

DECISION

Facts/Background

This appeal arises from the Town of Carbonear resolving to issue an order to Mr. Kenneth Peters on October 6, 2014. The Order was drafted by the Town's lawyer and served to Kenneth Peters, President of Howken Holdings Limited, on January 20, 2015. The Order was issued pursuant to section 102 of the Urban and Rural Planning Act, 2000 (the "Act") and required Mr. Peters' to stop any renovations and/or construction related to the change of use of the subject building located at 191 Water Street from commercial to residential. Additionally, the Order required the building be restored to a commercial use and cease any residential use of the said building. Lastly, the work was required to be completed within 14 days from the receipt of the Order. The Order also noted the appellant's right and process to appeal the Town's decision.

Mr. Peters initiated the appeals process against the issuance of the Order with the Eastern Newfoundland Regional Appeal Board on January 22, 2015. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Act* and included the required information as per section 42(5) of the *Act*.

In accordance with the *URPA* a public notice of the appeal was published in *The Compass* on July 28, 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 August 17, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Carbonear Municipal Plan and Development Regulations, 2004

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Matters presented to and considered by the Board

Is the change in use, from commercial to residential, considered development?

Yes. The Board referred to section 2(g) of the *Urban and Rural Planning Act, 2000* for the definition of *development*. According that the definition, "the making of a material change in the use, or the intensity of use of land, buildings or premises" constitutes development.

Did Mr. Peters' have a permit from the Town of Carbonear?

No. The Board confirmed at the hearing with the Appellant and the Authority, that Mr. Peters' did not have a permit to convert the main floor of the building location at 191 Water Street from a commercial use to a residential use. The Board reviewed the Town's Development Regulations, specifically section 7, and confirmed that a permit is required from the Town prior to any development commencing. 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 Town also referred section 194 of the *Municipalities Act, 1999*, which also requires one to obtain a permit from the Town prior to changing the use of a building. Section 194 states:

A person shall not within a municipality

- (a) erect a building;*
- (b) extend, repair, relocate or demolish an existing building;*
- (c) change the use for which an existing building is or was last held or occupied; or*
- (d) occupy a building that has been vacant for a period of 6 months or more or a newly constructed building, except in accordance with a written permit from the council.*

Therefore, the Board determined that the appellant acted contrary to section 7 of the Town's Development Regulations as well as section 194 of the *Municipalities Act, 1999* as he did not have a permit to change the use of the main floor of 191 Water Street from commercial to residential.

How is the property zoned?

The Board accepts that 191 Water Street is located within the Heritage Area zone in the Town of Carbonear. The Town may consider the conversion of a space from commercial to residential located on Water Street within the Heritage Area provided 25 percent of the main floor area is maintained for business storefront. The Town indicated that this requirement was intended for buildings with larger main floor areas. The appellant noted that 191 Water Street has an area of 600 square foot area and not conducive to the 25 percent requirement. While the Board sympathises with the appellant's situation, this does not negate the appellant from complying with Town Regulations, specifically permit requirements.

Did the Town of Carbonear have the authority to issue the Order?

Yes. The Board accepts that section 102(1) of the *Urban and Rural Planning Act, 2000* provides the Town with the authority to issue an 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.

The Board found that the Town had the authority to issue the Order to Mr. Peters since the subject development was contrary to the Town's Development Regulations as well as the *Municipalities Act, 1999*.

Did the Town issue the Order appropriately?

Yes. The Board heard from the Authority that the Town's lawyer drafted and served the Order to Mr. Peters. Therefore, the Board found that the Order was served in accordance with section 107(1) of the *Urban and Rural Planning Act, 2000*. Section 107 states:

Unless otherwise stated in this Act, a notice, order or other document required to be given, delivered or served under this Act is sufficiently given, delivered or served where delivered personally or sent by registered mail addressed to the person at the latest known address of that person.

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 Carbonear had the authority to issue an Order to Kenneth Peters and did so in accordance with section 102(1) of the *Urban and Rural Planning Act, 2000*. That is to say, the Order issued by the Town of Carbonear to Mr. Peters remains in effect.

Order

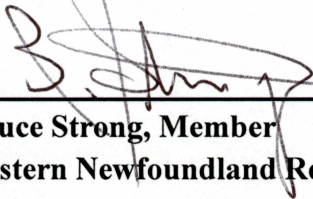
Based on the information presented, the Board orders that the Order issued by the Town of Carbonear on January 20, 2015 to Kenneth Peters to stop renovations and or construction related to the change in use at the building located at 191 Water Street, be confirmed.

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

DATED at St. John's, Newfoundland and Labrador, this 16th day of September, 2015.



**Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board**



**Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board**



**Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board**