

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN David Power, on behalf of Kentwood Homes Ltd. **Appellant**

AND Town of Cupids **Authority**

RESPECTING Matter under appeal – Respecting Order to immediately stop development of a single dwelling at 563-565 Conception Bay Highway, Cupids [15-006-004-37]

BOARD MEMBERS Chair – Cliff Johnston
Member – Paul Boundridge
Member - Robert Warren

DATE OF HEARING October 16, 2018

IN ATTENDANCE

Respondent: Town of Cupids – Mayor Carl Butler, Councillor Ron Deleney,
Town Clerk Ivy King

Appellant: David Power, on behalf of Jerome Quinlan/ Kentwood Developments Inc.

Interested parties that presented at the hearing: Cory Connolly

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

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

DECISION

Facts/Background

This appeal arises from the Town of Cupids issuing a Stop Work Order on September 23, 2016 to Kentwood Homes Ltd. for a Single Dwelling on property at 563-565 Conception Bay Highway, Cupids. The Town's Order outlined that:

- The partially completed single dwelling was contrary to the conditions attached to the permit that had been issued to the Appellant by the Town of Cupids on August 26, 2016, and
- That the structure is in violation of the Urban and Rural Planning Act, 2000, (URPA) and the Town of Cupids Development Regulations, 2014, and
- Section 102(1) of URPA and Section 7 and 21(5) of the Town of Cupids Development Regulations, 2014, and
- That development "immediately stop".

On October 3, 2016 Kentwood's representative filed an Appeal package with the Secretary of the Appeal Board. The grounds of appeal can be summarized as follows:

1. The Town of Cupids does not have authority to issue a stop work order for work being done pursuant to a permit issued but not revoked or amended by the Town.
2. The Municipal Plan for the Town of Cupids does not make a distinction between a home and a cottage or a home and a seasonal dwelling. All permits for building homes are permits for "New House Construction".
3. The Town of Cupids Development Regulations do not prohibit the construction of cottages within the Municipal Planning Area.

In accordance with the Urban and Rural Planning Act, 2000, a public notice of appeal was published in The Telegram newspaper and a notice of the time, date and place of the hearing was

provided to the appellant and the authority as required by URPA.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Cupids Municipal Plan 2014 and Town of Cupids Development Regulations 2014

Matters presented to and considered by the Board

Q: Do the Town's Development Regulations distinguish between a Seasonal Residence and a Single Dwelling?

A: The Town's Development Regulations offer the following definitions:

“SEASONAL RESIDENCE means a dwelling which is designed or intended for seasonal or recreational use, and is not intended for use as permanent living quarters.”

“SINGLE DWELLING means a single dwelling which is free standing, separate, and detached from other main buildings and consists of a constructed, prefabricated, or manufactured detached dwelling unit, but not including a mini-home or a mobile home.”

Q: Are single dwellings allowed within the Residential Medium Density (RM) Zone?

A: The subject property is located within an RM zone. The Board accepts that single dwellings are permitted in the RM zone as a Permitted Use.

Q: Is a Seasonal Residence allowed within the Residential Medium Density (RM) Zone?

A: A Seasonal Residence is not listed within the RM Zone as either a Permitted Use or a Discretionary Use. Therefore, the Town maintains that a Seasonal Residence may not be allowed in the RM Zone and that the Town has no legal authority to permit development of such use.

Q: When and how did the Town determine that the proposed development should be classified as a Seasonal Residence as opposed to a Single Dwelling?

A: Following receipt of a copy of a Certificate of Approval dated October 16, 2015 to Kentwood Construction “for the construction of a sewage system/water supply to service a two bedroom cottage” at the subject property, the Town determined that the use had come under the definition

of Seasonal Residence – a use which the Town has no authority to approve in the RM Zone under the Town’s Development Regulations. Consequently, the Town decided to issue the Stop Work order. Section 27 of the Town’s Development Regulations provides that:

“27. Stop Work Order and Prosecution

(1) Where a person begins a development contrary or apparently contrary to these Regulations, the Town may order that person to stop the development or work connected therewith pending final adjudication in any prosecution arising out of the development.

(2) A person who does not comply with an order made under Regulation 27(1) is guilty of an offence under the provisions of the Act.”

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 had the authority to issue a Stop Work Order to the development project.

Order

Based on the information presented, the Board orders that the decision made by the Town of Cupids on September 23, 2016 be confirmed.

The Town and the Appellant 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).

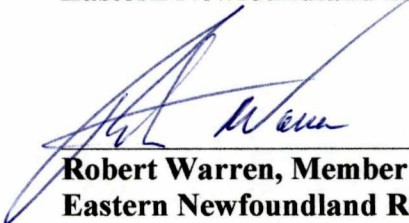
DATED at Portugal Cove-St. Philip's, Newfoundland and Labrador, this 16th day of October, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Bountridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board