

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Gary Chafe **Appellant**

AND Town of Petty Harbour – Maddox Cove **Respondent**

RESPECTING Stop Work Order

BOARD MEMBERS Vicki Connolly, Chair
Michelle Downey, Member
Mary Thorne- Gosse, Member

DATE OF HEARING June 16, 2015

IN ATTENDANCE

Stephanie Stack – Authority
Mohammad Khayer – Department of Environment and Conservation
Gary Chafe – Appellant
Blair Chafe – 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 Petty Harbour – Maddox Cove issuing a Stop Work Order to Gary Chafe on November 14, 2014. The Order required Mr. Chafe to stop infilling his property located at 8A Main Road immediately. The Order stated that the development of his property has gone beyond the scope of Permit #68 and is contrary to the Town's Municipal Plan and Development Regulations, 1999 as well as the Floodplain Management Policy of the Department of Environment and Conservation.

The Town issued Permit #68 to Mr. Chafe on September 3, 2014 for the purpose of filling in the hole that was created from removing his shed. The Town issued the Order under the authority of section 102(1) of the *Urban and Rural Planning Act, 2000*. The Order also noted Mr. Chafe's right and process to appeal the Town's decision.

Mr. Chafe initiated the appeals process against the issuance of the Order with the Eastern Newfoundland Regional Appeal Board on November 25, 2014. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Urban and Rural Planning Act, 2000* and included the required information as per section 42(5) 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 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 May 11, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Petty Harbour – Maddox Cove Municipal Plan and Development Regulations, 1999
Urban and Rural Planning Act, 2000

Minister's Development Regulations, 2000

Matters presented to and considered by the Board

Is infilling permitted within the Harbour zone?

No. The Board found that the appellant infilled a portion of the waterway adjacent to his property. Mr. Chafe's property is located within the Harbour zone. The Board referred to the Harbour Use Zone Table in Schedule "C" of the Town's Development Regulations and found that infilling is not permitted. Specifically, Condition 8 of the Harbour Use Zone Table, Waterways Buffers, states:

No development or fill will be permitted within 15 metres of the highwater mark of rivers or streams, with the exception of conservation structures such as those designed to control flooding; and bridges, pathways, and utility lines (Water and sewer). All development within these limits will be referred to the Department of Environment and Labour (Water Resources Branch) for advice and necessary permits.

The appellant indicated that the infilling was required in order to comply with Permit #68 he received from the Town to fill in the hole that was created when he removed a structure.

Did the Town of Petty Harbour – Maddox Cove have the authority to issue the Stop Work Order to Mr. Chafe?

Yes. The Board determined that the Town has the authority to issue a Stop Work Order in accordance with section 25 of the Town's Development Regulations when development occurs contrary to the Town's Development Regulations. The appellant conceded that he infilled a portion of the waterway stated that he thought he was complying with Permit #68.

Did the Town issue the Stop Work Order appropriately?

While the Town incorrectly referenced where it derived the authority to issue the Stop Work Order, the Board accepts that the Stop Work Order was issued in good faith. The Order was issued in writing and the appellant was informed of his right and process to appeal in accordance with section 5 of the Minister's Development Regulations, 2000.

Conclusion

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 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.

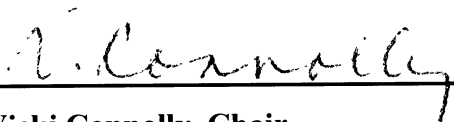
Based on its findings, the Board determined that the Town of Petty Harbour – Maddox Cove had the authority to issue the Stop Work Order to Gary Chafe requiring him to stop infilling his property at 8A Main Road immediately since infilling in contrary to the Town's Development Regulations. Any development in the subject area requires prior approval from the Town as well as the Department of Environment and Conservation.

Order

Based on the information presented, the Board orders that the Stop Work Order issued on November 14, 2014 by the Town of Petty Harbour- Maddox Cove to Mr. Gary Chafe, be confirmed.

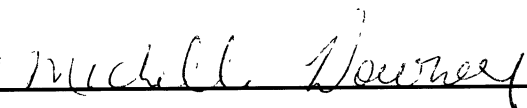
The Town of Petty Harbour-Maddox Cove and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 17th day of June, 2015.



Vicki Connolly, Chair

Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member

Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member

Eastern Newfoundland Regional Appeal Board