

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-037
Appellant(s)	Ed Cole
Respondent / Authority	Town of Victoria
Date of Hearing	December 1, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Lisa Slaney

Attendance

Appellant(s)	Absent
Representatives for the Appellant(s)	
Representatives for the Authority	Sarah Hogan, Stewart McKelvey Law Firm; Shelly Butt, Town Clerk /Manager
Interested Parties	
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Tolulope Victoria Akerele
Start/End Time	11: 00 am – 12:00 pm

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board (ENRAB) is to determine if the Town of Victoria made errors when it issued an order to Ed Cole on October 6, 2020 with respect to the erection of signage without a permit at 65, Highway East, Route 70, Victoria. The Board must determine if the Town of Victoria acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Victoria Municipal Plan and Development Regulations and the Municipalities Act, 1999 when Council issued this Order. As the ENRAB is not a court of law, the Board can only determine whether or not development has taken place and if the Town carried out the Order they issued in accordance with the Urban and Rural Planning Act, 2000 and the Town of Victoria Municipal Plan and Development Regulations and the Municipalities Act, 1999.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Town of Victoria Municipal Plan and Regulations
- Municipalities Act, 1999

Background:

On June 7, 2021, the Eastern Newfoundland Regional Appeal Board confirmed an Order issued by the Town of Victoria to Ed Cole at Civic address, #65, rr70, Victoria, NL to remove signage place on the property.

Mr. Cole appealed the ENRAB decision to Supreme Court of Newfoundland and Labrador. On October 6, 2022, Justice O'Brien reviewed the Appeal Board's decision of June 7, 2021 and deemed that the Eastern Newfoundland Regional Appeal Board erred when they did not provide the proper resources for the appellant to attend the hearing on June 7, 2021. The Board also understands that Justice O'Brien did not make a ruling on the Order issued by the Town of Victoria with respect to Section 46. (4) of the Urban and Rural Planning act, 2000 which states

- (4) The court shall either confirm or vacate the order of the board and where vacated the court shall refer the matter back to the board with the opinion of the court as to the error in law or jurisdiction and the board shall deal with the matter in accordance with that opinion.

Therefore, the ENRAB is to hear the matter in its entirety.

The secretary sent notices to all parties in November, 2022. As covid19 restrictions have been lifted, the Board is now holding in person hearings. Via email, Mr. Cole has informed the Board that the Board may continue without his presence at the hearing and to consider all of his written submissions to the Board and as well his brief that he submitted to the Supreme Court.

Prior to today's hearing, the Board reviewed all submissions to the Supreme Court. The Board also listened to the audio of Justice O'Brien's decision.

Presentations During Hearing

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

Technical Advisor:

- Urban and Rural Planning Act, 2000
- Municipalities Act, 1999
- Town of Victoria Municipal Plan and Development Regulations
- According to section 1 (g)(ii) of the Urban and Rural Planning Act, 2000, erection of an advertisement or sign is development. Section 1(g) of the Act states:

(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

(ii) erection of an advertisement or sign

- Section 7 of the Town's Development Regulations require all development to comply with the regulations while Section 8 of the Regulations states that a person shall not carry out development within the planning without a permit.

- Under s. 102 of the Urban and Rural Planning Act, Council has the authority to issue an order where a person has undertaken development contrary to a plan or development regulations.
- Section 197 of the Municipalities Act, 1999 states that a person shall not erect a sign except in accordance with permit from Town.

197. Signs

A person shall not, within a municipality, erect a sign except in accordance with the terms of a written permit issued by the council.

- Section 404 (1) (h) of the Municipalities Act, 1999 gives the Town the authority to issue an order where a person construct a sign without permit.
- Section 102 of the Urban and Rural Planning Act, 2000 also provides for enforcement where a development is undertaken contrary to the legislation in effect in the planning area. Section 107 (1) of the Act requires that an order be delivered personally or sent by registered mail. The appeal submission shows that the Order was personally delivered to the appellant by a Sheriff.
- Section 109 (3) of the Urban and Rural Planning Act states that an employee of Council may issue an order. Subsection (4) requires this order to be confirmed by the majority vote of the members of council present at the next meeting and the order is considered cancelled if it is not confirmed. Evidence that Council resolved to issue a Removal Order was found in the minutes of Council's meeting.

- Review of the appeal submission showed that there is no permit in place to erect the signage on the appellant's property.
- The submission included evidence that Council authorized the Order at a regular Council meeting.
- The right to appeal was included in the Order.

The Appellant

The Board as per the request of the Appellant agreed to review Mr. Cole's "Brief, Audio and Transcript" at the Hearing of his appeal to the Supreme Court of Newfoundland and Labrador File #2021 O1G 3718. The Board also reviewed Mr. Cole's original submissions that were presented to the Board for the Appeal Hearing dated June 7, 2021.

Based on his written appeal submission, the Appellant is appealing the Order based on the following grounds:

1. The Order is abusive, frivolous and vexatious.
2. The Order is contrary to the Canadian Charter of Rights and Freedom:
 - Mr. Cole has advised the Board that since 2015, he has a therapeutic hobby of producing and displaying "folk art" and/or "yard art". This artwork is improvised/make shift and mixed. Materials are recycled and/or re-purposed and are temporary in nature.
 - Mr. Cole's opinion is that the Town has failed to properly consider the Town of Victoria Development Regulations, 2011, in this matter. He believes that his yard is protected by the Regulations in that his "yard art" is exempt from control.
 - Mr. Cole indicates that the Town has failed to consider the Canadian Charter of Rights and Freedoms in this matter; the Appellant's "yard art" is protected by the Charter.
 - Mr. Coles's opinion is that he has not constructed and/or erected any permanent and/or real advertising and/or signage contrary to the Municipalities Act and/or the Town of Victoria Development Regulations.
 - Through an email from Mr. Cole to the Secretary of the Appeal Board, Mr. Cole has advised the Board that he does not have a PO Box.

