

LABRDOR REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

Appeal #	15-006-072-020
Appellant(s)	Ian Strachan
Respondent / Authority	Town of Happy Valley Goose Bay
Date of Hearing	March 14, 2023

Board Members

Chair	Karen Oldford
Member	Nina Pye
Member	Carol Best

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	
Representatives for the Authority	Nadine MacAulay, Mark Urquhart
Developer/Applicant	
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Sean McGrath, Planner III, Municipal and Provincial Affairs
Interested Parties	
Start/End Time	9:00 am – 10:25 am

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 Regional Appeal Board (the Board) is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000, the Municipalities Act, 1999 and the

Ian Strachan v Town of Happy Valley Goose Bay 15-006-072-020

Town of Happy Valley-Goose Bay Municipal Plan and Development Regulations, 2021 when it issued an order to Atsanik Lodge Limited for the demolition of a building located at 452 Hamilton River Road on July 9th, 2021 with a compliance time line stated August 21, 2021. The order was issued under Section 404.(1)(f) of the Municipalities Act, 1999.

Presentation's During the Hearing

The following is a synopsis/summary of the verbal presentations 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:

Planner's Presentation

Sean McGrath, Planner III, Municipal and Provincial Affairs, provided details of the legislative framework that the Board may use in making a determination in this matter.

The Town of Happy Valley-Goose Bay issued a demolition order to the Appellant dated July 9th, 2021 pursuant to Section 404.(1)(f) of the Municipalities Act, 1999. The order directed the demolition and removal of a derelict structure on the property of 452 Hamilton River Road, Happy Valley-Goose Bay with a compliance date of August 31, 2021. 452 Hamilton River Road is situated in a Mixed Use Zone under the Town's Future Land Use Map and Land Use Zoning Map. Of note: There is a question regarding title with the subject parcel and resolution to the question of who owns the land has not been resolved.

The parcel and structure situated at 452 Hamilton River Road was originally leased by the The Honorable The Minister of Public Works and Services to Hudson's Bay Co., National

Stores Department, Hudson's Bay House, Winnipeg Manitoba for a period of fifty (50) years in 1978. The lease was never registered with the Newfoundland Registry of Deeds, confirmed by multiple title searches performed by legal counsel hired by the Appellant.

The Appellant purchased the property from Vincent Clowe in 1986 and soon after discovered the parcel was not in freehold title and there was no record of termination of the root lease, transference of the lease to Mr. Clowe with the consent of the Province or Mr. Clowe obtaining a new lease or grant of the lands from the Crown.

The Appellant through individual means and through legal counsel contacted the Director(s) of Realty/Accommodations with the Provinces Works Services and Transportation Division on

multiple occasions to obtain information with regards to the lease status. In continued efforts the Appellants allege to have yet to receive communication from the Province of Newfoundland and Labrador with regards to the status of the root lease issued in 1978. It is not indicated whether the Appellants made application to Crown Lands for the parcel and perused a quieting of titles process.

The Authorities taxation records indicate the Appellant has been paying property tax on the land and structure since at least 2008, however did not provide records back to 1978. Without knowing if the Appellant has clear title to the land, and asserting they do not and the land has reverted back to the Crown, the Appellant submits the Authority erred in its execution of the order and the order should have been served to the Government of Newfoundland and Labrador.

The Appellant:

Ian Strachan offered an oral history of the region and the property in question. Then he described the thirty seven year (37) chronological history of his process of trying to secure freehold title to the property in question, T357 also known as 452 Hamilton River Road. He stated that he applied to purchase through Crown Lands. Although no application was presented by either party. He was never successful in obtaining ownership, however, he did state that when called upon by the RCMP, he secures the building for public safety, because "somebody has to do it." He also understands that he is trespassing when he does so, as he does not own this property.

The Appellant requested that the Board make a recommendation that the front portion of the building on the property, be saved and utilized as a heritage structure, as he stated it is potentially the oldest building in the Happy Valley-Goose Bay.

He stated that the Authority erred in issuing the order to Atsanik Lodge Ltd. as it is not the owner/occupier of the property.

The Authority:

Nadine MacAulay, CAO of the Town of Happy Valley-Goose Bay, referred to the bill of sale from Vincent Clowe to Atsanik Lodge in 1986 as the reference point for determining the ownership of the property at 452 Hamilton River Road, so they could issue the demolition order.

