

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Neil Kelly **Appellant**

**AND** Town of Paradise **Authority**

**RESPECTING** Order - Order to Neil Kelly that the deck and pool be removed from the property at 30 Clearview Heights within fourteen (14) days of the receipt of this order.  
[MAE File: 15-006-057-019]

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Paul Boundridge  
Member – Robert Warren

**DATE OF HEARING** March 4, 2019  
**LOCATION:** City of Mount Pearl Council Chamber

**IN ATTENDANCE**  
**Appellant:** Neil Kelly – Appellant  
**Respondent:** Alton Glenn, Town of Paradise

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

## DECISION

### Facts/Background

This appeal arises from the August 17, 2018 decision of the Town of Paradise to issue an Order to Neil Kelly to remove a deck and pool from his property at 30 Clearview Heights that were said to be constructed without a Permit and in contravention of the Town's Development Regulations within fourteen (14) days of the receipt of the Order.

The Appellant appealed the Order on the following grounds:

1. *"The Town of Paradise has 2 outstanding permit applications that we have submitted that they have yet to rule on regarding same."*
2. *"The area surrounding the swimming pool and pool deck is fully enclosed by a fence and does not present any hazard."*
3. *"We also have a stop work order that was served on us in April preventing us from doing any work on our patio."*

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

Urban and Rural Planning Act, 2000

Town of Paradise Development Regulations, 2016

### Matters presented to and considered by the Board

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Paradise acted in accordance with the *Urban and Rural Planning Act 2000* and the 2016 Town of Paradise Municipal Plan and Development Regulations when it issued the Order to Neil Kelly.

**Q: Does the Town of Paradise Development Regulations 2016 allow development of a pool and associated deck at the subject property?**

**A:** The subject property is zoned Residential Low Density (RLD) which zone allows a swimming pool, deck and fencing as permitted accessory uses. Section 4.23 of the Development Regulations sets out the conditions under which a swimming pool could be allowed as a residential Accessory Use.

**"4.23 Swimming Pools**

*Swimming Pools as a residential Accessory Use, shall meet the following requirements:*

- a. It shall be located in the Rear Yard of the residential property.*
- b. Shall not encroach upon any easements.*
- c. Shall not be located under any overhead power lines.*
- d. Shall have a minimum set back of 2.0 m from any property boundary.*
- e. The area surrounding the Swimming Pool and pool deck shall be fully enclosed by a fence to prevent people, especially children, from unauthorized access to the pool area, in accordance with the Town of Paradise Fence Regulations."*

**Q: Did the Appellant have a Permit for the pool and deck that he was ordered to remove on August 17, 2018?**

**A:** No, the pool and associated deck had been erected without a Permit having been approved and issued by the Town. On July 12, 2017 the Appellant applied to the Town for a Permit for the existing pool and patio (deck). It is the Board's understanding, based upon information presented, that the Town has not yet issued a response to the application nor issued a Permit.

The Board reviewed *URPA, 2000* section

*Council and regional authority etc. regulations*

- 35. (g) requiring that a decision of a council or regional authority with respect to a permit be in writing and state reasons for a refusal of or conditions placed upon a permit;

Both parties agreed that council did not render a decision on the July 12, 2017 development application. The Board also found that the Order issued to Mr. Kelly did not include any reference to an application.

**Q. Does a deferment of an application exist?**

**A.** The Board reviewed section 3.15 1.2. of the Town's Development Regulations.

- 1. Council may defer consideration of an application with the written agreement of the Applicant
- 2. Council may defer decisions on an application within a specified area where council has directed that a planning study or other similar study pertaining to the future use and Development of the specified area be undertaken.

The Board learned that neither the above was considered.

**Q: Did the Town have the authority to issue the Removal Order to the Appellant?**

**A:** The Town of Paradise Development Regulations 2016 state:

**"3: GENERAL REGULATIONS**

### **3.1 Compliance with Regulations**

*Development shall be carried out and maintained within the Planning Area in accordance with the Municipal Plan, these Regulations, the conditions stated in a Development Approval and/or Building Permit, and any other by-law or regulation enacted by Council.*

### **3.2 Permit Required**

*Development shall not be carried out unless Council has first issued a Building Permit.*

### **3.35 Stop Work Order and Prosecution**

1. *Where a person begins or continues a Development contrary, or apparently contrary, to the Municipal Plan and these Regulations, Council may order that person to stop the Development, and any work connected with it, pending the submission and approval of an application or a final decision in a prosecution arising out of the Development.*
2. *A person who does not comply with an order made under 3.35 (1) is guilty of an offence under Sections 102-107 of the Act."*

The *Urban and Rural Planning Act 2000* states:

#### **"Order**

*102. (1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state."*

In this case, the Town would have had the authority to issue the August 17, 2018 Order to the Appellant only in the absence of an application respecting the same development.

### **Conclusion**

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Paradise acted in accordance with the *Urban and Rural Planning Act 2000* and the 2016 Town of Paradise Municipal Plan and Development Regulations when it issued the Order to Neil Kelly.

The Board derives its powers under the *Urban and Rural Planning Act, 2000* Section 42. 10

*42. (10) 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.*

The Board finds that the Town did not have the authority under the *Urban and Rural Planning Act 2000* and the Town of Paradise Development Regulations 2016 to issue the Order in

question as the Town did not appropriately make a development decision regarding the July 12, 2017 development application (for a permit for the existing deck and pool). Therefore the Order is reversed. That is to say, the Board directs council to render a decision on the July 12, 2017. Consideration and formal decision by the Town of the application will enable the Town to determine if the application can be or needs to be modified to meet the applicable requirements of the Town's Development Regulations.

## ORDER

Based on the information presented, the Board orders that the Order dated August 17, 2018 from the Town of Paradise to the Appellant to remove the deck and pool from the property located at 30 Clearview Heights be reversed.

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.

The Respondent and the Appellant(s) 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.

**DATED** at Mount Pearl, Newfoundland and Labrador, this 7<sup>th</sup> day of March, 2019.



Cliff Johnston, Chair  
Eastern Newfoundland Regional Appeal Board



Paul Bountridge, Member  
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member  
Eastern Newfoundland Regional Appeal Board