

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Edmund Cooke **Appellant**

AND Town of Howley **Respondent**

RESPECTING Order

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guinhard – Member
Bill Madore – Member

DATE OF HEARING September 28, 2016

IN ATTENDANCE

Edmund Cooke – Appellant
Dorothy Cooke – Support for Appellant
Wayne Bennett – Authority
Betty Stead – Authority
Debbie Janes - 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

This appeal arises from the Town of Howley issuing a Removal Order (the “Order”) to Mr. Edmund Cooke on May 24, 2016 regarding the placement of a recreational vehicle (RV) on his land in the Town of Howley.

The Order notes that the Town does not have the authority to grant a permit for the RV as it is not a permissible building or structure. The Order was issued pursuant to section 404(1)(e) of the *Municipalities Act, 1999* and required Mr. Cooke to remove the RV from his property before June 6, 2016.

Mr. Cooke filed an appeal against the issuance of the Order with the West Newfoundland Regional Appeal Board on June 3, 2016. 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. Cooke 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

Municipalities Act, 1999

Matters presented to and considered by the Board

Is an RV considered a building?

Yes. The Board reviewed the definition of “building” under section 2(1)(b) of the *Municipalities Act, 1999*, and found that a trailer or mobile home when used as a residence is considered a building. The term “building” is defined as follows:

"building" includes those structures commonly known as mobile homes or trailers that are adopted as residences, shops, offices or for other similar uses;

The Board accepts that the subject RV is a type of mobile home or trailer and therefore captured under the definition of "building".

The Board acknowledges that the Town of Howley does not have a Municipal Plan and Development Regulations at this time and therefore may not control development pursuant to the *Urban and Rural Planning Act, 2000*. However, the Board accepts that since the Town of Howley operates under the *Municipalities Act, 1999*, this definition of a "building" is important when considering building permits.

Does the placement of an RV require a permit in the Town of Howley?

Under section 194 of the *Municipalities Act, 1999*, the erection of a building requires a written permit from the Town. Since the subject RV is captured under the definition of a "building", the Board maintains that a permit for the erection of the RV is required under section 194(a). 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.

Did the Town have the authority to issue the Order to Mr. Cooke?

The Town issued the Order to Mr. Cooke pursuant to section 404(1)(e) of the *Municipalities Act, 1999*, which states:

(1) 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;

It was established at the hearing that Mr. Cooke did not have a permit from the Town for his RV. Since the Board determined a permit is required for the placement of the subject RV in the Town of Howley, the Board found that the Town had discretionary authority to issue the Order to Mr. Cooke under section 404(1)(e). However, rather than requiring Mr. Cooke remove the RV, the Order should have required Mr. Cooke apply for a permit under section 194 of the *Municipalities Act, 1999*.

Was the Order issued to Mr. Cooke accordingly?

Yes. The Board confirmed at the hearing that the Order was served to Mr. Cooke via registered mail in accordance with section 406 of the *Municipalities Act, 1999*. The appellant was also notified of his right and process to appeal the decision as required under section 5 of the *Minister's Development Regulations, NLR 3/01*.

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* 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 Howley had the authority to issue the Order to Mr. Cooke due to the fact he did not have a permit under section 194 of the *Municipalities Act, 1999* to have his RV located on his property. However, the Board found that the Town should have ordered Mr. Cooke to apply to the Town of Howley for a permit, rather than ordering him to remove the structure. That is to say, pursuant to section 42(10) of the *Urban and Rural Planning Act, 2000*, the Board will vary the Order dated May 24, 2016 as follows:

- remove the second and third paragraphs completely; and
- insert the requirement to apply to the Town of Howley for a permit for the RV.

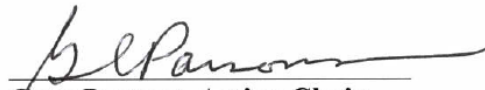
ORDER

Based on the information presented, the Board orders that the Order issued by the Town of Howley on May 24, 2016 to Mr. Edmund Cooke regarding the RV located at 8 Kelvin Brook Road, be varied.

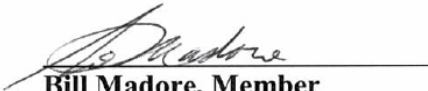
The Town of Howley is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

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.

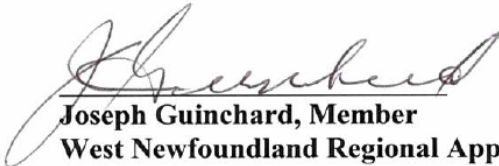
DATED at Deer Lake, Newfoundland and Labrador, this 28th day of September, 2016.



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