

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN**                      Brendan O'Leary                      **Appellant**

**AND**                              Town of Carbonear                      **Authority**

**RESPECTING**                      Town of Carbonear's Order to cease construction and  
removal of wharf located at 177 Water Street, Carbonear  
(15-006-044-043)

**BOARD MEMBERS**                      Cliff Johnston, Chair  
Carol Ann Smith, Member  
Robert Warren, Member

**DATE OF HEARING**                      April 25, 2019

**IN ATTENDANCE**

Brendan O'Leary, Appellant

Cynthia Davis, Chief Administrative Officer, Town of Carbonear

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

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

## DECISION

### Facts/Background

The Appellant undertook construction of a wharf and/or crib work at 177 Water Street, Carbonear. The Town of Carbonear issued a stop work and removal order for said wharf and/or crib work on the basis that the work was being undertaken without a required permit, contrary to Section 7 of the Town of Carbonear Development Regulations. The Appellant is appealing the Town's order based on the grounds the Town of Carbonear does not have jurisdiction over the water on which the wharf and/or crib work is being constructed and/or repaired.

### Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Carbonear Development Regulations

Municipalities Act, 1999

### Matters presented to and considered by the Board

**Q.** Does the Town of Carbonear have the authority to require the Appellant to apply for a permit to undertake development including not limited to wharf and/or crib work at 177 Water Street, Carbonear?

**A.** Section 2(2) of the Municipalities Act, 1999 states that "all docks, quays, wharfs, and structures touching the boundaries of a municipality and all ships attached either permanently or temporarily to a dock, quay, wharf, ship or structure shall be considered to be within and to be part of the municipality."

The Urban and Rural Planning Act, 2000 defines "development" as below:

- (g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the*
- (i) making of an access onto a highway, road or way,*
  - (ii) erection of an advertisement or sign,*
  - (iii) construction of a building,*
  - (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation*

Section 7 of the Town of Carbonear Development Regulations states that “no person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority”.

- Q.** Is a wharf allowed at the subject property?
- A.** The Board was verbally advised by the Town’s Chief Administrator Officer during the Appeal Hearing that the subject property is located in the Heritage Area Zone under the Town’s Development Regulations. This zone allows a wharf as a discretionary use.

## **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 Carbonear acted in accordance with the Municipalities Act, 1999, the Urban and Rural Planning Act, 2000, and the Town of Carbonear Development Regulations when it issued an Order to the Appellant on October 24, 2016 to stop work and remove structures at 177 Water Street, Carbonear.

Therefore, the Board confirms the Authority's decision to issue the Order to stop work and remove structures at 177 Water Street, Carbonear.

## Order

Based on the information presented, the Board orders that the Authority's decision to issue the Order to stop work and remove structures at 177 Water Street, Carbonear, be confirmed.

The Authority and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador 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 St. John's, Newfoundland and Labrador, the 29<sup>th</sup> day of April, 2019.



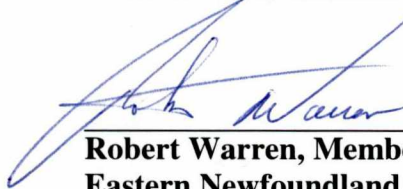
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**Cliff Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**



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**Carol Ann Smith, Member**  
**Eastern Newfoundland Regional Appeal Board**



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**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**