

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD  
URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

BETWEEN	John Dehann and Kim Masters	Appellants
AND	Town of Harbour Main – Chapel’s Cove-Lakeview	Respondent
RESPECTING	Order	
FILE NUMBERS	15-006-044-030            Order re Paul’s Road 15-006-054-010            Order re Hickey’s Road	
BOARD MEMBERS	Michelle Downey — Chair Raelene Thomas — Member Mary Thorne-Gosse – Member	
DATE OF HEARING	November 17, 2017	
IN ATTENDANCE		
Authority:	Marion Hawco, Town Clerk, Harbour Main – Chapel’s Cove – Lakeview	
Representative:	Lee A. English	
Appellant:	John Dehann and Kim Masters	
Representative:	Melissa Royle	
Interested Party:	Shirley Murphy Jim Miller	
Secretary to the Eastern Newfoundland Regional Appeal Board:		Robert Cotter
Technical Advisor to the Eastern Newfoundland Regional Appeal Board:		Kim Blanchard

**DECISION**

**Introduction**

These appeals arise from two orders issued by the Town of Harbour Main – Chapel’s Cove-Lakeview for the removal of a gate located at a location initially described as Paul’s Road and the same location later described as Hickey’s Road.

The appeals were heard by the Eastern Newfoundland Regional Appeal Board on November 17, 2017.

At the hearing the Board heard that the first order issued in August 2016 for the removal of the gate at Paul's Road had been rescinded by the Town and the appeal fee returned to the Appellants. The Appellants indicated at the hearing they would not be pursuing that appeal and the matter was no longer under appeal. As such the Board was without jurisdiction to hear that appeal.

With regard to the appeal of the second order, the Town stated the Board was without jurisdiction as the appeal had not been filed within 14 days following the notice of the order being received by the appellants. The order had been issued on June 14, 2017, however the appeal was not filed until August 8, 2017.

The Board assessed the arguments and evidence presented by the parties and for the reasons stated below determined the Board was without jurisdiction and declined to hear the appeal.

### **Facts/Background**

The Appellants own property which is accessible from an entrance off Hickey's Road in the town of Harbour Main – Chapel's Cove – Lakeview. At various times the entrance to the property has been barred by the Appellants placing a chain between two posts across that entrance. As the Town's water supply is accessed by that entrance the Town has issued two Stop Work Orders for the removal of any barrier located at the entrance to the property.

The last Stop Work Order, issued on June 14, 2017 was appealed by the appellants in accordance with the *Urban and Rural Planning Act, 2000* on August 8, 2017. Appeal number 15-006-044-030 was advertised in The Telegram on November 16, 2016 and appeal number 15-006-054-010 was advertised in The Telegram on August 21, 2017. Appeal packages were distributed to all affected parties.

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

Urban and Rural Planning Act, 2000  
Minister's Development Regulations, NLR 3/01  
Minister's Interim Development Regulations

### **Evidence considered by the Board**

The Board received Technical Information and Planning Advice and heard from the technical advisor, Ms. Kim Blanchard. At the request of the Board Ms. Blanchard was asked to confine her remarks to the jurisdiction issue. The analysis noted that with respect to the Stop Work Order issued in June 2017 the appeal had been filed on August 8, 2017. Section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)* limited the time frame for filing an appeal to not more than "14 days after the person who made the original application appealed from has received the decision being appealed." Ms. Blanchard noted

the *Minister's Development Regulations* stated at section 6 that where an appeal is not filed in accordance with *URPA* Section 42, the right to appeal was forfeited.

On behalf of the Appellants, Ms. Royle argued the process used to issue the June 2017 Stop Work Order was so flawed as to render the order *void ab initio*, that is, the order was invalid from the outset. In support of this argument, Ms. Royle noted the legislation must be followed to a tee. In this case the Town had not complied with Section 109 of the *URPA* which required that where an employee of a town is appointed to issue an order, any order issued by the employee must be confirmed at the next meeting of council. If not confirmed by council the order shall be considered cancelled. In this case the order issued on June 14, 2017 was not confirmed by the council in any of the three meetings following the date the order was issued. Thus the order was *void ab initio* and the 14 day time limit for filing an appeal never commenced.

Ms. Royle noted the first Stop Work Order issued in August 2016 for the removal of the barrier was still in place at the time the second Stop Work Order for the removal of the same barrier was issued in June 2017. The Appellants thought because their appeal on the first order was still in place there was no need to appeal the second order as the appeal process for the first order was still ongoing.

