

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Newfoundland and Labrador English School District **Appellants**

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

RESPECTING Order

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

DATE OF HEARING October 29, 2015

IN ATTENDANCE

Kate O'Brien – Solicitor for Appellant

Wyman Jacque – Authority

Douglas Foster – Authority

Wade Wilcox – Appellant

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 Happy Valley – Goose Bay issuing an order to the CEO of Newfoundland and Labrador English School District (NLESD), Mr. Darrin Pike, by registered mail on October 21, 2014. The Order was issued under the authority of section 404(1)(f) and 404(1)(l) of the *Municipalities Act, 1999* as well as section 4 and 5 of the *Occupancy and Maintenance Regulations, 2000*. The Order requires the NLESD to “remove the building on Lake Crescent, previously known as Robert Leckie School, and restore the site to its original condition.” The Order noted the right and process to appeal.

On October 31, 2014, Kate O’Brien, on behalf of the Newfoundland and Labrador English School District, filed an appeal with the West Newfoundland Regional Appeal Board against the Order dated October 15, 2014. The appellant’s submission states that the NLESD is using the Robert Leckie School to store surplus furniture and equipment as well as cleaning supplies that are purchased in bulk on a yearly basis. The grounds for appeal are summarized as follows:

- Section 404(1)(f) of the *Municipalities Act, 1999* does not apply: the NLESD denies that the Robert Leckie School is unfit as a storage facility and denies that the building is a public nuisance;
- Section 404(1)(l) of the *Municipalities Act, 1999* does not apply;
- The School is not being used for human habitation; it is used for storage and is maintained in good condition and repair.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Labradorian* on November 24, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on March 6, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Municipalities Act, 1999

Occupancy and Maintenance Regulations, CNLR 1021/96

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

Matters presented to and considered by the Board

Did the Town follow proper procedure when it issued an Order to the Newfoundland and Labrador English School District (NLESD)?

The Board heard from the appellant's legal counsel that the Town Clerk did not have the required delegated authority to issue the Order dated October 15, 2014. The Board learned that the Town Clerk was delegated the authority to issue orders by the Town Council at the October 28, 2014 Regular Meeting of Council. The Board acknowledges that the Town Clerk received this delegated authority after the Order was issued to NLESD.

The Board reviewed section 404(6) of the *Municipalities Act, 1999* and confirmed that an official or employee of the Town Council may issue orders pursuant to section 404 of the *Municipalities Act, 1999* if delegated that authority by Council. Section 404(6) of the *Municipalities Act, 1999* states, "[a] council may delegate to an official or employee of the council the power to issue orders under this section."

In this case, since the Town Clerk did not have the delegated authority to issue the Order under the authority of the *Municipalities Act, 1999* at the time the Order was issued to NLESD, the Board concluded that the October 15, 2014 Order was invalid.

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

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

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 Board heard testimony from the authority regarding the state of the subject building. Mr. Jacques indicated that building has been abandoned from many years and is severally weathered. Additionally, the windows on the main floor are covered with boards and the heat and water have been turned off. The Board learned that Council determined the building was in a dilapidated state based upon visual appearances and complaints received from the public. The Board recognizes that this was a discretionary decision of Council and found that Council appropriately deemed the building to be in a dilapidated state.

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

A council may make an order that

(l) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.

The Board heard arguments from the appellant's legal counsel that section 404(1)(1) of the *Municipalities Act, 1999* is not the appropriate section to rely upon if the Town is concerned with the state of the building. The authority did not provide any arguments supporting its rationale for issuing the order pursuant section 404(1)(1) at the hearing. Therefore, the Board is unclear how this section is applicable.

Did the Town have the authority to issue the Order pursuant to section 4 and 5 of the *Occupancy and Maintenance Regulations*?

The Board heard arguments from the appellant's legal counsel that section 4 and 5 of the *Occupancy and Maintenance Regulations* do not provide the Town with the authority to issue an

order. The Board recognizes that the Town may issue an order under section 42 of the *Occupancy and Maintenance Regulations* but notes that the Town did not refer to section 42 in the Order issued on October 15, 2015 to the NLESD. Therefore, the Board concluded that the Town did not have authority to issue the Order to the NLESD pursuant to section 4 and 5 of the *Occupancy and Maintenance Regulations*.

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, policy and regulations.

Based on its findings, the Board determined that the Town of Happy Valley – Goose Bay had the authority to issue the Order to the NLESD. However, due to the fact the Town Clerk did not have delegated authority to issue orders under the *Municipalities Act, 1999* when the Order was issued to the NLESD, the Board vacates the Town's decision. Additionally, the Board found that the Town did not have the authority to issue the Order pursuant to section 4 and 5 of the *Occupancy and Maintenance Regulations*. Lastly, the Board concluded that the Town issued the Order in accordance with section 404(1)(f) of the *Municipalities Act, 1999* but it was unclear how section 404(1)(l) could provide the Town with authority to issue the Order to the NLESD.

ORDER

Based on the information presented, the Board orders that the decision of the Town of Happy Valley – Goose Bay to issue an Order dated October 15, 2015 to the Newfoundland and Labrador English School regarding the former Robert Leckie School, be vacated.

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

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.

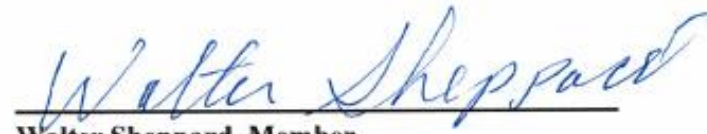
DATED at Deer Lake, Newfoundland Labrador, this 29th day of October, 2015.



**Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board**



**Joseph Guinchard, Member
West Newfoundland Regional Appeal Board**



**Walter Sheppard, Member
West Newfoundland Regional Appeal Board**