The Authority:

The Board heard from the representatives from the Town regarding the Appeal. The representatives' comments were similar in nature to the comments expressed to the Board at the Appeal Hearing on June 7, 2021. A synopsis of comments expressed to the Board at the hearing on December 1, 2022, are noted below:

- Ms. Butt advised the Board that the Town became aware of the signage on the Appellant's property approximately 3 years ago.
- The signage is offensive to the Town and many residents have complained the signs have depiction of swastikas and what residents consider anti-Semitic phrases.
- There is a large volume of traffic passing this property daily.
- There is no permit in place for the signage.
- Subsequent to the issue of the Town's Order regarding the signage, the Appellant submitted a formal application for the signage. There was little information included with the application. The Town has not yet made a decision on this application; it is waiting for the Board's decision on this appeal.
- Ms. Hogan advised the Board that there is case law to demonstrate that the Town's Order against Mr. Cole does not infringe upon his rights under the Canadian Charter of Rights and Freedoms. Ms. Hogan noted to the Board that the Appellant has failed to provide any proof that his rights under the Charter had been violated by the issuance of the Town's Order for removal of "yard art". Ms. Hogan also advised the Board that "yard art" is not exempted from the requirements of the Town's Municipal Plan and Development Regulations and the Municipalities Act, 1999 respecting the installation of signage on private residential property.
- Ms. Hogan advised the Board that it is the Town's view that the Board has no jurisdiction to determine whether the Appellant's rights under the Canadian Charter of Rights and Freedoms have been violated. Rather, it is the Town's view that the Board should focus on whether the Town had the authority to issue the Order of October 6, 2021 to the Appellant for removal of the signage on his property.
- The Board heard evidence from the Town that it uses the Appellant's PO Box through Canada Post for the delivery of Town correspondence to the Appellant and they have not been advised by the Appellant that he is failing to receive such correspondence.

BOARD ANALYSIS

Q. Is "signage" a Development?

A. Yes. Signage would be considered a Development as defined under Section 2(g) of the Urban and Rural Planning Act. Section 2 (g)(ii) of the Act specifically lists "erection of an advertisement or sign" as a form of Development.

Q. Is a permit required from the Town of Victoria to erect signage on a private residential property?

A. Yes, a permit is required to erect signage in the Town of Victoria. Mr. Cole did not submit a permit in his submission.

Section 197 of the Municipalities Act, 1999 states that a person shall not erect a sign except in accordance with a permit from Town.

"197. Signs

A person shall not, within a municipality, erect a sign except in accordance with the terms of a written permit issued by the council."

Section 404 (1) (h) of the Municipalities Act, 1999 gives the Town the authority to issue an order where a person construct a sign without permit.

"404. Council Orders

(1) A council may make an order that

(h) a person stop construction of, remove or repair a sign erected without a permit or not in accordance with the terms of a permit or a regulation of the council;

(2) A person ordered to carry out an action or to stop an action under subsection (1) shall be served with that order and shall comply with that order at that person's own expense."

Q. Does the Appellant have a permit from the Town for the signage he erected on his property?

A. The Town has advised the Board that the Appellant does not have a permit for the signage on his property.

The Town has further advised the Board that the Appellant has submitted an application for the erection of the signage; however the Town is awaiting a decision from the Board on the Appellant's appeal prior to making any decision on the application

Q. Does the Town of Victoria have the authority to issue an Order for removal of signage placed on a private residential property without a permit from the Town?

- A. Yes. Section 404 (1) (h) of the Municipalities Act, 1999 gives the Town the authority to issue an order where a person construct a sign without permit.

"404. Council Orders

(1) A council may make an order that

(h) a person stop construction of, remove or repair a sign erected without a permit or not in accordance with the terms of a permit or a regulation of the council;

(2) A person ordered to carry out an action or to stop an action under subsection (1) shall be served with that order and shall comply with that order at that person's own expense."

BOARD'S CONCLUSION AND DETERMINATIONS

In arriving at its decision, the Board reviewed the submission and comments given by parties present at the Hearing, along with the technical information and written materials submitted by all parties. The Board is bound by Section 42 of the Urban and Rural Planning Act, 2000 and therefore must make a decision which complies with the applicable legislation, policy and regulations.

The Board concludes that the Town of Victoria had the authority under the Section 197 of the Municipalities Act, 1999 to issue the Order made on October 6, 2020 to Ed Cole to remove signage located on his property at 65-73 Main Highway East, Victoria. 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.

Under Section 42 (10)

In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

In this case the Board confirms that the Town of Victoria acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Victoria Municipal Plan and Development Regulations and the Municipalities Act, 1999 when Council issued this Order.

BOARD'S ORDER

The Board has determined that the Order issued by the Town of Victoria on October 6, 2020 to Ed Cole to remove signage on his property located at 65-73 Main Highway East, Victoria, be confirmed.

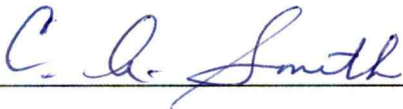
The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this 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, this 1st of December, 2022.



Clifford Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member
Eastern Newfoundland Regional Appeal Board