On behalf of the Town, Mr. English argued the issue on jurisdiction was limited to whether the Stop Work Order had been appealed within the 14 day time limit. In this case the order was issued on June 14, 2017 and appealed on August 8, 2016. The timeline for an appeal is determinative. At Section 107 of *URPA* a notice is considered to be sufficiently delivered if sent by personal service or registered mail. The Town does not have to prove the notice was served. The notice was served personally on June 13, 2017 by two employees of the Town. That notice was corrected and emailed to the Appellants on June 14, 2017. In reply to a question from the Board Mr. Masters indicated he had received the order in the following week.

With regard to Council confirming the Stop Work Order Mr. English noted that on April 3, 2017 at a special meeting of the council the Clerk had been granted the authority to issue a Stop Work Order under Section 102(1) of *URPA* in advance of the order being issued.

### **Analysis**

The jurisdiction of the Eastern Newfoundland Regional Appeal Board to hear this appeal is challenged by the Appellants on the basis that the Stop Work Order was not valid. The Town challenges the Board's jurisdiction on the basis the right to appeal was forfeited as the Appellants did not appeal within 14 days of receiving the Stop Work Order. To decide whether the Board has jurisdiction the Board must first determine if the order was valid. If the Board finds the order to be valid the Board must then determine if the appeal was filed within the time limit permitted. Questions on filing within the time limit require the Board to first determine when the appeal period began and then determine if the appeal was filed within 14 days of the appeal period beginning.

The Board is further governed by Section 42(3) of the *Urban and Rural Planning Act, 2000*, which requires that "An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed."

**Was the Stop Work Order valid?**

The Appellants have argued as the Stop Work Order issued by the Town Clerk was not confirmed by Council at the next meeting as required by Section 109 of the *Urban and Rural Planning Act, 2000*, it was not a valid order. The Town argued as the Council directed the Clerk to issue Stop Work Order Section 109 did not apply and the order was valid and was properly issued on June 14, 2017.

The Board reviewed the Minutes of Special Meeting dated April 3, 2017. Those minutes state:

Motion#17.03.35                      Councillor Dave Woodman/Deputy Mayor Bob Myers  
Be it resolved that the Town Clerk be permitted to issue a Stop Work Order Removal to Resident locally known as 24 Paul's Rd regarding the barricade at the intersection of Paul's Rd and Hickey's Rd and if need be any Stop Work Orders Removals which need to be issued in the Town  
**MOTION CARRIED UNANIMOUSLY**

The Board also reviewed Sections 109 (3) and (4) of the *Urban and Rural Planning Act, 2000* which state:

- (3)     An employee of a council or regional authority may issue an order under section 102
- (4)     An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of members of the council or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.

The Board finds that because the Council directed the Town Clerk to issue the Stop Work Order in advance of the order being issued that meeting satisfied the requirement to confirm the order. As a result, the Board finds the Stop Work Order issued in June 2017 to be a valid order.

**When did the appeal period start?**

Section 42(4) of the *Urban and Rural Planning Act, 2000* states:

- (4)     An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

The Board examined the appeal form dated August 8, 2017. Question 6 on the form asks: When did you receive notification of this decision. The answer is: 14/06/2017 (day/month/year).

The Board finds the Appellants were in receipt of the Stop Work Order as of June 14, 2017 and the time period for filing an appeal started on that date.

**Was the appeal filed within the 14 day time period?**

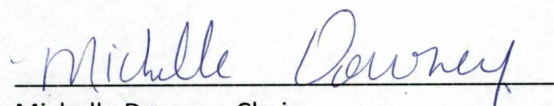
The appeal form is dated August 8, 2017. The Board finds that the appeal was not filed within the 14 day time period. In accordance with Section 6(5) of the *Minister's Development Regulations, NLR 3/01*, the Appellants have forfeited their right to appeal the Stop Work Order issued and received on June 14, 2017.

**Conclusion**

In arriving at its decision, the Board reviewed the submissions provided by the appellants and the authority, along with the technical information and planning advice. For the reasons outlined above the Board finds it does not have jurisdiction to hear the appeal.

The Board of Appeal thanks the Appellants, the representative of the Appellants, the representatives of the Town, and the technical advisor for their presentations.

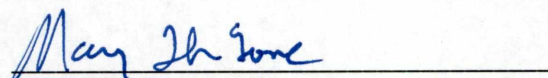
**DATED** at the City of St. John's, Newfoundland and Labrador, this 27<sup>th</sup> day of November, 2017.



Michelle Downey, Chair  
Eastern Newfoundland Regional Appeal Board



Raelene Thomas, Member  
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member  
Eastern Newfoundland Regional Appeal Board