

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-039
Appellant(s)	Gary Churchill
Respondent / Authority	Service NL
Date of Hearing	June 9, 2021

**Board Members**

Chair	Cliff Johnston
Member	Carol Ann Smith
Member	Robert Warren

**In Attendance**

Appellant	Gary Churchill
Representatives for the Authority	David Hearn, Solicitor, Dept. of Justice Justin Kennedy, Environmental Health Officer, Service NL
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
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 whether the appeal filed by Gary Churchill (the Appellant) against an order issued to him by Service NL (the Authority) on October 19, 2020 under the *Sanitation Regulations*, made under the *Health and Community Services Act*, to remove a pit privy on property located near Gallows Cove Rd., Witless Bay, is in accordance with section 42 of the *Urban and Rural Planning Act, 2000*.

## **Postponement Request**

Mr. Churchill emailed the secretary to the Board on June 8, 2021 requesting a postponement for the following reasons:

*“Good morning Mr. Cotter,*

*This is a request for a postponement of the hearing scheduled for June 9th. There have been several recent developments with regard to this appeal that will be important for the Board to consider.*

*1. The Town is moving forward with road development and an appeal of that development is scheduled for June 30th. Assuming the road is completed after June 30th; we will have no need for the privy as a standard septic system will be possible with the new road access.*

*2. We have also learned through the paperwork supplied by the technical advisor that we have to first make an application to the Town for a septic system for Service NL approval.*

*Pending the outcome of the above actions, it may be unnecessary for the Board to hear the appeal and we will withdraw our appeal, or we will provide additional information for the Board to consider at that time.*

*Sincerely,*

*Gary Churchill”*

At the Hearing, Mr. Churchill summarized his rationale for requesting the postponement. Representatives for the Authority indicated to the Board that they did not feel the Board has jurisdiction to hear the Appeal, and therefore asked the Board to not grant the postponement.

Following a short adjournment to discuss the request for postponement, the Board denied the Appellant’s request on the basis that the Board did not accept his rationale as adequate reasons for postponing the Hearing.

## **Jurisdiction**

Does the Board have jurisdiction to hear this Appeal?

Section 42 (1) of the Urban and Rural Planning Act, 2000 states:

*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 4 of the *Sanitation Regulations* states that a person shall not install a sewage system unless that person has received a certificate of approval from an inspector and that the sewage system cannot be covered until a final approval certificate is obtained.

*4. (3) A person shall not install or cause to be installed a sewage system or portion of a sewage system unless the person installing or causing the installation of that system has received a certificate of approval from an inspector and, where required, approval has been obtained from all controlling agencies.*

*(9) A person shall not cover a sewage system, or cause it to be covered, without having first obtained a final approval certificate.*

The *Sanitation Regulations* are made under the *Health and Community Services Act*. Section 9 gives authority for issuance of an order to pull down, fill in or otherwise destroy the facility.

*Removal of sewage facilities*

*9. (1) Where a person erects, constructs, renovates, or extends or causes to be erected, constructed, renovated, or extended a building or sewage facility in a restricted area, without obtaining a permit under subsection 8(3) or otherwise than in accordance with the terms and conditions mentioned in, attached to or prescribed in respect of a permit issued under that subsection, the building or sewage facility so erected, constructed, renovated or extended shall be considered a public nuisance, and the minister may order the owner or builder or maker of it to pull down or fill in or otherwise destroy the building or facility or to make the disposition or alteration of it that the minister considers necessary, within 3*

*days after the service of the order upon the owner, builder or maker, or within a shorter period that the minister may prescribe.*

*(2) Where the owner, builder or maker of a building or sewage facility erected, constructed, renovated or extended as described in subsection (1) cannot be found in the restricted area in which the building or facility is situated, the minister may serve an order made under that subsection by posting it in a conspicuous place on or near the building or facility.*

*(3) Where an order of the minister made under subsection (1), whether served personally under that subsection or by posting it in accordance with subsection (2), is not complied with or is not complied with to an extent that the minister considers reasonable, within 3 days of the service of it or within a shorter period that the minister may designate, the minister may execute the order through a person he or she appoints for the purpose and the minister may recover the cost of execution of the order as a civil debt from the first person upon whom the order was served.*

*(4) A person*

*(a) on whom an order made under subsection (1) is served personally, who fails to comply with it; or*

*(b) who interferes with the execution of an order made under subsection (1) or subsection (3) is guilty of an offence.*

The *Health and Community Services Act* provides no appeal mechanism and does not enable the Regional Appeal Boards under the Urban and Rural Planning Act, 2000 to hear appeals of orders issued under the *Sanitation Regulations* or other regulations made under this legislation.

The order issued under the *Sanitation Regulations* is not an order under section 404 of the *Municipalities Act, 1999* or section 102 of the Urban and Rural Planning Act, 2000.

Section 404 of the *Municipalities Act, 1999* outlines circumstances when a Council may issue an order and section 408 (1) of the *Municipalities Act, 1999* states that a person aggrieved by an order made under section 404 may appeal to the appropriate regional appeal board.

#### *Appeal*

*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.*

Section 102 (1) of the Urban and Rural Planning Act, 2000 states that where a person has undertaken development contrary to a plan or development regulations, Council may issue an order.

*Order*

*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 42 of the Urban and Rural Planning Act, 2000 as quoted above states that a person aggrieved of a decision that, under the regulations, may be appealed may appeal that decision to the appropriate board. The regulations, in this context include either municipal development regulations or regulations made under the Urban and Rural Planning Act, 2000 Act by the Minister. This provision does not apply to an order made under the *Health and Community Services Act*.

The Town of Witless Bay did not issue the Order under either the Municipalities Act, 1999, the Urban and Rural Planning Act, 2000 Act or regulations made under the Urban and Rural Planning Act, 2000. Rather Service NL issued the Order under the Sanitation Regulations.

## Board's Decision

After reviewing the information presented to this Board, the Board concludes that it does not have jurisdiction to hear this Appeal.

## Board's Order

The Board has determined that it does not have the jurisdiction to hear the Appeal filed by Gary Churchill (the Appellant) against an order issued to him by Service NL (The Authority) on October 19, 2020 under the Sanitation Regulations to remove a pit privy located on property located near Gallows Cove Road, Witless Bay.

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 9, 2021.



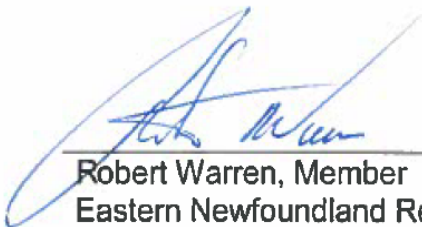
---

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

