

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Donnie Martin **Appellant**

AND Town of Portugal Cove-St. Philip's **Respondent**

RESPECTING Order

BOARD MEMBERS Michelle Downey – Chair
Mary Thorne-Gosse
Raelene Thomas

DATE OF HEARING June 13, 2017

IN ATTENDANCE

Donnie Martin – Appellant

Les Spurrell – Authority

Ashley McKinnon – Authority

Robert Cotter – Secretary to the Eastern Newfoundland Regional Appeal Board

Kim Blanchard – Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts

The Board understands that, at the March 22, 2016 Regular Council meeting of the Town of Portugal Cove-St. Philip's, Council resolved to issue a Removal Order to Donnie Martin and Robin Adams concerning the existing accessory structure located at 16-18 Dawn Allen Road, which was built without a permit from the Town. The Order was issued under the authority of the *Municipalities Act, 1999* and the *Urban and Rural Planning Act, 2000*. On March 30, 2016, the Town posted the Removal Order on the accessory building, and also sent the Order via registered mail on April 1, 2016.

The Board learned that Mr. Martin received notification of the Removal Order on April 8, 2016 and received the Removal Order via registered mail on April 11, 2016. Mr. Martin filed an appeal against the issuance of the Removal Order with the Eastern Newfoundland Regional Appeal Board on April 29, 2016.

According to section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, an appeal must be filed within fourteen (14) days from the date the decision being appealed is received. Based on the information provided, it appears that Mr. Martin filed his appeal outside the fourteen (14) day time frame. According to section 6(5) of the *Minister's Development Regulations, NLR 3/01*, if an appeal is filed in contravention to section 42 of *URPA*, then the right to appeal shall be considered forfeited.

The Board heard arguments from the appellant and the Town on the matter of validity to first consider if it was within the jurisdiction of the Board, given that the appeal was not filed within the legislative timeframe.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Matters presented to and considered by the Board

Is the appeal valid?

The Board reviewed Part VI, section 42(4), of the *Urban and Rural Planning Act, 2000* (the "Act") which requires an appeal be filed within 14 days. 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.

The Board considered the Appellant's Appeal Summary Form and arguments presented at the appeal, and determined that Mr. Martin received Council's decision on April 11, 2016. The Appellant filed his appeal with the Eastern Newfoundland Regional Appeal Board on April 29, 2016, which was outside the 14 day requirement outlined in section 42(4) of the *Act*.

The Board determined that the Appellant did not satisfy section 42(4) of the *Act*. In accordance with section 6(5) of the Minister's Development Regulations, "*where an appeal of a decision and the required fee is not received by a board in accordance with this section and Part VI of the Act, the right to appeal that decision shall be considered to have been forfeited.*"

Does the Board have jurisdiction to hear the appeal?

The Board heard arguments from the Appellant that, upon becoming aware of the Order, he engaged in dialogue directly with the Mayor. He expressed to the Board that his sentiment was that he was working together with the Town in an effort to resolve the issue. Because he was of the understanding and belief that the issue would be resolved through direct communication with the Town, he did not immediately pursue the appeal avenue. Since the Board deemed the appellant had not exercised his right to appeal in a timely fashion in accordance with the *Urban and Rural Planning Act*, the Board found that it is without jurisdiction to hear the appeal.

Conclusion

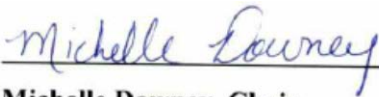
In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information and planning advice.

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 appeal was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, or section 6.5 of the *Minister's Development Regulations*, and is therefore, invalid.

Based on the information presented, the Board finds that it is without jurisdiction to hear the appeal. That is to say, Council's Order remains in effect.

DATED at Mount Pearl, Newfoundland and Labrador, this 13th day of June, 2017.



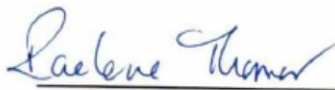
Michelle Downey, Chair

Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member

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Raelene Thomas, Member

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