

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

Appeal # 15-006-072-014

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-014
Appellant(s)	The Vales Development Inc.
Respondent / Authority	Town of Pouch Cove
Date of Hearing	March 18, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Paul Boundridge, MCIP

In Attendance

Representative for the Appellant(s)	Jack Parsons, Curtis Mercer
Representatives for the Authority	Brian Peach, Chief Administrative Officer (CAO)
Secretary to the Boards	Robert Cotter
Technical Advisor to the Board	Elaine Mitchell, MCIP

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 is to determine if the Order issued by the Town of Pouch Cove, on June 25, 2021, to Jack Parsons, of The Vales Development Inc., was in accordance with the Municipalities Act, the Urban and Rural Planning Act, 2000, and the Pouch Cove Municipal Plan and Development Regulations 1992-2002.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Municipalities Act, 1999

- Occupancy and Maintenance Regulations
- Pouch Cove Town Plan and Development Regulation.

Background

In 2003, the Authority passed motions to approve in principle applications for an estate lot subdivision. In 2012, the Authority and 52182 Newfoundland & Labrador Limited entered into a subdivision development agreement. The Vales Development Inc. assumed ownership of the development and accepted responsibility for the completion of the subdivision in accordance with the subdivision development agreement. On June 25, 2021, the Authority issued an Order by e-mail under section 102 of the Urban and Rural Planning Act, 2000 and section 404 of the Municipalities Act, 1999 to correct deficiencies with the subdivision; it was delivered by Registered Mail on June 29, 2021 and was ratified by Council on July 5, 2021. This Order was appealed by Mr. Parsons (Vale) on July 2, 2021.

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:

The role of the Regional Appeal Board is to determine if the Town of Pouch Cove (the Authority) acted in accordance with the Urban and Rural Planning Act, 2000 and the Pouch Cove Municipal Plan and Development Regulations when it issued an Order to The Vales Development Inc. on June 25, 2021. The Order was made under section 404 of the Municipalities Act, 1999 and section 102 of the Urban and Rural Planning Act, 2000 and stated:

From this investigation, the Town of Pouch Cove has determined that The Vales Development Inc. is in breach of its obligations under the Subdivision Agreement and the Town of Pouch Cove Municipal Plan and Development Regulations. As a result, the Town of Pouch Cove will no longer issue building permits for the parcels of land identified in this order until The Vales Development Inc. has completed all actions required to comply with these obligations in accordance with section 74 of the 2003-2013 Town of Pouch Cove Development Regulations.

The Order outlined 6 items which the Authority considered to be deficient:

- Fire hydrant
- Ditching
- 1 Acre Park with Trail Link
- Unsightliness of 12-14 Mountain Crescent
- Lot Landscaping
- Driveway Paving

This appeal is based on the following section of the Act: Section 42.(1) the issuance of a stop work order.

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

- (a) an application to undertake a development;
- (b) a revocation of an approval or a permit to undertake a development;
- (c) the issuance of a stop work order; and
- (d) a decision permitted under this or another Act to be appealed to the board.

The Appellant is appealing the decision of the Authority to issue an order on June 25, 2021 based on the following grounds:

- The stop work order addressed 6 categories and agreements had been made with the town to address the deficiencies;
- The Town is exploiting the cooperation given by The Vales Development Inc.; and
- The Vales Development Inc. has demonstrated their cooperation to work with the Town to resolve issues.

The Appellant:

Mr. Parsons commented that:

- The Town took ownership of the infrastructure (roads and ditching) in June 2013, and in April 2013 agreed to accept a smaller public open area (park) provided the developer constructed a trail, and had agreed to deal with the matter of the hydrant during development of phase 2 of the development. There were no written records

maintained by the Town to confirm what was discussed and agreed to, and that the Appellant's recollection of events is corroborated by a sworn affidavit signed by the former Town Mayor Bennet.

- The authority to enforce the conditions rests with the Town, not the Developer/Appellant and that the Developer's/Appellant's obligation was solely to ensure that purchasers were informed of the obligations concerning installation of landscaping and hard-surfaced driveways within prescribed time limits.
- The Developer questioned why the Town had acted to issue a Stop Work Order on June 25, 2021 when the two parties were in active discussions to resolve the deficiencies and had subsequently entered into a Compliance Agreement on December 17, 2021 to outline in detail how the deficiencies would be addressed.
- The Developer understands that the Stop Work Order remains in place as it has not been rescinded by Council at a Regular Public Meeting of the Town Council.
- Permits have been issued to individual homeowners of some of the identified properties by the Town subsequent to issuance of the Stop Work Order.

The Authority:

- Mr. Peach advised the Board that the Town Council does not believe that the subdivision development is in agreement with the Town's Development Regulations.
- The Town feels that it has the authority under the *Municipalities Act* and the *Urban and Rural Planning Act* to issue the Stop Work Order as the requirement to enter into a Subdivision Agreement was one of the conditions of Council's approval of the subdivision development project.
- The Town is of the opinion that the Stop Work Order of June 25, 2021 has been lifted as a result of the execution of the Compliance Agreement entered into between the Developer and the Town.
- The Town has delegated to Mr. Peach, as Municipal Enforcement Officer, the authority to issue a Stop Work Order and this extends to the ability to rescind/revoke the Stop Work Order. Therefore, it was/is not necessary for the revocation of the Stop Work Order to be brought back to a Regular Public Meeting of Council.

BOARD ANALYSIS

Q: Does the Town have the authority under the Municipalities Act and the Urban and Rural Planning Act to make and issue a Stop Work Order?

R: Yes.

