

**WEST NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Dennis Basha **Appellant**

**AND** City of Corner Brook **Respondent**

**RESPECTING** Order

**BOARD MEMBERS** Gary Parsons – Acting Chair  
Joseph Guincharde – Member  
Bill Madore – Member

**DATE OF HEARING** September 28, 2016

**IN ATTENDANCE**

Dennis Basha - Appellant  
Lorilee Sharp – Legal Representative for the Authority  
James King – Authority  
Mark Kennedy – Authority  
Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board  
Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

## DECISION

### Background/Facts

In September 2015, the City of Corner Brook became aware of the construction of an accessory building at 42 West Valley Road. The City determined that an application had not been received and a permit had not been issued for the structure. On September 21, 2015, the City issued a municipal ticket to the property owner of 42 West Valley Road, Mr. Dennis Basha.

This appeal arises from the City of Corner Brook issuing a Stop Work Order to Mr. Basha on September 25, 2015 requesting he apply for a permit or remove the structure. That same day, Mr. Basha submitted an application to construct an accessory building at 42 West Valley Road. On November 17, 2015, the City approved a 7.7% variance for the structure and on November 18, 2015, issued Building/Development Permit #0468-2015 (the "Permit") for the existing accessory building subject to conditions. Condition 2 of the Permit required the accessory building be relocated in order to meet setback requirements established on an attached site plan.

As of June 2016, Mr. Basha had not relocated the subject accessory building as directed. The City reminded him of this requirement in a letter dated June 6, 2016. On July 11, 2016, the City issued a subsequent Order (the "Order") to Mr. Basha directing him to either relocate the structure in accordance with the Permit or remove the structure. The Order required this work be completed by July 31, 2016.

On July 18, 2016, Mr. Basha appealed the Order to the West Newfoundland Regional Appeal Board. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "Act") the appeal was filed within the fourteen (14) day requirement. Additionally, Mr. Basha included the required information as per section 42(5) of the *Act*.

In accordance with the *Act*, a public notice of the appeal was published in *The Western Star* on September 7, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on August 16, 2016.

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

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

City of Corner Brook Integrated Community Sustainability Plan and Development Regulations, 2012

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

### **Was Mr. Basha aware of the conditions of his Permit (#0468-2015)?**

Mr. Basha stated at the hearing that he understands the terms and conditions of Permit #0468-2015 including condition 2, which requires Mr. Basha move the existing accessory building in order to comply with the required setbacks established by the City of Corner Brook.

### **Was Mr. Basha aware that he constructed his shed on top of municipal infrastructure?**

The Board learned during the Authority's questioning that Mr. Basha was well aware that his constructed his shed on a storm sewer. Mr. Basha also noted that he understand this to be the reason for the City's request to move his shed. Mr. Basha stated that he observed engineering consultants working on the storm sewer and after speaking with those consultants was of the opinion that constructing a shed over the subject storm sewer was not a major concern. The City clarified that this consultant company, while hired by the City, in no way has the authority to make development decisions on behalf of the City of Corner Brook.

### **Did the City have the authority to issue the Order to Mr. Basha?**

Yes. The Board accepts that under section 102 of the *Urban and Rural Planning Act, 2000* the City may issue an order when development proceeds in contravention to the City's Development Regulations. The City explained to the Board the basis for the setback requirements outlined in condition 2 of Mr. Basha's permit. The front and side-yard setback requirements are derived from the City's Development Regulations and the 17' rear-yard setback was determined by Mr. Kennedy to ensure the accessory building would not affect the existing storm sewer. Mr. Basha confirmed at the hearing that the accessory building had not been relocated in accordance with these setback requirements at the time the Order was issued. Therefore, the Board found that the

location of Mr. Basha's shed contravened the City's Development Regulations and therefore the City had the authority to issue the Order to Mr. Basha.

**Did the City issue the Order appropriately?**

Yes. The Board concluded that the Order was served in person to Mr. Basha by the Municipal Enforcement Officer on July 11, 2016 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 Board also determined that the Order was confirmed at the next scheduled meeting of Council held on July 18, 2016 in accordance with section 109(4) of the *Urban and Rural Planning Act, 2000*.

In accordance with section 5 of the *Minister's Development Regulations, NLR 3/01*, the Order noted the appellant's right and process to appeal, which states:

*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.*

**Conclusion**

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, 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 City of Corner Brook had the authority to issue the Order to Mr. Basha on July 11, 2016 and did so in accordance with the *Urban and Rural Planning Act, 2000*.

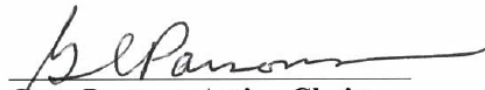
## **ORDER**

Based on the information presented, the Board orders that the Order issued by the City of Corner Brook on July 11, 2016 to Mr. Dennis Basha regarding the accessory building located at 42 West Valley Road, be confirmed.

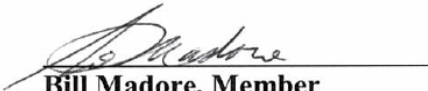
The City of Corner Brook is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

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

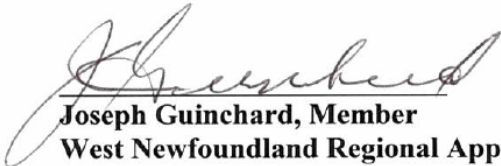
**DATED** at Deer Lake, Newfoundland and Labrador, this 28<sup>th</sup> day of September, 2016.



**Gary Parsons, Acting Chair**  
**West Newfoundland Regional Appeal Board**



**Bill Madore, Member**  
**West Newfoundland Regional Appeal Board**



**Joseph Guinchard, Member**  
**West Newfoundland Regional Appeal Board**