

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Michael Porter **Appellant**

**AND** Town of Conception Bay South **Respondent**

**RESPECTING** Order

**BOARD MEMBERS** Michelle Downey – Chair  
Mary Thorne-Gosse  
Colleen Hanrahan

**DATE OF HEARING** June 15, 2017

**IN ATTENDANCE**

Michael Porter – Appellant

Ed Jarvis – Authority

Stewart Giles – Authority

Robert Cotter – Secretary to the Eastern Newfoundland Regional Appeal Board

Kim Blanchard – Technical Advisor to the Eastern Newfoundland Regional Appeal Board

## DECISION

### SUMMARY

This appeal arises from the efforts by the Town of Conception Bay South to address fuel pumps that are rusty and in a state of disrepair at the property at 433 Conception Bay Highway, formerly the location of Porter's Automotive Parts and Services Inc.

The Town began contacting Mr. Michael Porter regarding the fuel pumps located at 433 Conception Bay Highway on October 25, 2015. On February 4, 2016, the Town sent a letter to Mr. Michael Porter requesting that he cover or remove the fuel pumps on or before March 4, 2016. Mr. Porter did not comply with the Town's request. On April 22, 2016, the Town issued an Order to Mr. Michael Porter, to cover the fuel pumps by no later than May 6, 2016. Michael Porter filed an appeal on May 6, 2016 with the Eastern Newfoundland Regional Appeal Board against Council's decision to issue an Order to him.

The appeal was heard by the Board on June 15, 2017. Based on its consideration of the evidence and analysis, and for the reasons stated below, the Board Orders that the decision by the Town of Conception Bay South to issue an Order to Mr. Michael Porter concerning the fuel pumps at 433 Conception Bay Highway, be **reversed**.

### EVIDENCE

At the hearing, the Board heard from the municipality that numerous communications and site visits had taken place, and the municipal enforcement officer had made many attempts to have the issue addressed respecting the old fuel pumps located at 433 Conception Bay Highway. In the absence of resolution for the issue, the Town of Conception Bay South issued an Order to Mr. Michael Porter on April 22, 2016, which required that Mr. Michael Porter cover the fuel pumps located on the subject site on or before May 6, 2016.

The Town issued the Order pursuant to section 404(1)(L) of the *Municipalities Act, 1999* due to the violation of section 3.1 and 3.2(1) of the *Town of Conception Bay South Waste Disposal and*

*Property Regulations* (hereinafter referred to as "the Regulations"). The Regulations were adopted under section 414(2)(pp) of the *Municipalities Act, 1999* on May 4, 2010. In the event an individual contravenes the Regulations, the Town has the authority to issue an Order under the *Municipalities Act, 1999* as outlined under section 6.1(b) of the Regulations.

Mr. Michael Porter initiated the appeals process against the issuance of the Order with the Eastern Newfoundland Regional Appeal Board on May 6, 2016. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)* and included the required information as per URPA, section 42(5).

The Board understands that Mr. Michael Porter's argument is that the Town did not have the authority to issue the Order to him as he is neither the occupant nor the property owner of 433 Conception Bay Highway. Michael Porter argued that his father, Richard Porter Sr., had been the owner of the property; Michael looked after it for his father until his father's death in June 2015.

Section 404(1)(L) of the *Municipalities Act, 1999* provides Council with the authority to issue an Order requiring the owner or occupier of the property to complete the work specified. The Town decided to exercise its authority under the *Municipalities Act* and the *Conception Bay South Waste Disposal and Property Regulations*, and directed an Order to Michael Porter (22 Buckingham Drive, CBS) to cover the fuel pumps, which are not in operation and are in a deplorable condition, to the satisfaction of the Town. The Town maintains that the Order was issued to Michael Porter after receiving notification from the Public Trustee's office stating that the owner of 433 Conception Bay Highway is Porter's Automotive Parts and Services Inc. and that Mr. Porter is the Director of that company. However, according to a letter received from Michael Porter's lawyer, Mr. Denis Barry, Q.C., Porter's Automotive Parts and Services Inc. dissolved on August 26, 2008, further, Mr. Barry wrote that Anthony Autotech Ltd. is the occupier of the subject property.

The Board was presented with evidence that the subject of the Order – namely the fuel pumps at 433 Conception Bay Highway – have in fact been covered, as illustrated in a photo taken by the Authority this week; however, the Board learned that the covering of said fuel pumps was not completed by the appellant, Michael Porter.

## **ANALYSIS**

### **Matters considered by the Board**

#### **Who owns the property at 433 Conception Bay Highway?**

The Board learned at the hearing that the estate is being administered by the office of the Public Trustee. At the Hearing, Michael Porter stated that his father's estate is complicated and remains unsettled. Based on the documentation provided and Mr. Barry's letter, it would appear that the ownership of the property is uncertain. The Board does not have jurisdiction to comment on property ownership.

#### **Who pays taxes on the subject property?**

The Board learned at the hearing that tax bills are being directed to the estate of Michael Porter's late father, Richard Porter Sr., who died in June of 2015.

#### **Who occupies the subject property?**

At the hearing, the Board learned that the property is occupied by Anthony Autotech Ltd. and, while rent was being collected by Michael Porter on behalf of his father for the time that he was still alive, rent owing after Richard Porter's death was subsequently returned to Anthony's Autotech Ltd., and no rent is currently being paid by the occupants.

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

Yes, the Board found that, in accordance with S. 404 of the *Municipalities Act, 1999*, the Town has the authority to issue an Order.

##### **404. Council Order**

*(1) A council may make an order that*

*(1) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.*

The Board also found, however, that an Order must be properly served in accordance with S. 406 of the *Municipalities Act, 1999*. Based on written submissions and evidence presented at the hearing, the Board is not convinced that Michael Porter is the appropriate recipient of the Removal Order.

**406. Service**

*(1) A notice, order or other document required to be given or served under this Act or the regulations is sufficiently given or served where delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the applicable council.*

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

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Conception Bay South Municipal Plan and Development Regulations, 2004

**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 Conception Bay South had the authority to issue an Order; however, while the Town demonstrated efforts to identify the appropriate party on which to serve the Order, the Board found that there was insufficient evidence to determine if the issuance of the Order to Mr. Michael Porter was correct.

**ORDER**

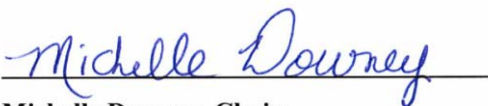
Based on the information presented, the Board orders that the decision made by the Town of Conception Bay South to issue an Order to Michael Porter on April 22, 2017 regarding the removal of the fuel pumps, be reversed.

The Board further orders that, in accordance with the *Urban and Rural Planning Act, 2000*, the Town of Conception Bay South must refund an amount of money equal to the fee paid by Mr. Michael Porter in his appeal application (\$230.).

The Town of Conception Bay South 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 15<sup>th</sup> day of June, 2017.



**Michelle Downey, Chair**

**Eastern Newfoundland Regional Appeal Board**



**Mary Thorne-Gosse, Member**

**Eastern Newfoundland Regional Appeal Board**



**Colleen Hanrahan, Member**

**Eastern Newfoundland Regional Appeal Board**

