

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Marina and Martin Fennelly **Appellants**

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

RESPECTING Removal 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

Marina Fennelly – Appellant

Martin Fennelly - Appellant

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 Martin Fennelly Jr. regarding land formerly part of 75-85B Round Pond Road. The Order required Mr. Fennelly to remove the structure (cabin) within thirty (30) days and restore the site to its original state. The Order was dated September 25, 2014, sent via registered mail on September 26, 2014, and received by Mr. Fennelly on October 30, 2014. The Order was issued under section 404 of the *Municipalities Act, 1999* as well as section 102 of the *Urban and Rural Planning Act, 2000*. The Order indicated that the subject structure contravened section 194(a)(d) of the *Municipalities Act, 1999*; section 4(1)(2) of the *Occupancy and Maintenance Regulations*; and section (4)(6) and (7) of the Town's Development Regulations.

On October 7, 2014, Marina and Martin Fennelly filed an appeal with the Eastern Newfoundland Regional Appeal Board in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*. Additionally, the appeal was made in writing and included the following: a summary of the decision being appealed; grounds for the appeal; and the appeal filing fee as required under section 42(5) of the *URPA*.

In accordance with the *URPA* a public notice of the appeal was published in *The Telegram* on October 18, 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 March 11, 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

Did Mr. and Mrs. Fennelly have a permit from the Town of Portugal Cove-St. Philip's?

No. The Board confirmed at the hearing that the Appellants did not have a permit to occupy the subject structure. The Board reviewed section 4 of the *Occupancy and Maintenance Regulations (CNLR 102/96)*, which requires one to obtain an occupancy permit to occupy a structure intended for human habitation.

The appellants stated at the hearing that the structure existed on the property when the land was acquired in 1996. The Authority indicated that it never issued a development permit or a building permit for the subject structure. The Board confirmed that in accordance with section 7 of the Town's Development Regulations, a development permit is required prior to any development occurring. The Board also determined that section 194 of the *Municipalities Act, 1999* requires one to obtain a building permit prior to any construction occurring.

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

Yes. The Board determined that within the Town of Portugal Cove-St. Philip's, a written permit from Council is required for the purpose of developing, constructing and occupying a building for human habitation. The Board accepts that section 102(1) of the *Urban and Rural Planning Act, 2000* provides the Town with the authority to issue a removal order when development exists contrary to a plan or regulations. Section 102(1) states:

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.

Additionally, the Board accepts that section 404(1)(e)(i) of the *Municipalities Act, 1999* provides the Town with the authority to issue an Order when construction has occurred without a permit under section 194 of the *Municipalities Act, 1999*. Section 404(1)(e) states:

A council may make an order that

(e) the person pull down, stop construction, remove, fill in, alter or destroy the building and restore the site to its original state or make the alterations or disposition of the building that the order directs where a person has

- (i) erected, extended, repaired, relocated or demolished,*
- (ii) changed the use of, or*
- (iii) after a 6 month vacancy, newly constructed or reoccupied,*

a building without a permit as required under section 194;

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.

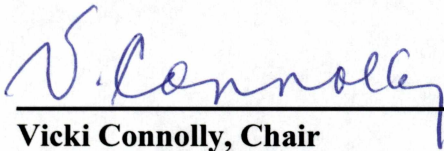
Based on its findings, the Board determined that the Town of Portugal Cove-St. Philip's had the authority to issue an Order to Marina and Martin Fennelly and did so in accordance with section 102(1) of the *Urban and Rural Planning Act, 2000* as well as section 404(1)(e) of the *Municipalities Act, 1999*.

Order

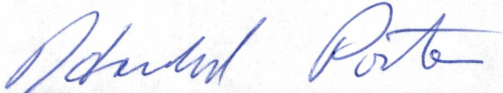
Based on the information presented, the Board orders that the Order issued by the Town of Portugal Cove – St. Philip’s on September 26, 2014 to Marina and Martin Fennelly to remove the structure located on land formerly part of 75-85B Round Pond Road, be confirmed.

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

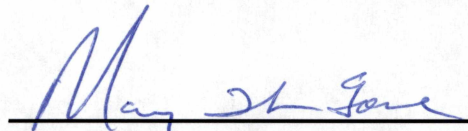
DATED at St. John’s, Newfoundland and Labrador, this 27th day of March, 2015.



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