

Central Newfoundland Regional Appeal Board

Appeal #	15-006-054-002
Appellant(s)	George Yates
Respondent / Authority	Town of Springdale
Date of Hearing	September 15, 2021

Board Members

Chair	Bill Carter
Member	Charles Irving
Member	David Oxford
Member (Observer)	Allan Scott
Member (Observer)	Rebecca Redmond MacLean

Also in Attendance

Solicitor for the Appellant(s)	Robert Regular
Representatives for the Appellant(s)	
Representatives for the Authority	Shawn Colbourne, Town Solicitor Jason Sparkes, Chief Administrative Officer Chris Sargent, P.Eng. Mario MacDonald, P.Eng.
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	
Time Start/End	9:00 am/3:12 pm

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 Town of Springdale acted in accordance with section 404 (1) (f) of the *Municipalities Act* when it issued an order to Mr. George Yates on April 12, 2018 ordering that a building at 57 Bayview Heights be demolished within fourteen (14) days.

Presentations During the Hearing

1. Planner's Presentation

Elaine Mitchell, MCIP, summarized the technical report and outlined the provisions of section 404 of the *Municipalities Act, 1999* with respect to the Authority's ability to issue orders noting in particular subsections 404 (1) (f), (5) and section 406.

2. Appellant's Presentation

The Appellant outlined the chronology related to this matter. Mr. Yates acknowledged issues with the condition of the property but stated that it was his intention to make repairs and the materials necessary to replace the roof. He indicated that he used the building for personal storage. He stated that he had previously obtained a permit and attempted to obtain a new permit in 2017 to carry out repairs to the building. Mr. Yates stated that the building condition has deteriorated because he has not been able to obtain a permit to carry out necessary repairs since 2017.

The Appellant stated that the Town showed bias because they hired an engineering firm to undertake a structural assessment which had not been done for other buildings. The Appellant noted that Council had considered expropriation or demolition and that he concluded that Council had motives to acquire his property. He stated that there was a bias of Council and by the Chief Administrative Officer because of family connections to the owner of the seniors complex on Bayview Heights.

The Appellant stated that building standards of 2016 cannot be applied to a building that was building in the 1950s.

The Appellant's solicitor, Mr. Regular, concluded by stating that property rights are important and that the decision of the Town to order demolition of this building has serious implications for Mr. Yates. He suggested that the Council should have worked with Mr. Yates in a proactive manner to resolve the issues before proceeding with the demolition order. Mr. Regular indicated that Council was careless in the use of its authority.

3. Authority's Presentation

Mr. Colbourne, the Town's solicitor, explained that section 404 (1) of the *Municipalities Act, 1999* gives the Town the authority to issue an order. He stated that the Town has attempted to resolve the issues with Mr. Yates and had taken the additional steps to obtain a structural assessment of the building. Based on this report and the failure of Mr. Yates to address issues with the building, the Town had justification to issue the order. Mr. Colbourne also noted that Council has the authority to determine whether an order was appropriate and that the Board cannot insert its discretion for that of Council.

Mr. Jason Sparkes, Chief Administrative Officer, outlined a chronology of this matter. Mr. Sparkes indicated that he had no conflict of interest and that it was the role of Council to make decisions. Mr. Sparkes stated that Council had asked him to investigate options for the building at 57 Bayview Road and Council determined that demolition order was appropriate.

Mr. Sargent, P.Eng. is employed by Exploits Engineering Consultants Ltd. He gave a summary of the structural assessment of 57 Bayview Road. He noted that he was not permitted to enter onto the property by the property owner which impacted his findings. He further explained that Mr. Yates had filed a professional conduct complaint with the professional association and that the professional association did not find fault with his work.

Mr. MacDonald, P. Eng., is part owner of Exploits Engineering Consultants Ltd. He stated that he was a resident of Springdale and owned property on Bayview Road. He stated that the condition of the building at 57 Bayview Road and the actions of Council had no impact on his property. He explained his role as a peer reviewer of the structural assessment. He further explained that Mr. Yates had filed a professional conduct complaint with the professional association and that the professional association did not find fault with his or the company's work.

Board's Analysis

Is Holding a Hearing by Teleconference Appropriate?

Mr. Regular questioned whether holding the hearing by teleconference was appropriate. He also questioned whether the appeal board as a whole or individually had met with a representative of the Authority to conduct a site visit.

The Board's position is that all recent appeal hearings are being held by teleconference due to the current COVID pandemic. The Board decided to proceed.

The Board is familiar with the matter based on the information provided by the Appellant and the Authority which was circulated to all parties. The Board or individual members did not conduct a site visit.

Did the Town have the authority to issue a Order for the property located at 57 Bayview Road?

The Board finds that the Town had the authority to issue a demolition order under Section 404 (1) (f), of the *Municipalities Act, 1999* which states:

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.

The Board recognizes that this is a discretionary decision of Council and that the Board does not have the authority to insert its discretion for that of Council under section 42 (11) of the *Urban and Rural Planning Act, 2000*.

Did the Town exercise its authority appropriately in issuing an Order for 57 Bayview Road?

The Board finds that the Town exercised its authority appropriately in issuing an Order for the subject property. The Board learned that the Town invited Mr. Yates to meet with them to explore options which he declined. The Board further learned that Mr. Yates has been issued a permit but did not carry out adequate repairs. The Board learned that the Town had been raising issues with regards to the condition of the building since 2012.

Was the Order Served Appropriately?

Mr. Regular raised the issue of the order which named Mr. Yates rather than the company which owned the property. Mr. Colbourne noted that Mr. Yates had filed the appeal in his own name rather than the company name.

Section 404 (1) (f) of the *Municipalities Act, 1999* states that an order may be served to the owner or occupier of the subject property. Mr. Yates stated that he was occupying the building for personal storage.

The Board finds that the order was hand delivered to Mr. Yates by the Town Clerk and was served in accordance with section 406 of the *Municipalities Act, 1999*.

Was the engineering firm that completed the structural assessment biased against the Appellant?

The appeal board finds no evidence that Mr. Sargent or Mr. MacDonald exhibited bias against Mr. Yates.

Was Council biased against the Appellant?

After hearing the testimony of Mr. Yates and Mr. Sparkes, the appeal board finds no evidence that Council was biased against the Appellant. The Board finds that the condition of 57 Bayview Road was a long standing issue and that Council had the discretionary authority to issue an order.

Board's Conclusion

After reviewing the information presented to this Board, the Board concludes that the Authority exercised its discretionary authority and issued an order under section 404 (1) (f) of the *Municipalities Act, 1999*. The Board finds that there is no evidence of bias by the Council or its engineering consultants. The Board further finds that it cannot insert its discretion for that of Council under section 42 (11) of the *Urban and Rural Planning Act, 1999*.

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 provided ample opportunity for cross examination of all witnesses and this was acknowledged by all parties.

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 Town of Springdale exercised its authority appropriately in issuing a Demolition Order for the property located at 57 Bayview Road.

Therefore, the Board confirms the Authority's decision to issue a Demolition Order for the property located at 57 Bayview Road.

In its decision, the Board is bound by section 42 of the *Urban and Rural Planning Act, 2000* which states,

42. (10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

Order

Based on the information presented, the Board **confirms** the Town of Springdale's decision to issue a Demolition Order for the property located at 57 Bayview Road.

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 Gander, Newfoundland and Labrador, this 16th day of September, 2021.



Bill Carter, Chair
Central Newfoundland Regional Appeal
Board



Charles Irving, Member Central
Newfoundland Regional Appeal Board



David Oxford, Member Central
Newfoundland Regional Appeal Board