

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Clifford Reid **Appellant**

AND Town of Chapel Arm **Authority**

RESPECTING Council's Order to pull down, remove, fill in or otherwise destroy the building at 318 Main Road and restore the site to its original state

BOARD MEMBERS Cliff Johnston, Chair
Damian Ryan, Member
Robert Warren, Member

DATE OF HEARING January 15, 2019

IN ATTENDANCE

Clifford Reid, Appellant (teleconference)
John Brown, Legal Counsel for Appellant
Sandra Blackmore, Legal Counsel for Respondent (teleconference)
Tracy Smith, Town of Chapel Arm (teleconference)

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

A removal order was issued by the Town of Chapel Arm (the Authority) to Clifford Reid (the Appellant) on July 20, 2016 regarding the condition of the building situated at 318 Main Road (the subject property). Council's Order by Motion stated to pull down, remove, fill in or otherwise destroy the building at 318 Main Road and restore the site to its original state was received by Mr. Reid on August 10, 2019. The Order outlined the following:

- A council may make order under §404(1) of the *Municipalities Act, 1999*, regarding dilapidated buildings, That a motion to issue the Order and “return the site to its original location” occurred at a regular meeting of Council on July 19, 2016,
- That the Order be carried out within 30 days,
- The repercussions of not complying with the Order, and
- That the Order can be appealed and how to complete that process.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

What is the role of the Appeal Board?

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Chapel Arm acted in accordance with the *Municipalities Act, 1999*, and the *Urban and Rural Planning Act, 2000*, when it issued an Order to the Appellant on July 20, 2016 related to 318 Main Road, Chapel Arm, NL.

Matters presented to and considered by the Board

Request to postpone?

Due to the weather conditions in January 15, 2019, Mr. John Brown on behalf of the appellant requested the hearing be postponed. The Board rejected the request and asked Mr. Brown to have his client to participate via teleconference.

Question of validity

Was the appeal filed within 14 days?

No. The Town of Chapel Arm presented evidence that the appeal regarding the issuance of the Order is outside the jurisdiction of the Appeal Board.

The Appeal Board reviewed the following;

The provision for appeal is enabled under the section 42 of the *Urban and Rural Planning Act, 2000 Section 42. Appeal*

- (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate Board where the decision is with respect to*
- (a) an application to undertake a development;*
 - (b) a revocation of an approval or a permit to undertake a development;*
 - (c) the issuance of a stop work order; and*
 - (d) a decision permitted under this or another Act to be appealed to the Board.*

The Appeal Board reviewed Part VI, section 42(4), of the *Urban and Rural Planning Act, 2000* which required an appeal be filed within 14 days of the decision of Council.

Section 42(4) states:

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 Appeal Board reviewed the July 20, 2016 Order and the Affidavit of Service. The Appeal Board confirmed with all parties that Mr. Reid received the Order on August 10, 2016. An appeal by Mr. Reid was received by the Appeal Board on August 30, 2016. Mr. Reid explained that he had other matters to attend to while the appeal period was in effect and no other explanation why the appeal was submitted outside the 14 day requirement.

Conclusion

In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

In arriving at its decision, the Appeal Board reviewed the submissions and comments given by all parties present along with the technical information and planning advice.

The Appeal 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 Appeal Board determined that the appeal is not under its jurisdiction and therefore cannot make a decision on the merits of the appeal. Therefore, the Appeal Board has no power to confirm/reverse/vary the Order that was issued.

Order

Based on the information presented, the Board orders that the appeal submitted is outside its legislative authority.

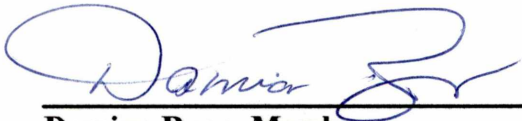
The Respondent and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 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).

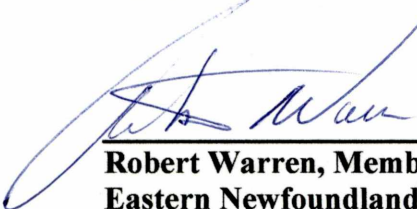
DATED at Portugal Cove-St. Philip's, Newfoundland and Labrador, this 16 day of January, 2019.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board