

West Newfoundland Regional Appeal Board

Appeal #	15-006-064-047
Board Members	Chair: Lloyd Walters Member: Boyd Noel Member: Derrick House
Date of Hearing	October 15, 2020

In Attendance

Appellant	Kelly Rubia and Michel Hasty
Respondent/Authority	Town of Channel-Port aux Basques
Representatives for the Authority	Leon MacIsaac, Town Manager Mayor John Spencer
Secretary to the Board	Robert Cotter
Technical Advisor to the Board	Elaine Mitchell, MCIP

The provision for appeal is enabled under s. 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the West Newfoundland Regional Appeal Board is to determine if the Town of Channel-Port aux Basques acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999* and the Channel-Port aux Basques Development Regulations when it issued an order to Ms. Rubia and Mr. Hasty (the Appellants), dated November 20, 2019, ordering repairs to the municipal water supply service and repair of affected adjacent properties within 21 days of service of the order.

Validity

Section 42 (4) and (5) of the Act state:

42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

42. (5) An appeal shall be made in writing and shall include

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

According to the documents provided, the appeal was filed on February 20, 2019. The submission included the grounds of appeal, an appeal summary form and the required fee.

The order was dated November 20, 2019.

Planner's Technical Analysis

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Channel-Port aux Basques Municipal Plan and Development Regulations

Procedural Compliance

Section 106 (1) of the *Municipalities Act, 1999* requires that an order be personally served or sent by registered mail.

406. (1) A notice, order or other document required to be given or served under this Act or the regulations is sufficiently given or served where delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the applicable council.

Section 107 (1) of the *Urban and Rural Planning Act, 2000* requires that an order be delivered personally or sent by registered mail.

107. (1) Unless otherwise stated in this Act, a notice, order or other document required to be given, delivered or served under this Act is sufficiently given, delivered or served where delivered personally or sent by registered mail addressed to the person at the latest known address of that person.

Section 404 (1) (6) of the *Municipalities Act, 1999* allows Council to delegate the authority to issue orders to an employee of Council.

404 (1) (6) A council may delegate to an official or employee of the council the power to issue orders under this section.

Section 109 (3) of the *Urban and Rural Planning Act, 2000* 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.

109. (3) An employee of a council or regional authority may issue an order under section 102.

(4) An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.

Presentations during the Hearing

The Board asked for arguments with respect to the validity of the appeal with regards to legislative time lines.

Appellant

The Appellant stated that the order was received but that they could not comply within the time line specified in the order because of weather conditions and equipment availability. As a result, the Appellant requested an extension to the time line which was granted without a time limit being specified by the Authority. Subsequently, the Appellant received a letter from the Authority giving January 31, 2020 as the date for completing the work. At this point, the Appellant proceeded to file the appeal. The Appellant acknowledged receiving the order by registered mail in late November or early December.

Authority

The Authority indicated that it issued an order on November 20, 2019. Before issuing the order, the Authority had issued letters requesting compliance. The Authority had extended the time line for compliance with the order and sent a letter requiring compliance by January 31, 2020. The Authority confirmed that it had completed the work. The Authority further stated that as the order was not complied with, the Town completed the work and, as a result, the order was no longer in effect.

Conclusion

What is the issue under consideration by the Board?

The matter under consideration by the Board is whether the appeal filed on February 21, 2020 was filed within the time lines prescribed in section 42 (4) of the Act.

When did the Appellant become aware of the Authority's order?

The Board heard that the order was dated November 20, 2019 and was sent by registered mail by the Authority. The Appellant acknowledged receipt of the order sent by registered mail.

The Board determined that the order advised the Appellant of their right of appeal "within 14 days of your receipt of this order". The order also advised of the procedure to file an appeal.

When did the Appellant file their appeal?

The Appellant filed their appeal on February 21, 2020.

Decision

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 Appellant failed to file their appeal within the prescribed period. Section 42 (4) of the *Urban and Rural Planning Act, 2000* states that:

"an appeal made under this section shall be filed with the appropriate Board not more than 14 days after the person who made the original application appealed from has received the decision being appealed".

Therefore, the Board has determined that it does not have the jurisdiction to hear the Appellant's appeal.

In addition, the Board heard that since the work has been completed by the Authority, the Authority no longer regards the order as being in effect.

Order

Based on the information presented, the Board has determined that it does not have the authority to hear the Appeal and thereby, the Board cannot confirm, reverse or vary the Town Council's decision to issue an order dated November 20, 2019 ordering repairs to the municipal water supply service and repair of affected adjacent properties within 21 days of service of the order at 17 Harry's Lane, Channel-Port aux Basques.

The Authority and the Appellant are bound by this decision of the West Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West 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 Deer Lake, Newfoundland and Labrador, this 16th day of October, 2020.



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Boyd Noel, Member
West Newfoundland Regional Appeal Board



Derrick House, Member
West Newfoundland Regional Appeal Board