

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Brian Brown **Appellant**

AND Town of Northern Arm **Respondent**

RESPECTING Removal Order

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Norm Austin – Member

DATE OF HEARING January 12, 2016

IN ATTENDANCE

Brian Brown – Appellant
Lisa Hart – Authority
Peter Chatter - Authority
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

On October 24, 2014, the Town of Northern Arm issued Mr. Brian Brown a Stop Work Order in response to construction beginning without a permit. Mr. Brown submitted a development application on October 29, 2014 for a single dwelling on Route 350 which was considered by Council on November 4, 2015 and November 18, 2014. The Town rejected Mr. Brown's application since the site is zoned Rural and the development contravenes the Town's Municipal Plan, 2013.

Subsequently, Mr. Brown requested his property be rezoned in order to permit his development. The Town rejected the rezoning request at the August 18, 2015 Regular Meeting of Council and issued Mr. Brown a Removal Order dated September 2, 2015. The Removal Order required Mr. Brown remove the residential dwelling within 90 days from receipt of the Order. The Town issued the Order pursuant to section 102(1) of the *Urban and Rural Planning Act, 2000* (the "Act"). The Town provided notice of the right and process to appeal the Order.

Mr. Brian Brown initiated the appeals process against the Town's decision to reject his rezoning request and the Removal Order with the Central Newfoundland Regional Appeal Board on September 15, 2015. 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 Advertiser* on December 3, 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 December 3, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Northern Arm Municipal Plan and Development Regulations, 2013

Matters presented to and considered by the Board

Did Mr. Brown obtain a permit from the Town of Northern Arm?

The Board confirmed at the hearing that Mr. Brown did not obtain a permit from the Town of Northern Arm prior to commencing construction of his dwelling on property located along Route 350. The Board reviewed the Town of Northern Arm Development Regulations and confirmed that the Town must issue a permit for all development located within the Town's Planning Area boundary in accordance with section 7 of the Town's Development Regulations. The appellant noted at the hearing that he thought his property was outside the Town's boundary and therefore did not need permission from the Town. The Board reviewed the Town of Northern Arm's boundary and found that Mr. Brown's property is well within the Town's Municipal and Planning area boundary. Therefore, the Board concluded that Mr. Brown contravened section 7 of the Town's Development Regulations since he did not obtain a permit from the Town of Northern Arm prior to construction.

Is a single dwelling permitted within the Rural zone?

The Board reviewed the Rural policies in the Town's Municipal Plan and the Rural Use Zone Table in Schedule C of the Town's Development Regulations and found that single dwellings may be considered by Council in the Rural zone if in conjunction with a permitted use such as forestry or agriculture. Rural Policy 3.2.7.3 (Residential Use) of the Town's Municipal Plan states:

Single residential dwelling use may only be permitted in conjunction with a permitted use such as forestry or agriculture.

The Board learned that Mr. Brown explored certain agricultural options for his land but determined none of the options were viable.

Does the Board have the authority to hear matters with respect to amendments to the Town's Municipal Plan and Development Regulations?

The Town of Northern Arm rejected Mr. Brown's request to rezone his land and appealed that decision, along with the Removal Order, to the Board. Under section 42 of the *Urban and Rural Planning Act, 2000*, the Board does not have the authority to hear appeals with respect to amendments. Section 42(4) of the *Urban and Rural Planning Act, 2000* states:

A decision of a council, regional authority or authorized administrator to adopt, approve or

proceed with a plan, scheme, development regulations and amendments and revisions of them is final and not subject to an appeal.

A Council decision to reject a request to rezone land is also not subject to appeal in accordance with section 42(1), which outlines what decisions may be appealed:

- (a) an application to undertake a development;*
- (b) a revocation of an approval or a permit to undertake a development;*
- (c) the issuance of a stop work order; and*
- (d) a decision permitted under this or another Act to be appealed to the board.*

Did the Town have the authority to issue the Removal Order?

The Board reviewed section 102 of the *Urban and Rural Planning Act, 2000*. The Removal Order was issued pursuant to section 102(1), which 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 accepts that the Town may issue a removal order under section 102(1) if development has commenced contrary to the Town's Plan or Regulations. The Board determined that the appellant contravened section 7 of the Town's Development Regulations by not having a permit to develop. Additionally, the Board accepts that the proposed development of a single dwelling was refused by Council as it contravened the Town's Municipal Plan and Development Regulations. Therefore, the Board found that the Town had the authority to issue the Removal Order to Mr. Brown.

Did the Town accurately issue the Removal Order to Mr. Brown?

Part XI, *Enforcement*, section 102-107, of the *Urban and Rural Planning Act, 2000*, outlines how an order issued under section 102 of the *Urban and Rural Planning Act, 2000* shall be served. The Board reviewed section 107 of the *Urban and Rural Planning Act, 2000* and confirmed at the hearing that the Town served the Removal Order to Mr. Brown on September 3, 2015 via registered mail. The Removal Order included Mr. Brown's right and process to appeal as required under section 5 of the *Minister's Development Regulations*.

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 following decision was made by the majority of the Board members present at the hearing and therefore shall be considered the decision of the Board in accordance with section 42(12) of the *Urban and Rural Planning Act, 2000*.

Based on its findings, the Board determined that the Town of Northern Arm had the authority to issue the Removal Order to Mr. Brian Brown and did so in accordance with the *Urban and Rural Planning Act, 2000*. That is to say, the Removal Order, dated September 2, 2015, issued by the Town of Northern Arm to Mr. Brian Brown remains in effect.

Order

Based on the information presented, the Board orders that the Removal Order dated September 2, 2015 issued by the Town of Northern Arm to Brian Brown concerning the development of a single dwelling on property along Route 350, be confirmed.

The Town of Northern Arm and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the appellant(s).

DATED at Gander, Newfoundland and Labrador, this 12th day of January, 2016.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board

Norm Austin, Member
Central Newfoundland Regional Appeal Board