

West Newfoundland Regional Appeal Board

Appeal #	15-006-064-025
Appellant	Wade Reid
Respondent / Authority	Town of Roddickton-Bide Arm
Board Members	Chair: Lloyd Walters Member: Boyd Noel Member: Derrick House
Date of Hearing	October 15, 2020

Also in Attendance

Solicitor for the Authority	G. John Samms
Representatives for the Authority	Paula Snook-Randell, Town Manager Carrie Compton, Town Clerk
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	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 Roddickton-Bide Arm acted in accordance with the *Municipalities Act, 1999* when an order was issued to Wade Reid (the Appellant) on July 30, 2019 which ordered that solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties be removed from 60-62 Lower Road, Roddickton-Bide Arm.

Background

The Town issued an order, dated July 22, 2019, concerning a building and property situated at 60-62 Lower Road, Roddickton-Bide Arm to Wade Reid (the Appellant) ordering that:

- the building be pulled down, removed, filled in or otherwise destroyed and the site restored to its original condition; and
- solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties be removed from the property.

The order required the work to be completed within 14 days of the date that the order was served. The order also outlined the consequences of not complying with the Order, that the Order could be appealed and how to file an appeal. The appellant appealed this order.

The July 22, 2019 order was withdrawn by the Town and a new order was issued on July 30, 2019. The July 30, 2019 order ordered that:

- solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties be removed from the property at 60-62 Lower Road.

Correspondence from the Town Clerk confirmed that the July 30, 2019 order was intended to address the condition of the property.

The July 30, 2019 order required that the clean up of the property occur within 14 days of the date that the order was served. The order also outlined the consequences of not complying with the Order and that the Order could be appealed and how to file an appeal.

The Appellant confirmed that he wished to appeal the order dated July 30, 2019. As the previous order was withdrawn by the Town, the appeal with respect to the July 22, 2019 order is not under consideration.

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 August 14, 2019. The Appellant's submission included grounds of appeal, the completed appeal summary form and the required fee. In the appeal summary form, the appellant indicates that he received the order on July 26, 2019 but the revised order, dated July 30, 2019, had not yet been issued.

The order must be served as prescribed by section 406 (1) of the *Municipalities Act, 1999*. The appellant is the individual named in the order. The appeal must be filed not more than 14 days after the order was served or posted.

Grounds of Appeal

This appeal is based on the following section of the Act: Section 42. (1) (d) (s. 408(1) of the *Municipalities Act, 1999*).

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.

Section 408 (1) of the *Municipalities Act, 1999* states:

408. (1) A person aggrieved by an order made under subsection 404(1) may, within 14 days of the service or posting of the order, appeal to the appropriate regional appeal board established under the Urban and Rural Planning Act, 2000 and the board may make an order with respect to the matter that appears just.

The Appellant appealed the order based on the following grounds:

1. The order was unjustified;
2. The Town did not request compliance before issuing the order; and
3. The condition of the property is similar to other properties on the water front and in the town.

The Board's authority is restricted to those grounds with respect to compliance with legislation and regulations. The Board will determine whether Council's decision to issue an order to the Appellant on July 30, 2019 ordering that solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties be removed from 60-62 Lower Road, Roddickton-Bide Arm complies with the *Municipalities Act, 1999*.

Planner's Technical Analysis

The applicable legislation with respect to this appeal is:

Municipalities Act, 1999

Section 404 (1) of the *Municipalities Act, 1999* gives Council the authority to issue orders to address specified matters including dilapidated buildings and solid waste, noxious substances or things that are a public hazard or adversely impacting surrounding properties.

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

(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;...

(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.

Procedural Compliance

Section 406 (1) of the *Municipalities Act, 1999* requires that an order be delivered personally or sent by registered mail or if it cannot be personally serviced or sent by registered mail, posted in a conspicuous place on the subject property.

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...

(3) Where an order which can be made under this Act cannot be given or served under either subsection (1) or (2), that order is considered served if it is posted in a conspicuous place on the property to which the order relates.

The order was authorized in a motion of Council, at a special meeting held on July 10, 2019. Section 24 of the *Municipalities Act, 1999* provides for Mayor or two Councillor to request that the Town Clerk call a meeting and that a public meeting be held at least once a month.

24. (1) The mayor or 2 councillors shall request that the town clerk call and there shall be held, at least once a month, a meeting of the town council to which the public shall be admitted.

(2) A meeting called and held under subsection (1) shall be for the dispatch of general business.

Presentations during the Hearing

Planner

During the hearing, the Board heard technical details about the requirements for issuing an order under the *Municipalities Act, 1999*. The Board learnt that section 404 (1) (l) of the *Municipalities Act, 1999* allows Council to issue an order ordering that solid waste and noxious substances be removed from a property. The Board also learnt that section 406 (1) of the *Municipalities Act, 1999* requires that an order be delivered personally or sent by registered mail or if it cannot be personally serviced or sent by registered mail, posted in a conspicuous place on the subject property.

The solicitor for the Authority noted that the Authority has provided the motion from the Council meeting of July 10, 2019 authorizing the issuance of the order to the Board. The Chair stated that this minute was provided to be Board the day before the hearing and, as a result, this information could not be addressed in the technical report. The Secretary of the Appeal Board requested this information be provided by the Authority at the time the appeal was filed.

