

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Ray Hunter **Appellant**

AND Town of Grand Falls – Windsor **Respondent**

RESPECTING Removal Order

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

DATE OF HEARING January 14, 2016

IN ATTENDANCE

Ray Hunter – Appellant
Gerald Ralph – Solicitor for Appellant
Mary Wong – Respondent
Michael Pinsent – Respondent
Robert McDonald – Interested Party
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Grand Falls – Windsor issuing a Removal Order to Mr. Ray Hunter regarding a dilapidated building near Ivany's Road. The Town ordered Mr. Hunter to demolish the dilapidated building and return the site to its original state by August 19, 2015. The Order was issued on July 16, 2015 under the authority of section 404(1)(f) of the Municipalities Act, 1999. The Removal Order stated Mr. Hunter's right and process to appeal Council's decision.

On behalf of Mr. Hunter, Mr. Gerald Ralph with Easton Hillier Lawrence Preston filed an appeal against the issuance of the above noted Removal Order with the Central Newfoundland Regional Appeal Board on July 29, 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 September 10, 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 November 20, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Municipalities Act, 1999

Occupancy and Maintenance Regulations, CNLR 1021/96

Matters presented to and considered by the Board

The Board considered the following six (6) items that formed the basis for Mr. Hunter's grounds of appeal submitted and presented to the Board:

1. **The removal order was made prior to the Town Council of the Town of Grand Falls-Windsor making a valid order for maintenance and repair of the premisses, and as a result is a misuse and/or excessive use of discretion in requiring removal;**
2. **The Town Council of the Town of Grand Falls-Windsor cannot use current regulations and current National Building Code of Canada Requirements in assessing the required standards of the building as the building has been in place since prior to 1990, when the Appellant acquired the building and is therefore subject to the regulations in force at that time and is "grandfathered" under current regulations;**
3. **The zoning and use of the building does not include sales or service to the public, and as private property is subject to different standards than that for commercial properties;**
4. **The officials from the Town who completed the building inspections in 2012 and 2014 are not qualified to confirm that the building is dilapidated or a public nuisance, and the Appellant submits that the building requires repairs and not demolition.**
5. **The building is not in dilapidated state, is not used for human habitation, and is not a public nuisance and is fit for the use for which it is being used, such that the Town Council of the Town of Grand Falls-Windsor does not have jurisdiction to issue an order under Section 404(1)(f) of the *Municipalities Act, 1999*; and**
6. **The Town Council of the Grand Falls-Windsor is improperly exercising its discretion to impose this order, demonstrating bad faith and bias against the Appellant.**

Item 1

The Board found that the Town is not required to issue a maintenance order prior to issuing a removal order in accordance with section 404(1)(f) of the *Municipalities Act, 1999* and,

therefore, Council did not act outside it's discretionary authority when it issued the Removal Order.

Item 2

The Board learned that the building at the time of construction did not meet the National Building Code of Canada. Additionally, the Board heard that the structure does not meet today's National Building Code of Canada according to the Evaluation Report completed by the Exploits Engineering Consultants Limited dated January 12, 2016 signed by Chris Sargent, P. Eng., S.E. that was submitted to the Board at the hearing for review. The Board found these facts immaterial since the Removal Order was based on the present condition of the building rather than meeting any particular dated Building Codes.

Item 3

The Authority stated at the hearing that the site has been zoned Residential since 1997 and that the property is considered an existing non-conforming use. Mr. Hunter claims that as private property, it is subject to different standards than for commercial properties. However, the Board learned that the property is leased from Crown lands. Regardless of land ownership, it is still subject to all legislation, policy and regulations available to the Town of Grand Falls-Windsor.

Item 4

The Board has no jurisdiction to determine whether a Town employee is qualified to carry out building inspections. The Removal Order was issued by the Town of Grand Falls – Windsor Council and not by the individual building inspectors. However, in this case, the Town provided the Board with qualifications of the building inspector and an independent Evaluation Report that supported the findings outlined by the Town's building inspector in the Building Inspection Reports.

Item 5

The Board accepts that the decision of the Town of Grand Falls – Windsor to determine the subject building is in a dilapidated state is a discretionary decision of Council. The Board acknowledges the fact that it cannot insert its discretion for that of Council's in accordance with section 42(11) of the *Urban and Rural Planning Act, 2000* but shall consider whether Council

applied its discretion appropriately. In doing so, the Board found that the Town of Grand Falls-Windsor Council determined the subject building is in a dilapidated state by having the building inspected by the Town's Building Inspector on two separate occasions and based on reports provided by the Building Inspector, deemed the building dilapidated. The Building Inspection Reports were further substantiated by an independent engineering firm after the Removal Order was issued in response to allegations that the Building Inspector was not qualified to assess the building. That is to say, the Board was satisfied that the Town of Grand Falls-Windsor used its discretionary authority appropriately when it deemed the subject building dilapidated.

Item 6

The Board found that the Appellant did not provide any evidence to support the argument that the Town was acting in bad faith and in a biased manner against Mr. Hunter.

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

The Removal Order was issued pursuant to section 404(1)(f) of the *Municipalities Act, 1999* which states:

A council may make an order that

(f) where a building is in a dilapidated state, or is, in the opinion of the council, unfit for human habitation, or another use for which it is then being used, or is a public nuisance, the owner or occupier is to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state, or make the disposition or alteration of the building that the order directs;

The Board accepts that the Town of Grand Falls-Windsor had the authority to issue the Removal Order under section 404(1)(f) because the Town deemed the building dilapidated and determined the building to be a public nuisance from a safety perspective.

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

Yes. Section 406 of the *Municipalities Act, 1999* outlines how an order issued under section 404 of the *Municipalities Act, 1999* shall be served. The Board reviewed section 406 and found that the Town sufficiently served the Removal Order to Mr. Hunter in person on July 16, 2015.

Additionally, the Removal Order stated Mr. Hunter's right and process to appeal as required under section 408 of the *Municipalities Act, 1999*.

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 Grand Falls – Windsor had the authority to issue the Removal Order to Mr. Ray Hunter and did so in accordance with the *Municipalities Act, 1999*. That is to say, the Removal Order, dated July 16, 2015, issued by the Town of Grand Falls – Windsor to Mr. Ray Hunter remains in effect.


Order

Based on the information presented, the Board orders that the Removal Order dated July 16, 2015 issued by the Town of Grand Falls – Windsor to Ray Hunter concerning the dilapidated building near Ivany’s Road, be confirmed.


The Town of Grand Falls – Windsor 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).

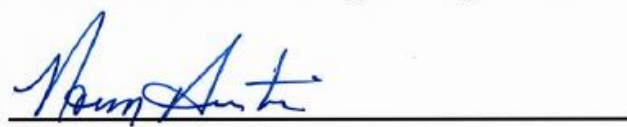
DATED at Grand Falls – Windsor, Newfoundland and Labrador, this 14th day of January, 2016.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Norm Austin, Member
Central Newfoundland Regional Appeal Board