

**LABRADOR REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN**

Keith Russell

**Appellant**

**AND**

Town of Happy Valley-Goose Bay

**Authority**

**RESPECTING**

Order on a warehouse building at 83B Hamilton River Road,  
Happy Valley-Goose Bay (15-006-057-001)

**BOARD MEMBERS**

Karen Oldfold, Chair  
George Andrews, member  
Reginald Hutchings, member  
Nina Rumbolt-Pye, member

**DATE OF HEARING**

December 12, 2018

**IN ATTENDANCE**

Keith Russell, Appellant  
Brenda Russell, supporting the appellant  
Robert Andrews, Town Manager, Town of Happy Valley-Goose Bay  
Jonathan Dale, Legal Counsel for Respondent  
Brian Johnston, Town of Happy Valley-Goose Bay  
Michael Emmens, interested party

Robert Cotter, Secretary to the Labrador Regional Appeal Board  
Christopher Hardy, Technical Advisor to the Labrador Regional Appeal Board

## DECISION

### Facts/Background

This appeal arises from the Town of Happy Valley-Goose Bay issuing an Order to Mr. Keith Russell regarding a warehouse building at 83b Hamilton River Road. The Town ordered Mr. Russell, on or before July 31, 2018, to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state. The Order was issued on March 22, 2018 under the authority of section 404(1)(f) of the Municipalities Act, 1999. The Order stated Mr. Russell's right and process to appeal Council's decision.

Mr. Russell filed an appeal against the issuance of the above noted Order with the Labrador Regional Appeal Board on April 13, 2018. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the Urban and Rural Planning Act, 2000 and included the required information as per section 42(5) of the Urban and Rural Planning Act, 2000.

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

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Happy Valley-Goose Bay Development Regulations 2008

Occupancy and Maintenance Regulations, CNLR 1021/96

### Matters presented to and considered by the Board

The Board considered the following grounds of appeal submitted and presented to the Board:

1. Whether the Town had the authority to issue an Order to deal with this matter.

**(f) where a building is in a dilapidated state, or is, in the opinion of the council, unfit for human habitation, or another use for which it is then being used, or is a public nuisance, the owner or occupier is to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state, or make the disposition or alteration of the building that the order directs.**

2. Whether Council applied its discretion appropriately in reference to the Order.

The Board does not accept the decision of the Town of Happy Valley-Goose Bay determining that the subject building is in a dilapidated state. The Board acknowledges the fact that it cannot insert its discretion for that of Council's in accordance with section 42(11) of the Urban and Rural Planning Act, 2000 but shall consider whether Council applied its discretion appropriately ( Derek and Evelina Stroud vs Central Newfoundland Regional Appeals Board Hon. Richard D LeBlanc). In doing so, the Board found that the Town of Happy Valley-Goose Bay did not satisfactorily determine the subject building was in a dilapidated state or contravening the Occupancy and Maintenance Regulations. The only supporting documentation presented by the Authority was that of photos of the outside of the structure showing peeling paint and missing siding. There was no information shared by the Authority of the structural soundness of the building or other public nuisance concerns.

The Appellant however did present a letter from Borealis Consulting Inc. Mr Randy Tucker P.Eng. MBA, that the "building appeared sound structurally, and that there was no noted rot or deterioration of structural members." There was a photo showing the interior of the building with hydro service still connected

## **Conclusion**

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information. 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 were within their right to issue an Order however the Board finds that the Town failed to provide adequate rationale for the building being deemed in a dilapidated or public nuisance state while issuing the Order. That is to say, that the Board has removed the Order issued to Mr. Russell, as the Board is not satisfied the town has provided substantive evidence to demonstrate that the building constituted a public nuisance or was in a dilapidated state of repair.

## Order

Based on the information presented, the Board orders that the Order dated March 22, 2018 issued by the Town of Happy Valley-Goose Bay to Keith Russell concerning the dilapidated building at 83 B Hamilton River Road, Happy Valley-Goose Bay be reversed.


The Respondent and the Appellant(s) are bound by this decision of the Labrador Regional Appeal Board.

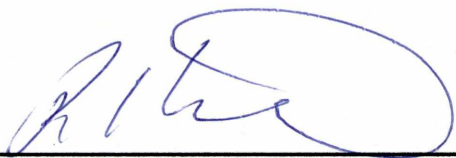
In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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 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(s).

**DATED** at Happy Valley-Goose Bay, Newfoundland and Labrador, this 12<sup>th</sup> day of December, 2018.

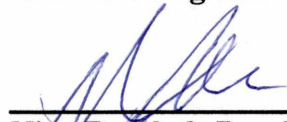
  
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**Karen Oldford, Chair**  
**Labrador Newfoundland Regional Appeal Board**

  
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**George Andrews, Member**  
**Labrador Regional Appeal Board**



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**Reginald Hutchings, Member  
Labrador Regional Appeal Board**



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**Nina Rumbolt-Pye, Member  
Labrador Regional Appeal Board**