue a building permit from section 194 of the *Municipalities Act, 1999*. Section 194 states:

A person shall not within a municipality

- (a) erect a building;*
- (b) extend, repair, relocate or demolish an existing building;*
- (c) change the use for which an existing building is or was last held or occupied;*
or
- (d) occupy a building that has been vacant for a period of 6 months or more or a newly constructed building, except in accordance with a written permit from the council.*

The Board reviewed section 409 of the *Municipalities Act, 1999* and found that only the refusal of a building permit is subject to appeal. Section 409 states:

A person aggrieved by the refusal of a council to issue a permit required under section 194 may, within 14 days from the date of that refusal, appeal against the refusal to the appropriate regional appeal board established under the Urban and Rural Planning Act and the board may make an order with respect to the matter that appears just.

Under section 409 of the *Municipalities Act, 1999*, the Board concluded, however, that it is only the refusal of a building permit that may be appealed.

The Board questioned the Town to determine whether the permit issued to Daniel Bursey on May 5, 2015 was indeed a building permit. While the permit is referred to as a building permit, the Town only issues one permit for development and building. Therefore, the Board determined that the matter could be considered.

2. Was the appeal filed in accordance with section 42(4) of the Urban and Rural Planning Act, 2000?

The Board understands that according to section 42(4) of the *Urban and Rural Planning Act, 2000*, an appeal must be filed within a fourteen (14) day time-frame. Since this appeal was filed by an interested third party, the fourteen day period begins when the public has reasonably been notified. The Board heard from the appellant at the hearing that he discovered the development on July 16, 2015 and learned about his right to appeal on that same day from the Town's website. Mr. Andrews filed his appeal with the Board on August 14, 2015, nearly two months. The Board concluded that Mr. Andrews did not file his appeal in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* as his appeal was filed more than fourteen (14) days after the date in which he learned of the Town's decision and his right and process to appeal.

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, 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. Since Mr. Andrews filed his appeal nearly two (2) months after the date in which he learned of the development and his right and process to appeal, the Board determined that it did not have the jurisdiction to hear the appeal as it was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*.

Section 42(4) states:

An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

ORDER

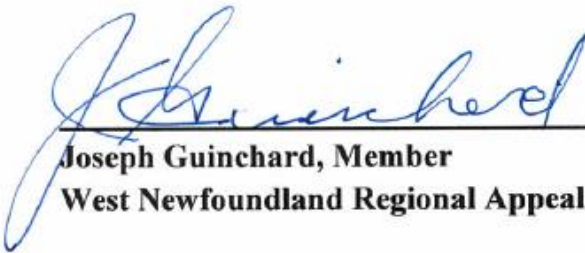
Based on the information presented, the Board dismisses the appeal regarding the decision of the Town of Happy Valley – Goose Bay on May 5, 2015 to issue a building permit for the construction of a mini home at 7 Paddon Road.

The Town of Happy Valley – Goose Bay is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

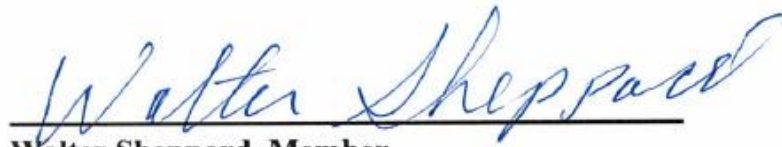
DATED at Deer Lake, Newfoundland Labrador, this 29th day of October, 2015.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Joseph Guinchar, Member
West Newfoundland Regional Appeal Board



Walter Sheppard, Member
West Newfoundland Regional Appeal Board