Appeal Board Analysis

Q. Who owns the property at 452 Hamilton River Road?

A. The Board learned at the hearing that there is no clear title to this property. The Appellant has been trying for 37 years to obtain title from Crown Lands.

Q. Who pays taxes on the subject property?

A. The Board learned and heard that the Appellant has been paying property taxes on the property since 2008. Mr. Strachan stated that he started and continued to pay the property taxes so that when he finally received title to the property he would not be faced with a large arrears tax bill.

Q. Who occupies the subject property?

A. At the hearing, the Board learned that the Appellant occupied the property for a few weeks in 1986, placing personal belongings in the building, until he discovered there were issues with the title. At that point he removed his belongings, stopped occupying, and secured the building with padlocks to prevent vandalism and risk of fire.

The Board reviewed Appendix 1 Interpretation of Technical Terms Used in the Development Regulations 2018-2028 for the town of Happy Valley-Goose Bay. "Owner means a person or organization of persons owning or having the legal right to use the land under consideration."

The Board was unable to find a definition for occupier in any of the regulations.

The Board reviewed page 34 of the appeal package of the ORDER issued to the Atsanik Lodge Ltd.

The Board has determined that Atsanik Lodge is not the owner/occupier of the property or the building.

The Board has determined that Ian Strachan is not the owner/occupier of the property or the building.

Q. Why was the ORDER issued?

A. The ORDER was issued because the property was deemed public safety concern by Council, which is not in accordance to regulations of Council. The property is to be demolished and all contents removed on or before August 31, 2021.

Under the Municipal Plan 2018-2028, policy 2.3.3 states: It is a policy of Council to: (6) implement landscaping regulations and promote the upkeep of residential properties, businesses, and institutions, encourage the repair or removal of dilapidated buildings and structures...

Both parties agreed that the building is in a dilapidated state and poses a risk to life safety.

Q. Did the Town have the authority to issue the ORDER to Atsanik Lodge?

A. Section 404 (1)(f) of the Municipalities Act 1999 allows the Authority to issue an order to the owner or occupier of a subject building that is in a dilapidated state or in the opinion of the council is unfit for human habitation or another use for which it is being used.

The Board learned that Atsanik Lodge is not the owner/occupier of the property. Minutes of Committee meetings starting in December 2017 were provided to the Board for Review. At that time the minutes indicate “Owners are trying to clear and obtain title and plan on renovations once acquired.” The same minutes indicate that the property is “not occupied” by the owner. Each consecutive set of Committee Meeting minutes repeats this information until June 2020, when the statement changes to: “There is a legal issue with this land, it is not clear who owns the land, the process is still in the stage of discovering this.” These, and future, minutes continue to indicate the property is “not occupied” by the owner.

Therefore the Board finds the Authority issued this order in error to the Appellant.

Legislation, Municipal Plans and Regulations considered by the Board

Municipalities Act, 1999

Urban and Rural Planning Act, 2000

The Town of Happy Valley-Goose Bay’s Municipal Plan and Development Regulations came into legal effect on July 2nd, 2021

Q. Was Regulation 10 used in issuing the Order? 2.4.1?

A. No. The Authority confirmed that no discretionary powers were used by Council in this matter.

(11) Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision.

10. Discretionary Powers of Authority

(1) In considering an application for a permit or for approval in principle to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) An authority may, in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed in the authority’s regulations as discretionary, permitted or prohibited uses for that area

Q. Can the Board make recommendations?

A. No, the Board is unable to make recommendations on the future use of the property. The Appeals Board is bound by:

Section 42

(3) An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed.

(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.

Appeal Boards' 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 has determined that Town Council of Happy Valley-Goose Bay had the authority to issue an Order; however, the Council erred in issuing this order to Atsanik Lodge Ltd/Ian Strachan, because, to the Board's knowledge with the evidence provided, is not the owner/occupier of the property.

Under Section 42 of the Urban Rural Planning Act 2000, it states:

(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.

BOARD'S ORDER

The Board orders that the decision made by the Town of Happy Valley – Goose Bay on July 9, 2021, under section 404(1)(f) of the Municipalities Act 1999, to Atsanik Lodge Ltd., for demolition of a building located at 452 Hamilton River Road be **reversed**.

In accordance with section 44(3) of the Urban and Rural Planning Act, 2000, the Board further orders the Authority pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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 Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this 8 of March, 2023.



Karen Oldford, Chair
Labrador Regional Appeal Board



Nina Pye, Member
Labrador Regional Appeal Board



Carol Best, Member
Labrador Regional Appeal Board