Appellant

The Board learned that the Appellant filed an appeal because he felt that the Authority had acting in a heavy handed fashion and that he had not received any letters requesting clean up of his property on Lower Road. He acknowledged that there was machinery on the subject property which he hoped to sell. He noted that he has owned the property for 12 years and it is in a similar condition to other properties on Lower Road, Roddickton-Bide Arm. He had no previous indication that the Authority had concerns about the condition of his property.

The Appellant questioned whether the order was authorized by the motion passed at the July 10, 2019 Council meeting. He noted that the wording of the motion differed from the contents of the order. He argued that the motion did not authorize the order and that a further motion was required before the July 30, 2019 order was issued.

Authority

The Board heard from the solicitor for the Authority that the Appellant had outlined his grievances with regards to Council's decision but these do not represent legal grounds for an appeal. He stated that the Town has been provided with discretionary authority to issue an order under the *Municipalities Act, 1999*. He referred the Board to photographs provided by affidavit showing the condition of the subject property. He argued that there is solid waste on the subject property which should be removed or stored out of public view. He stated that the Authority is given the power to act in such circumstances under section 404 of the *Municipalities Act, 1999*.

The Authority provided evidence that the order was sent to the Appellant by registered mail as attested in the affidavit provided.

The Board learnt that the motion was made at public meeting of Council. The Town Manager stated that Council has the authority to call a special meeting outside of regularly scheduled meetings and such a meeting is open to the public. She stated that it is the Authority's normal practice to give public notice of these meetings through its Facebook page. She indicated that she could not confirm whether public notice was given for this particular meeting.

The solicitor for the Authority addressed the argument made by the Appellant that the motion passed at the July 10, 2019 appeal did not authorize the issuance of the order. He responded indicating that the motion was general in nature, covered a number of properties and was made in accordance with the *Municipalities Act, 1999*. He noted that the order contained the specific provisions from the legislation.

The solicitor for the Authority argued that Council made a legitimate order passed by resolution at a public meeting of Council. He stated that the order was issued in accordance with legislation and Council had been given the authority to issue such orders under the *Municipalities Act, 1999*.

Conclusion

What is the matter under consideration?

The matter under consideration by the Board is whether the Town of Roddickton-Bide Arm acted in accordance with the *Municipalities Act, 1999* when it issued an order Wade Reid (the Appellant) on July 30, 2019 requiring the removal of solid waste, noxious substances and substances and things which may be a hazard to public health and safety or which adversely affects surrounding properties within 14 days. For details of the sections quoted below, please refer to the planner's technical analysis report.

Does the Authority have the power to issue an order?

Yes. Section 404 (1) of the *Municipalities Act, 1999* gives the Authority the power to issue an order requiring the removal of solid waste, noxious substances and substances and things which may be a hazard to public health and safety or which adversely affects surrounding properties from real property.

Was the order issued in accordance with legislation?

Yes. The affidavit provided by the Authority showed that the order was sent by registered mail in accordance with section 406 (1) of the *Municipalities Act, 1999*. The Appellant acknowledged receipt of the order.

Was the motion passed at a duly constituted meeting of Council?

Yes. The motion authorizing issuance of the order was made at a meeting of Council on July 10, 2019. Section 24 of the *Municipalities Act* allows the Mayor or two councillors to call a meeting and the public shall be admitted to such a meeting. Section 213 of the *Municipalities Act* states:

213. (1) A meeting of a council shall be open to the public unless it is held as a privileged meeting or declared by vote of the councillors present at the meeting to be a privileged meeting.

The Board has determined that Council has the authority to call a public meeting outside of its regular schedule under section 24 of the *Municipalities Act, 1999* and did so on July 10, 2019. The Board has determined that the motion to issue the order to the Appellant was adopted at duly constituted meeting of Council.

Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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.

The Board determined that the Authority has the power to issue an order under section 404 (1) of the *Municipalities Act, 1999*. The motion authorizing the issuance of the order was made at a duly consisted meeting of Council and the order was served in compliance with the *Municipalities Act, 1999*.

Board's Order

Based on the information presented, the Board orders that the order dated July 30, 2019 by the Town of Roddickton-Bide Arm issued Wade Reid (the Appellant) requiring the removal of solid waste, noxious substances and substances and things which may be a hazard to public health and safety or which adversely affects surrounding properties at 60-62 Lower Road, Roddickton-Bide Arm within 14 days be confirmed.

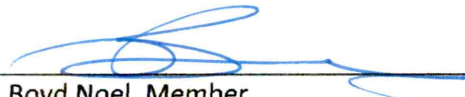
The Respondent and the Appellant(s) are bound by this decision of the West Newfoundland Regional Appeal Board.

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).

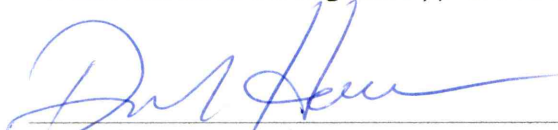
DATED at DEER LAKE, Newfoundland and Labrador, this 16th day of October, 2020.



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Boyd Noel, Member
West Newfoundland Regional Appeal Board



Derrick House, Member
West Newfoundland Regional Appeal Board