

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Richard Rendell **Appellant**

AND Town of Bishop's Falls **Respondent**

RESPECTING Order

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Shawn Feener – Member

DATE OF HEARING February 17, 2015

IN ATTENDANCE

Randy Drover – Authority
Richard Rendell – Appellant
Natasha Murthy – Appellant's Representative
Joyce Rendell – Support for Appellant
Nerdon Brown – Interested Party
Krista Sharpe – Interested Party
Sharon Pumphrey – Interested Party
Lisa Pollett – Interested Party
Robert Mills – Interested Party
Christina Morgan – Interested Party
Roy Jeans – Interested Party
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from a decision from the Town of Bishop's Falls to issue an order to Mr. Richard Rendell regarding the horse he keeps at 35 Main Street. The Town received complaints from residents regarding Mr. Rendell's horse. The Town stated that the horse is causing a hazard to public health and safety and is adversely affecting surrounding properties. The Town ordered Mr. Rendell to remove the horse from the Town of Bishop's Falls within fourteen days. The Order further noted the appellant's right and process to appeal Council's decision.

Mr. Rendell filed an appeal with the Central Newfoundland Regional Appeal Board on July 28, 2014 in response to the Order requiring him to remove his horse (Jake) from the Town. The appeal was filed in accordance with section 42 of the *Urban and Rural Planning Act, 2000*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Advertiser* on February 6, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on January 13, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Bishop's Falls Animal Control Regulations, 2010

Town of Bishop's Falls Municipal Plan and Development Regulations, 2010

Matters presented to and considered by the Board

Does the Town have the authority to issue an order to remove the animal from 35 Main Street under the Animal Control Regulations, 2010?

The Board accepted that the Town does not have the authority to issue an order under the Town of Bishop's Falls Animal Control Regulations, 2010. The Board reviewed section 420(1) of the *Municipalities Act, 1999*, which states that when a person contravenes a regulation made under the *Municipalities Act, 1999*, the owner is liable on summary conviction.

Is a horse considered a “thing”?

The Town issued the order under section 404(1)(l) of the *Municipalities Act, 1999* which states:

A council may make an order that

(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.

The Board learned from the Town at the hearing that it referred to the Town’s Animal Control Regulations, 2010 for a definition of “animal” since the *Municipalities Act, 1999* does not define “thing”. The Town’s Animal Control Regulations, 2010 defines animal as “any such living thing other than a human being.” The Town explained at the hearing that since the Animal Control Regulations define “animal” as a *living thing*, then the Town considered an animal to also be a *thing*. The Board accepts that the Town appropriately deemed a horse to be classified as a thing and therefore subject to section 404(1)(l) of the *Municipalities Act, 1999*.

Did the Town have the authority to issue the order to remove the animal from 35 Main Street under section 404(1)(l) of the *Municipalities Act, 1999*?

The Board learned that the Town determined the horse was a threat to public health and safety based on written complaints from neighbouring residents. The role of the Board is not to determine for Council what constitutes a threat to public health and safety, but rather considers whether the Council used its discretion appropriately.

The Board heard from the neighbouring residents regarding their concerns for the safety of their children, irritating odours and loss of property values. While the Town indicated that it could have fined the appellant under section 420 of the *Municipalities Act, 1999* since the appellant committed an offence under section 4 and 5 of the Animal Control Regulations, 2010, the Town decided to order the appellant to remove the animal due to the ongoing public complaints received. While the Board sympathizes with all parties, the Board found that the Town exercised its discretionary powers appropriately by deeming the horse a public health and safety concern.

Did the Town have the authority to order the removal of the horse from the municipal boundary of the Town of Bishop’s Falls?

No. The Board reviewed section 404(1)(l) of the *Municipalities, 1999* and determined that the Town may only order the removal from the owner’s property. The Town did not have the

authority to order Mr. Rendell remove his horse from the municipal boundary of the Town of Bishop's Falls.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 Town of Bishop's Falls had the authority under the *Municipalities Act, 1999* to issue the Order to Mr. Rendell, but erred in requiring the animal be removed from the municipal boundary of the Town of Bishop's Falls. Therefore, the Board vacates the Town's July 16, 2014 decision to issue an order to Mr. Rendell.

Order

Based on the information presented, the Board orders that the Order issued by the Town of Bishop's Falls to Mr. Richard Rendell regarding the horse kept at 35 Main Street, be vacated.

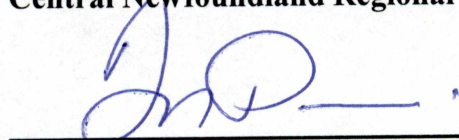
The Board further orders that the Town of Bishop's Falls pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellants to the appellants.

The Town of Bishop's Falls and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

DATED at Grand Falls - Windsor, Newfoundland and Labrador, this 17th day of February, 2015.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Shawn Feener, Member
Central Newfoundland Regional Appeal Board