

**WEST NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

15-006-057-025

**APPEAL**

BETWEEN Vincent McGrath APPELLANT  
and Town of Kippens RESPONDENT  
RESPECTING Stop Work Order

**BOARD MEMBERS** Lloyd Walters, Chairperson  
Helen Reid, Member  
Derrick House, Member

**DATE OF HEARING** June 12, 2019

**IN ATTENDANCE**

Vincent McGrath, Appellant  
Leonard Hann, Town of Kippens, Respondent  
Francis Power, Interested Party  
Paul Noseworthy, Interested Party  
Robert Cotter, Secretary to the West Newfoundland Regional Appeal Board  
Elaine Mitchell, Technical Advisor to the West Newfoundland Regional Appeal Board

## **DECISION**

### **Background/Chronology**

This is a third party appeal where Mr. Vincent McGrath (the Appellant) filed an appeal concerning a decision by the Town Council of Kippens with respect to an order.

Mr. Francis Power (the Applicant) applied for a permit to build an accessory building at 26 Island Pond Drive, Kippens which was issued by the Town. The Town subsequently notified the applicant, in writing, that the accessory building did not meet the requirements of the Kippens Development Regulations which specify a 2 metre side yard for accessory buildings. The Town issued a Stop Work and Removal Order which ordered that the accessory building be removed or altered to meet town regulations and that the site be restored by September 28, 2018.

At its September 13, 2018 Council meeting, Council passed a motion to impose a fine of \$500 on the applicant. The applicant was informed of this decision in a letter which stated that:

"Council has voted to impose a fine of \$500 as per the Municipalities Act 1999, section 420 (1)(a);

Removal of the addition behind the garage is required as it was built without a permit and does not meet the standards of a two metre separation between two accessory buildings in accordance with section 32 (5); and The garage addition must be removed and fine must be paid by October 19, 2018.

The Appellant filed an appeal after the September 13, 2018 Council meeting.

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

*Urban and Rural Planning Act, 2000(URPA,2000)*

Town of Kippens Development Regulations

### **Matters presented to and considered by the Board**

According to the Kippens Development Regulations, the subject property is located within Residential (RES) zone. Single dwellings are a permitted use. Section 32 (5) of the Kippens Development Regulations specifies that an accessory building associated with residential uses must be located a minimum of 2 metres from the side and rear property lines and a non-residential structure.

The board heard from both the appellant, Mr. McGrath and the respondent for the Town, Mr. Hann, as well as from the original applicant, Mr. Power, that the building was in fact not constructed in compliance with the side yard requirements as set out in the Town of Kippens Development Regulations..

Procedurally, Council should have brought forward a motion with respect to the stop order and debated and voted on that motion at a public Council meeting. Instead, Council did not bring forward a motion with respect to the order but instead considered motion #136/18 to impose a fine.

The Town does not have the legislative authority to impose a fine. It has not been given the authority by the Minister of Municipal Affairs and Environment to issue violation notices under section 421.3 of the Municipalities Act and section 39.3 of the Urban and Rural Planning Act. Where this authority is given by the Minister, the Town may issue violation notices (tickets) and collect voluntary payments. Where a person receives a violation notice, does not comply with the notice and is convicted on an offence in Provincial Court, the court may impose a maximum penalty of \$100.

### **What are the grounds of appeal?**

The Appellant is appealing Council's decision not to proceed with the Stop Work and Removal Order, issued on September 28, 2018, which ordered the removal or alteration of an accessory building constructed at 26 Island Pond Road. The Kippens Development Regulations specify requirements for a residential accessory building including a minimum set back of two metres from the side and rear lot lines and a non-residential structure.

### **Conclusion**

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

The Board considered Section 12 of *Urban and Rural Planning Act, 2000* that states that a plan and regulations are binding upon council and every person undertaking development within the Kippens planning area.

Based on its findings, the Board determined that the Town of Kippens acted outside their Development Regulations by substituting a fine for non-compliance of the Stop Work Order rather than confirming the stop work order at the next Council meeting. That is to say the town did not comply with its development regulations as is required under Section 12 of the *URPA 2000*.

**Order**

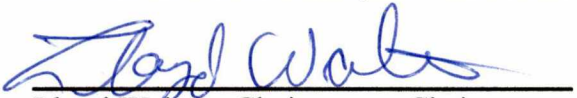
Based on the information presented, the Board orders that the decision by the Town of Kippens is reversed. The Town of Kippens is ordered to issue a Stop Work Order for the development at 26 Island Pond Drive and adhere to the Urban and Rural Planning Act, 2000, the Town of Kippens Development Regulations and the Municipalities Act, 1999 when dealing with this stop work order.

The Respondent and the Appellant(s) are bound by this decision of the West Newfoundland 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 West 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 Corner Brook, Newfoundland and Labrador, this 12th day of June 2019.



Lloyd Walters, Chairperson, Chair  
West Newfoundland Regional Appeal Board



Helen Reid, Member  
West Newfoundland Regional Appeal Board



Derrick House, Member  
West Newfoundland Regional Appeal Board