Section 102 of the *Urban and Rural Planning Act, 2000* states that an Order may be issued where a person has undertaken development contrary to a Municipal Plan or Development Regulations.

102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state. Section 404.(1) of the Municipalities Act identifies the circumstances which justify the issuance of a Stop Work Order and Section 404.(6) set out how a Stop Work Order shall be issued.

Section 404.(1) of the Municipalities Act contains a number of circumstances where Council may issue an Order.

“Council orders

404. (1) A council may make an order that

(a) a vehicle or stand used for the sale of food or goods and not operating in accordance with a permit issued by the council be removed;

(b) the owner or occupier of a property stop construction, fill in, remove or alter a privy, septic tank, sewer, sewer system, well or water system

(i) not constructed in accordance with or under a permit issued by that council, or

(ii) located or constructed so that it is or may be a danger to public health;

(c) the owner or occupier of a parking lot constructed or operated without a permit or not in accordance with the regulations of council and the terms of a permit, to stop operations and return the property to its original state or maintain it;

(d) a place of entertainment not operating in accordance with a permit or operating without a permit comply with that permit and regulations made by the council with respect to that place or that the place of entertainment stop operating;

(e) the person pull down, stop construction, remove, fill in, alter or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has

(i) erected, extended, repaired, relocated or demolished,

(ii) changed the use of, or

(iii) after a 6 month vacancy, newly constructed or reoccupied,

a building without a permit as required under section 194;

(f) where a building is in a dilapidated state, or is, in the opinion of the council, unfit for human habitation, or another use for which it is then being used, or is a public nuisance, the owner or occupier is to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state, or make the disposition or alteration of the building that the order directs;

(g) a building constructed on heritage lands be removed and the lands restored and that the exterior of a heritage building or structure not altered in accordance with a permit be restored as required by the council;

(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;

(i) a fence, building, steps, erection or other object which projects into or over land reserved for a public highway or sidewalk be removed;

(j) a person who causes a nuisance contrary to the regulations of the council cease causing that nuisance;

(k) the construction, filling in or removal of a ditch, drain or culvert or connection to a storm drainage system constructed or made without a permit or not in accordance with the terms of a permit or regulations of the council be stopped; and

(l) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.

(6) A council may delegate to an official or employee of the council the power to issue orders under this section."

Q: Are the *Municipalities Act* and the *Urban and Rural Planning Act* the correct mechanisms for issuing the Stop Work Order that was applied to the Vales Residential Development by the Town on June 25, 2021?

R: No. The Board notes that the Order issued by the Town does not specify which sub-section of the *Municipalities Act* under which the Order was issued. The Board has determined that none of the subsections of Section 404.(1) of the *Municipalities Act* apply to the circumstances outlined in the Town's Order.

Further, the Board has determined that an Order issued under Section 102 of the *Urban and Rural Planning Act* is not an appropriate mechanism to enforce an existing contractual agreement (the Vales Residential Development Subdivision Agreement) between the Vales Development Inc. and the Town of Pouch Cove, especially where the issues identified in the Order do not specifically/explicitly relate to non-compliance with a development approval or a development proceeding without the Town's approval. In the Board's determination, the Town is incorrectly using the Stop Work Order to enforce a Subdivision Agreement executed between the Town and the Appellant. The items identified in the Order pertain to the Subdivision Agreement rather than any approvals issued under the Town of Pouch Cove Municipal Plan and Development Regulations.

Section 102 of the *Urban and Rural Planning Act* states that an Order may be issued where a development is commenced contrary to a Municipal Plan or a Development Regulations. The Town must identify where the Vales Residential Development is contrary to the Town of Pouch Cove Municipal Plan and Development Regulations to justify the issuance of an Order under Section 102 of the Act; the Board has determined that the Town has not adequately demonstrated this.

Q: Has the Stop Work Order issued by the Town on June 25, 2021 been rescinded?

R: The executed Compliance Agreement contains a clause stating that the Stop Work Order shall remain in effect until the listed deficiencies have been satisfactorily addressed/remedied with the terms of the Compliance Agreement.

Section 404(3) of the *Municipalities Act* requires that a Stop Work Order be rescinded by Council at a Public Meeting of Council. It does not allow for the delegation of this authority by a Town official or employee. There is no evidence that the Town has rescinded the Stop Work Order at a Public Meeting of Council. In the Board's view, the Stop Work Order remains in effect.

BOARD'S CONCLUSION AND DETERMINATIONS

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 the Order issued by the Town of Pouch Cove, on June 25, 2021, to Jack Parsons, of The Vales Development Inc., was *not* in accordance with the Municipalities Act nor the Urban and Rural Planning Act, 2000, nor the Pouch Cove Municipal Plan and Development Regulations. That is to say that neither the Municipalities Act nor the Urban and Rural Planning Act, are the correct mechanisms for the Town's efforts to attempt to enforce an existing contract (the Subdivision Development Agreement) between the Town and the Appellant.

BOARD'S ORDER

The Board orders that the decision made by the Town of Pouch Cove on June 25, 2021 to issue a Stop Work Order to The Vales Development Inc. for the Vale residential development at Vale Drive and Mountain Crescent, be reversed.

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

The Board further orders the Authority to pay the Appellant in the amount equal to the Appeal Fee of \$200.00 plus HST.

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 22 March, 2022.

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Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board

A handwritten signature in blue ink, appearing to read "Lisa Slaney", is written over a horizontal line.

Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board

A handwritten signature in blue ink, appearing to read "Paul Boudridge", is written over a horizontal line.

Paul Boudridge, MCIP, Member

Eastern Newfoundland Regional Appeal Board