

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Tom Collingwood **Appellants**

**AND** Town of Portugal Cove – St. Philip’s **Respondent**

**RESPECTING** Order

**BOARD MEMBERS** Michelle Downey – Acting Chair  
Harold Porter  
Mary Thorne-Gosse

**DATE OF HEARING** September 29, 2015

**IN ATTENDANCE**

Tom Collingwood - Appellant

Les Spurrell - Authority

Ashley MacKinnon - Authority

Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

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

## **DECISION**

### **Background**

In October, 2013, the Town became aware of two accessory buildings being constructed without permits at 13 Emylia Place. The Town wrote to Mr. Tom Collingwood to notify him of the matter and requested he submit the required material and application forms. On August 5, 2014, Mr. Collingwood applied to the Town of Portugal Cove-St. Philip's for permits to construct two accessory buildings at 13 Emylia Place: one measuring 89.2 m<sup>2</sup> and the second measuring 32.6 m<sup>2</sup>. The Town considered both applications at the Regular Meeting of Council held on August 26, 2014. The Town approved in principle the 89.2 m<sup>2</sup> accessory building and refused the 32.6 m<sup>2</sup> accessory building. The Town rejected the latter application because it was contrary to section 7 and 38(2)(b) of the Town's Development Regulations. That decision was appealed to the Eastern Newfoundland Regional Appeal Board. The Board dismissed the appeal on February 4, 2015 since the appeal was contrary to section 42(4) of the Urban and Rural Planning Act, 2000 (the "URPA").

### **Facts**

This appeal arises from the Town of Portugal Cove – St. Philip's issuing a removal order to Mr. Tom Collingwood regarding an accessory building located in the front yard of his property at 13 Emylia Place. The Removal Order, dated February 27, 2015, required Mr. Collingwood to remove the accessory building within 30 days of receipt of the Order and restore the site to its original state. The Removal Order also noted Mr. Collingwood's right and process to appeal.

On March 12, 2015, Mr. Collingwood filed an appeal with the Eastern Newfoundland Regional Appeal Board against the Removal Order regarding his accessory building located at 13 Emylia Place. 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 April 29, 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 September 1, 2015.

## **Legislation, Municipal Plans and Regulations considered by the Board**

Town of Portugal Cove – St. Philip’s Municipal Plan and Development Regulations, 2014

Minister’s Development Regulations, NLR 3/01

Urban and Rural Planning Act, 2000

## **Matters presented to and considered by the Board**

### **Did Mr. Collingwood have a permit for the subject accessory building?**

No. The Board confirmed at the hearing that Mr. Collingwood did not have a permit for the construction of the subject accessory building. The Board reviewed the Town’s Development Regulations, specifically section 7, and found 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 Board also reviewed section 194 of the *Municipalities Act, 1999*, which requires one to obtain a permit from the Town prior to erecting 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*.

### **Did the Town of Portugal Cove – St. Philip’s have the authority to issue the Removal Order to Mr. Collingwood?**

Yes. The Town issued the Removal Order pursuant to section 102 of the *Urban and Rural Planning Act, 2000* and section 404 of the *Municipalities Act, 1999*. 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. Collingwood under section 102(1) of the *Urban and Rural Planning Act, 2000* since the subject development was constructed contrary to section 7 of the Town's Development Regulations.

The Board determined that section 404(1)(e) of the *Municipalities Act, 1999* allows the Town to issue an order when a structure is built without a building permit as required 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;*

Since Mr. Collingwood did not obtain a building permit as required under section 194 of the *Municipalities Act, 1999* from the Town prior to constructing the subject accessory building, the Board found that the Town had the authority to issue the Order to Mr. Collingwood under section 404(1)(e) of the *Municipalities Act, 1999*.

### **Did the Town issue the Order appropriately?**

Yes. The Board determined that the Removal Order was issued to Mr. Collingwood in accordance with section 107(1) of the *Urban and Rural Planning Act, 2000* and section 406 (2) of the *Municipalities Act, 1999*. Section 107(1) 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.*

Section 406(1) states:

*A notice, order or other document required to be given or served under this Act or the regulations is sufficiently given or served where delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the applicable council.*

### **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.

The Board learned at the hearing that the Town recently approved an amendment to the Town's Municipal Plan and Development Regulations that may allow Mr. Collingwood's accessory building. While this information is beneficial for the appellant and worthy of noting, it is not something the Board considered when determining whether the Town had the authority to issue the Removal Order to Mr. Collingwood.

Based on its findings, the Board determined that the Town of Portugal Cove – St. Philip's had the authority to issue the Removal Order to Mr. Tom Collingwood and did so in accordance with the *Urban and Rural Planning Act, 2000* and the *Municipalities Act, 1999*. That is to say, the Removal Order issued by the Town to Mr. Collingwood dated February 27, 2015 remains in effect.

**Order**

Based on the information presented, the Board orders that the Removal Order dated February 27, 2015 issued by the Town of Portugal Cove – St. Philip’s to Mr. Tom Collingwood concerning his accessory building located at 13 Emylia Place, 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 30<sup>th</sup> day of September, 2015.

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

  
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**Harold Porter, Member**  
**Eastern Newfoundland Regional Appeal Board**

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

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