

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-037
Appellant(s)	Ed Cole
Respondent / Authority	Town of Victoria
Date of Hearing	June 7, 2021

Board Members

Chair	Clifford Johnston
Member	Robert Warren
Member	Carol Ann Smith

Also in Attendance

Edward Cole	Absent
Representatives for the Authority	Shelly Butt, Town Clerk-Manager; Giles Ayres, Lawyer for the Town of Victoria
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Tolulope Victoria Akerele
Interested Parties	

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 is to determine if the Town of Victoria made errors when it issued an order to Ed Cole on May 27, 2019 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 when Council issued this Order.

Presentations During the Hearing

The following is a summary of the key points of the verbal representations made to the Appeal Board at the Hearing. The Board has considered these verbal representations along with the written submissions from the Appellant and the Authority and the Technical Report in making its decision on this Appeal.

1. Planner's Presentation

The Town of Victoria issued a Removal Order on October 6, 2020 (the Order) to Mr. Edward Cole. The Order, regarding an inappropriate signage erected without permit on property located at #65 -73, RR 70, Highway East, Victoria was delivered by a legal document server on October 7, 2020. The Order outlined the following:

- That the Appellant erected improper signage on his property without a permit,
- That s.197 of the *Municipalities Act, 1999* provided that a person shall not erect a sign without a permit from Town Council;
- That the *Town's Development Regulations* prohibits development without a permit within a protected area;
- That signage on property constitute a development and there was no application to erect signage on property;
- That s. 404(1)(h) of the *Municipalities Act, 1999* and s.102(1) of the *Urban and Rural Planning Act, 2000* gives Council the authority to order "that the person remove a sign erected without a permit";
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

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.

The applicable legislation with respect to this appeal is:

- 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 Sherriff.
- 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.

2. Appellant's Presentation

The Secretary to the Appeal Board was in contact with the Appellant, Ed Cole, by email prior to the Appeal Hearing date most recently as June 4, 2021. Mr. Cole had requested the Secretary to make special arrangement for a Skype call for Mr. Cole to be able to participate in the Appeal Hearing on June 7, 2021. The Secretary made this arrangement for Mr. Cole; however Mr. Cole did not call in to participate in the Hearing, also he did not advise the Secretary that he would not be in attendance.

The Board took a short recess to consider whether to proceed with the hearing in Mr. Cole's absence. Prior to taking the recess, the Board asked for the Town's opinion on a possible postponement. The Town requested that the hearing proceed.

Upon completion of the recess, the Board decided that the hearing would proceed in Mr. Cole's absence. It is the Board's determination that Mr. Cole was provided with adequate notice of the Appeal Hearing Date, and reasonable technical opportunity to participate.

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.

3. Authority's Presentation

- Ms. Butt advised the Board that the Town became aware of the signage on the Appellant's property approximately 2 years ago.
- Signage involves propaganda against the Town, the Provincial Government and Federal Government.
- 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.
- Mr. Ayres 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.

Board's Analysis

- 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.

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.

Board's Decision

In arriving at its decision, the Board reviewed the submission 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 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.

Board's Order

The Board orders 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).

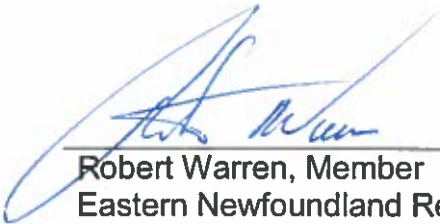
DATED at St. John's, Newfoundland and Labrador, this June 7, 2021.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal
Board