

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Donald Mercer **Appellant**

**AND** Town of Paradise **Respondent**

**RESPECTING** Order

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

**DATE OF HEARING** April 21, 2016

**IN ATTENDANCE**

Don Mercer - Appellant

Alton Glenn – Authority

Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

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

## DECISION

### **Facts**

This appeal arises from the Town of Paradise issuing an order to Mr. Donald Mercer concerning the construction of accessory buildings without permits at 46 Irving Drive.

On April 7, 2015, the Town of Paradise issued a Building Permit to Mr. Mercer for the purpose of constructing a 23' x 26' accessory building at 46 Irving Drive. When the Town's Building Inspector completed a security release inspection of Mr. Mercer's property on July 9, 2015, it was discovered that there were two additional accessory buildings located on the subject property.

The Town subsequently requested, in the form of a letter, Mr. Mercer remove the two additional accessory buildings by August 14, 2015 since he reached his maximum allowable floor area for accessory buildings when the Town approved the 23' x 26' building.

On September 16, 2015, the Town sent a second letter to Mr. Mercer requesting removal of the two additional accessory buildings by October 16, 2015. This letter notified Mr. Mercer that an order would be issued if he did not comply with the letter by the specified date.

On November 5, 2015, the Town issued a removal order (the "Order") to Donald Mercer concerning the construction of accessory buildings without permits at 46 Irving Drive. The Town ordered Mr. Mercer remove the structures on or before December 5, 2015.

The appeal filed with the Eastern Newfoundland Regional Appeal Board on November 18, 2015 was done so in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "Act"). Additionally, the appeal was made in writing and included the following: a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee as required under section 42(5) of the *Act*.

In accordance with the *Act* a public notice of the appeal was published in *The Telegram* on February 10, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on February 19, 2016.

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

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Paradise Municipal Plan and Development Regulations, 2004

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

### **Did the Town have the authority to issue the Order?**

The Board learned from the Appellant that there was a shed located on the subject property when Mr. Mercer purchased the land. Mr. Mercer divided that shed into two, without a permit from the Town. After the Town had issued a permit for a 23' x 26' (55.5 m<sup>2</sup>) shed, the Town discovered the two non-compliant accessory buildings during a site visit. Mr. Mercer stated at the hearing that he has removed one of accessory buildings but would like to maintain the smaller shed for wood storage.

The Board accepts that a permit must be issued for all development prior to any work commencing in accordance with section 7 of the Town's Development Regulations. The Town noted that approval for an additional accessory building would be contrary to section 40 of the Town's Development Regulations. According to section 40, the Board understands that the maximum floor area of an accessory building on Mr. Mercer's property is 7% or 56 m<sup>2</sup>, whichever is less. In this case, since the Town approved a 55.5 m<sup>2</sup> accessory building, no other shed could be permitted. Therefore, the Board found that the Town had the authority to issue the order under section 102(1) of the *Urban and Rural Planning Act, 2000*. 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.*

### **Did the Town issue the Order in accordance with the Act?**

The Board reviewed Part XI of the *Act* which outlines the procedure an authority must follow when issuing orders under section 102 of the *Act*. The Board confirmed that the Order was served in person to Mr. Mercer in accordance with section 107(1) of the *Urban and Rural Planning Act, 2000*. 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.*

The Order also noted the appellant's right and process to appeal as per section 5 of the *Minister's Development Regulations*, NLR 3/01.

*Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the*

*(a) person's right to appeal the decision to the board;*

*(b) time by which an appeal is to be made;*

*(c) right of other interested persons to appeal the decision; and*

*(d) manner of making an appeal and the address for the filing of the appeal.*

The Board determined that in accordance with section 109(4) of the *Act*, the Town confirmed the Order at the next Council meeting which was held on November 17, 2015.

### **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 Paradise had the authority to issue the Order to Mr. Mercer and did so in accordance with the *Urban and Rural Planning Act, 2000*. Therefore, the Board will uphold the Order issued on November 5, 2015 concerning the construction of accessory buildings without permits at 46 Irving Drive.

**Order**

Based on the information presented, the Board orders that the decision made by the Town of Paradise to issue an Order to Donald Mercer on November 5, 2015 regarding the construction of accessory buildings without permits at 46 Irving Drive, be confirmed.


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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern 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.

**DATED** at St. John's, Newfoundland and Labrador, this 2<sup>nd</sup> day of May, 2016.

  
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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**