

LABRADOR REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Dan Cole **Appellant**

AND Town of Happy Valley – Goose Bay **Respondent**

RESPECTING Order

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

DATE OF HEARING November 15, 2016

IN ATTENDANCE

Dan Cole – Appellant (Teleconference)
John Duggan – Appellant’s Solicitor
Randy Dillon – Authority (Teleconference)
Doreen Best – Interested Party (Teleconference)
Lindsay Church - Technical Advisor to the Labrador Regional Appeal Board
Robert Cotter - Secretary to the Labrador Regional Appeal Board

DECISION

Background/Facts

On April 6, 2016, Mr. Dan Cole applied to the Town of Happy Valley – Goose Bay for permission to operate a home-based business at 29 Markland Road. Home-based businesses are considered discretionary uses in the Residential Medium Density (RMD) zone. The Town advertised Mr. Cole’s application in *The Labradorian* on April 18, 2016. The Town received one complaint in response to the discretionary use notice within the time stipulated. At the May 24, 2016 Regular Meeting of Council, the Town refused Mr. Cole’s application. The Town notified Mr. Cole in a letter dated May 31, 2016. Reasons for the refusal were neither provided in the May 31, 2016 letter nor in the May 24, 2016 Council meeting minutes.

This appeal arises from the Town issuing a Stop Work Order (the “Order”) to Mr. Cole on June 28, 2016 regarding his unauthorized business at 29 Markland Road. The Order required Mr. Cole to immediately cease all activity related to Nushuk Plumbing & Heating Limited at the subject property.

On July 12, 2016, Mr. Cole filed an appeal with the Labrador Regional Appeal Board against the Order dated June 28, 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. Cole 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 Labradorian* on August 29, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 26, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Minister’s Development Regulations, NLR 3/01

Town of Happy Valley – Goose Bay Municipal Plan and Development Regulations, 2008

Matters presented to and considered by the Board

How is the property zoned?

The Board accepts that 29 Markland Road is located in a Residential Medium Density (RMD) zone according to the Town's Municipal Plan and Development Regulations.

Are home-based businesses permitted within the RMD zone?

Yes. The Board learned that home-based businesses may be considered by the Town as an accessory use in accordance with section 32 and 54 of the Town's Development Regulations.

Section 32 states:

32. Accessory Uses

- (1) See also Schedule A - Definitions.
- (2) Subject to the other requirements of these Regulations, including those of Schedule C, uses accessory to a permitted or discretionary use are allowed. Subject to Schedule C, examples of accessory uses include, but are not limited to:
 - a) facilities for the serving of food and alcoholic beverages in an arena or other place of assembly, marina, or hotel (commercial - residential) and/or a gift or souvenir shop in a museum, hotel or other establishment;
 - b) a general garage attached to or forming part of a car-dealership or other major retail-wholesale outlet;
 - c) an office, convenience store and/or catering establishment in a campground;
 - d) a marina, dock or wharf in a residential or other zone;
 - e) a subsidiary apartment;
 - f) a business carried out in a dwelling or residential accessory building by a resident of the dwelling, a home business - Regulation 54;
 - g) a dwelling accessory to a non-residential permitted or discretionary use – for example, a farm dwelling, a church manse, a caretaker's dwelling.
- (3) Accessory uses shall be clearly subsidiary to and controlled so as to be compatible with the primary use and the use of nearby properties.

Section 54 states:

54. Home Business

A Home Business can only be permitted as an accessory use (Regulation 32) if:

- a) the primary use of the property remains residential and the scope and intensity of the use classes is entirely compatible with the residential uses of the property and neighbourhood, and the business is operated by a resident of the dwelling;
- b) sufficient off-street parking space is provided;
- c) no mechanical equipment is used except that reasonably consistent with the use of a dwelling;
- d) no wholesale or retail sale of goods is externally apparent – for example, if sale of crafts occurs it does not occur through walk-in or drive-in trade;
- e) there is no outdoor storage or display;

Is a permit required for a home-based business?

Yes. The Board confirmed that a permit is required for a home-based business pursuant to section 8 of the Town's Development Regulations, which states: "No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Town."

Is Mr. Cole operating his business at 29 Markland Road?

The Board learned from the appellant at the hearing that he is not currently operating his plumbing business, Nushuk Plumbing & Heating, at 29 Markland Road. However, based on the information presented by Ms. Best, it appeared Mr. Cole was operating his business at 29 Markland Road. It is the Board's understanding that the Town issued the Stop Work Order in response to Ms. Best's submissions to the Town. The Board learned from the Town that it did not inquire with Mr. Cole or conduct a site visit at any point to confirm whether he was indeed operating his business at the subject location.

Did the Town have the authority to issue the Stop Work Order to Mr. Cole?

While the Board accepts and acknowledges the Town's authority to issue orders when development contradicts the Town's Municipal Plan and Development Regulations, the Board found in this case, that the Town did not have the authority to issue the Stop Work Order to Mr.

Cole as it was not evident Mr. Cole contravened the Town's Municipal Plan and Development Regulations. Specifically, it was not clearly presented to the Board that Mr. Cole was operating a business without a permit from 29 Markland Road at the time the Stop Work Order was issued.

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 Town of Happy Valley – Goose Bay did not have the authority to issue the Stop Work Order to Mr. Cole dated June 28, 2016. The Board understands that the Town exercised its discretionary authority when it issued the Stop Work Order to Mr. Cole and realizes its own limitations when dealing with discretionary decisions of Council. However, the Board found that the Town did not do its due diligence in confirming allegations of the operation of an unlawful business located at 29 Markland Road prior to the issuance of the Stop Work Order to Mr. Cole. Therefore, the Board will vacate Council's decision.

ORDER


Based on the information presented, the Board orders that the Stop Work Order issued by the Town of Happy Valley – Goose Bay on June 28, 2016 to Mr. Dan Cole regarding an unauthorized business operating at 29 Markland Road, be vacated.

The Board further orders that the Town of Happy Valley – Goose Bay pay an amount of money equal to the appeal filing fee of \$230.00, paid by the appellant, to the appellant.

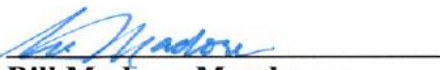
The Town of Happy Valley – Goose Bay and the appellant are bound by this decision of the Labrador Regional Appeal Board.

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

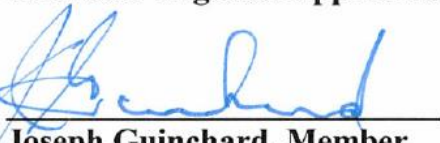
DATED at Deer Lake, Newfoundland and Labrador, this 15th day of November, 2016.



Gary Parsons, Acting Chair
Labrador Regional Appeal Board



Bill Madore, Member
Labrador Regional Appeal Board



Joseph Guinchard, Member
Labrador Regional Appeal Board