

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Sean McDonald **Appellant**

AND Town of Grand Falls – Windsor **Respondent**

RESPECTING Removal Order

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Norm Austin – Member

DATE OF HEARING January 14, 2016

IN ATTENDANCE

Mary Wong – Respondent

Michael Pinsent – Respondent

Sean McDonald – Appellant

Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board

Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Grand Falls – Windsor issuing a Removal Order to Mr. Richard McDonald regarding a dilapidated building at 1 Second Avenue. The Town ordered Mr. McDonald on April 7, 2015 to demolish the dilapidated building located on 1 Second Avenue by April 15, 2015. The Order was issued under the authority of section 404(1)(f) of the Municipalities Act, 1999.

Sean McDonald, on behalf of Richard McDonald, filed an appeal against the issuance of the above noted Removal Order with the Central Newfoundland Regional Appeal Board on April 14, 2015. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the Urban and Rural Planning Act, 2000 and included the required information as per section 42(5) of the Urban and Rural Planning Act, 2000.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Advertiser* on June 1, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on November 20, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Municipalities Act, 1999

Matters presented to and considered by the Board

Did the Town have the authority to issue the Removal Order to Mr. McDonald?

The Removal Order was issued pursuant to section 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 accepts that the Town of Grand Falls-Windsor had the authority to issue the Removal Order under section 404(1)(f) because the Town deemed the building to be in a dilapidated state. The Authority demonstrated to the Board that the building is dilapidated based on the Building Inspection Report dated November 4, 2014 as well as photos presented to the Board at the hearing. The Board accepts that the decision of the Town of Grand Falls – Windsor to determine the building dilapidated is a discretionary decision of Council. The Board acknowledges the fact that it does not have the authority to overrule Council's discretion in this instance in accordance with section 42(11) of the *Urban and Rural Planning Act, 2000*.

Where the Appellant indicated his plans to remove the building in the coming months, this would have to be agreed upon by both parties.

Did the Town accurately issue the Removal Order to Mr. McDonald?

Section 406 of the *Municipalities Act, 1999* outlines how an order issued under section 404 of the *Municipalities Act, 1999* shall be served. The Board reviewed section 406 and found that the Town satisfied the requirements outlined in section 406 by serving the Removal Order to Mr. McDonald via registered mail on April 9, 2015.

The Removal Order stated Mr. McDonald's right and process to appeal as required under section 408 of the *Municipalities Act, 1999*.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 Grand Falls – Windsor had the authority to issue the Removal Order to Mr. Richard McDonald and did so in accordance with the *Municipalities Act, 1999*. That is to say, the Removal Order, dated April 7, 2015, issued by the Town of Grand Falls – Windsor to Mr. Richard McDonald remains in effect.

Order

Based on the information presented, the Board orders that the Removal Order dated April 7, 2015 issued by the Town of Grand Falls – Windsor to Richard McDonald concerning the dilapidated building located at 1 Second Avenue, be confirmed.

The Town of Grand Falls – Windsor and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division 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 Board’s decision has been received by the appellant(s).

DATED at Grand Falls – Windsor, Newfoundland and Labrador, this 14th day of January, 2016.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Norm Austin, Member
Central Newfoundland Regional Appeal Board