

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN David Bickford **Appellants**

AND Town of Portugal Cove-St. Philip's **Respondent**

RESPECTING Stop Work Order

BOARD MEMBERS Vicki Connolly – Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING March 23, 2015

IN ATTENDANCE

Les Spurrell – Authority

Ashley MacKinnon – Authority

David Bickford – Appellant

Dan Bond – Support for Appellant

Ivy Stone – Interested Party

Tony Brewer – Interested Party

Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Portugal Cove-St. Philip's issuing an order to David Bickford regarding his business operating at 108-110 Windsor Heights. The Town is claiming Mr. Bickford is operating said business without a permit from 108-110 Windsor Heights. The Order required Mr. Bickford to cease all work related to his business immediately upon receipt of the Order. The Town issued the Order pursuant to section 102(1)-(4) of the Urban and Rural Planning Act, 2000 as well as section 35(1) of the Town's Municipal Plan and Development Regulations. The Order further stated that Mr. Bickford's business contravened section 120(1) of the *Municipalities Act, 1999*; regulation (6), (7), (91), and the Agriculture Use Zone Table in the Town's Development Regulations; and, section 3.2(vi) and 3.4.7(i) and (ii) of the Town's Municipal Plan.

On October 21, 2014, Mr. Bickford initiated the appeals process against the issuance of the Order with the Eastern Newfoundland Regional Appeal Board. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *URPA* and included the required information as per section 42(5) of the *URPA*.

In accordance with the *URPA* a public notice of the appeal was published in *The Telegram* on December 13, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on February 2, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Portugal Cove-St. Philip's Municipal Plan and Development Regulations, 2000
Urban and Rural Planning Act, 2000
Municipalities Act, 1999

Matters presented to and considered by the Board

Are business activities related to the operation of Mr. Bickford's Backhoe & Tandem Dump Truck Services occurring at 108-110 Windsor Heights?

The appellant argued at the hearing that he is not operating his business at 108-110 Windsor Heights; his business is located at 17 Hilltop Lane. The appellant maintained that 108-110 Windsor Heights is used to store equipment used to facilitate his business operations only. Since the appellant is storing commercial equipment used for his business at 108-110 Windsor Heights, the Board determined that it is reasonable to conclude that activities related to the appellant's Backhoe & Tandem Dump Truck Services business are occurring at 108-110 Windsor Heights.

Does Mr. Bickford require a permit for outdoor storage at 108-110 Windsor Heights?

Yes. The Board confirmed with the Town that a permit is required for outdoor storage in accordance with section 7 of the Town of Portugal Cove – St. Philip's Development Regulations. Section 7 states:

No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

The Board acknowledges that the subject property is located within a Provincial Agricultural Development Area (ADA) as defined by the St. John's Urban Region Regional Plan. The Board accepts that development located within the ADA must also be approved by the Department of Natural Resources prior to commencing.

Does Mr. Bickford have a permit for outdoor storage at 108-110 Windsor Heights?

No. The appellant stated at the hearing that he has not obtained a permit from the Town of Portugal Cove-St. Philip's or from the Department of Natural Resources. Therefore, the Board determined that he is in contravention of section 6 and 7 of the Town's Development Regulations.

Did the Town of Portugal Cove – St. Philip's have the authority to issue the Stop Work Order?

Yes. The Board accepts that section 35(1) of the Town's Development Regulations provides the Town with the authority to issue a stop work order when development contrary to the Town's

Development Regulations has occurred. Section 35(1) states:

Where a person begins a development contrary or apparently contrary to these Regulations, the Authority may order that person to stop the development or work connected therewith pending final adjudication in any prosecution arising out of the development.

In addition to section 35(1), the Order was issued pursuant to section 102(1) of the *Urban and Rural Planning Act, 2000*. While section 102(1) provides the Town with the authority to issue an order when development occurs contrary to a plan or regulations, the Board determined that section 102(1) does not enable the Town to issue a stop work order, specifically. Under section 102(1), an authority may only issue an order to “pull down, remove, stop construction fill in or destroy that building or development”.

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.

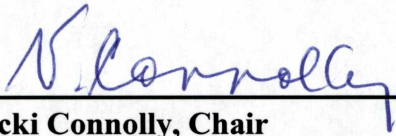
Based on its findings, the Board determined that the Town of Portugal Cove-St. Philip’s had the authority to issue a Stop Work Order to David Bickford and did so in accordance with section 35 of the Town of Portugal Cove – St. Philip’s Development Regulations, 2000.

Order

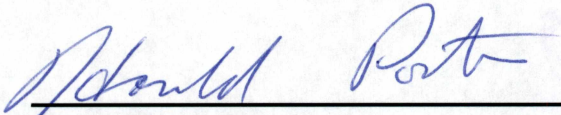
Based on the information presented, the Board orders that the Stop Work Order issued by the Town of Portugal Cove – St. Philip’s on July 2, 2014 to David Bickford to cease all business activities related to the operation of Backhoe & Tandem Dump Truck Services located at 108-110 Windsor Heights, be confirmed.

The Town of Portugal Cove – St. Philip’s and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

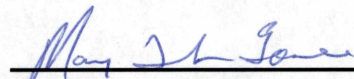
DATED at St. John’s, Newfoundland and Labrador, this 27th day of March, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board