

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Richard Freake **Appellant**

AND Town of Gander **Respondent**

RESPECTING Order

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Norm Austin – Member

DATE OF HEARING February 18, 2015

IN ATTENDANCE

John Boland – Authority
Kerry Wheeler – Authority
Cst. Oswald Judge – Authority
Addison Quilty – Authority
Tylor Barrett - Authority
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 made by the Town of Gander to issue an order to Mr. Richard Freake regarding his property located at 283 and 287 Elizabeth Drive. The Town ordered Mr. Freake to complete the following by July 16, 2014:

- Repair brick, fascia and canopy
- Clean interior mold and mildew, fix ceiling tiles and other housekeeping issues
- Remove all combustibles in building
- Remove tires
- Remove exposed wiring
- Repair fire separation breaches

The Town issued the Order under section 41(1) of the Town of Gander Occupancy and Maintenance Regulations. While the Order was dated July 2, 2014, it is unclear when the Town served Mr. Freake with the Order.

Mr. Freake initiated the appeals process against the issuance of the Order with the Central Newfoundland Regional Appeal Board on July 18, 2014. Based on the information submitted to the Board, it is unclear whether the appeal was filed in accordance with section 42(4) 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 Beacon* on January 26, 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

Occupancy and Maintenance Regulations, (CNLR 1021/96)

Town of Gander Municipal Plan and Development Regulations, 2010

Matters presented to and considered by the Board

Is the appeal valid?

The Board reviewed Part VI, section 42(4), of the *Urban and Rural Planning Act, 2000* (the “Act”) which requires an appeal be filed within 14 days. Section 42(4) states:

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.

Constable Oswald Fudge submitted a Certificate of Service to the Board illustrating the Order was hand delivered to Mr. Freake on July 2, 2014. Cst. Oswald Fudge stated he showed the Order to Mr. Freake at the time of delivery. Mr. Freake filed his appeal with the Central Newfoundland Regional Appeal Board on July 18, 2014, which was outside the 14 day requirement outlined in section 42(4) of the *Act*.

The Board determined that the Appellant did not satisfy section 42(4) of the *Act*. In accordance with section 6(5) of the Minister’s Development Regulations, “[w]here an appeal of a decision and the required fee is not received by a board in accordance with this section and Part VI of the *Act*, the right to appeal that decision shall be considered to have been forfeited.”

Should the Board defer the appeal hearing?

The Board received a written deferral request from Mr. Freake on February 18, 2015, prior to the hearing. Mr. Freake indicated in his letter that he could not attend the hearing as he was overseeing a jury trial at Supreme Court, Gander that commenced on February 16, 2015. Since the Board deemed the appeal invalid, the Board decided not to defer the hearing.

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.

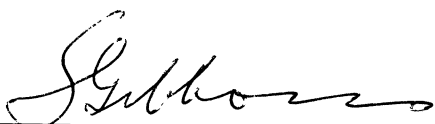
Based on its findings, the Board determined that the appeal was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* and, is therefore, invalid.

Order

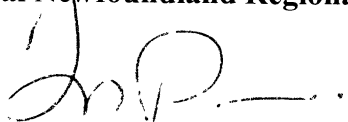
Based on the information presented, the Board dismisses the appeal regarding the Order issued on July 2, 2014 by the Town of Gander to Mr. Richard Freake regarding his property at 283 and 287 Elizabeth Drive.

The Town of Gander and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

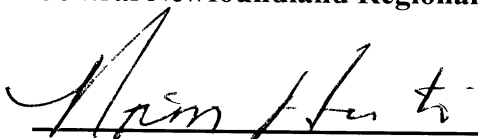
DATED at Gander, Newfoundland and Labrador, this 18th day of February, 2015.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Norm Austin, Member
Central Newfoundland Regional Appeal Board