

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Jess Puddister and Tim Ward **Appellant**

AND Town of Pouch Cove **Authority**

RESPECTING Order to Stop Work and repair, pull down, remove, fill, or otherwise destroy the dwelling and restore the site
15-006-057-027

BOARD MEMBERS Cliff Johnston, Chair
Carol Ann Smith, Member
Robert Warren, Member

DATE OF HEARING September 17, 2019

IN ATTENDANCE

Jess Puddister and Tim Ward, Appellants
Brian Peach, CAO, Town of Pouch Cove
Susan Arns Executive Clerk, Town of Pouch Cove
Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

On June 11, 2018, the appellants applied to the Town of Pouch Cove for a structure (29 ft x 8.5ft x 13 feet) at Lot 1, 24-42 Shoe Cove Road. On July 26, 2018, Council informed the Appellants that the application was deferred pending the accommodation of Tiny Home development in the Town of Pouch Cove. On September 27, 2018, Council issued a Stop Work and Removal Order for the Tiny Home structure that had been placed on the subject property. A week later, on October 3, 2018, the Order was appealed.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000 Ministerial Development Regulations

Town of Pouch Cove Development Regulations

Municipalities Act, 1999

Matters presented to and considered by the Board

Q. What were the events that lead to the Order?

A. On June 11, 2018, the Appellant submitted a development application to construct/place a Tiny Home at Lot 1, 24-42 Shoe Cove Road, Pouch Cove. The application was tabled at the Council meeting of July 23, 2018. On July 26, 2018, the Town sent a letter to the Appellants advising that the development application has been deferred by Council, “as the Development Committee would like to prepare and include the proper regulations for this type of development in our new Town Plan”.

The Town became aware on September 24, 2018 that a Tiny Home had been placed on the property. On September 27, 2018, a Stop Work / Removal Order was issued by the Town for the Tiny Home structure that had been placed by the Appellants on the property.

On October 3, 2018, the Appellants filed an appeal against the Town’s decision to issue the Order.

Q. Is the parking of the Tiny Home on the Appellants' property considered a "Development"?

A. The Board had determined that the parking of a Tiny Home on the subject property is a "Development" as defined under the Urban and Rural Planning Act, 2000 and requires a development permit.

Q. Have the Appellants submitted a development application to the Town for the placement of their Tiny Home?

A. Yes, the Appellants submitted an application on June 11, 2018. On July 26, 2018, the Town advised the Appellants by letter that their application has been deferred "as the Development Committee would like to prepare and include the proper regulations for this type of development in our new Town Plan". It is the Board's understanding that the Town has not to date made a decision on the development application.

Q. Did the Town have the authority to issue the removal order to the Appellants?

A. The Board accepts that the Town had the legislative authority to issue an Removal Order. The Urban and Rural Planning Act, 2000 defines Building and Development as follows:

("Definitions") In this Act

"Building" means

(i) a structure, erection, alteration or improvement placed on, over or under land or attached, anchored or moored to land,

(ii) mobile structures, vehicles and marine vessels adapted or constructed for residential, commercial, industrial and other similar uses,

(iii) a part of and fixtures on buildings referred to in subparagraphs (i) and (ii), and

(iv) an excavation of land whether or not that excavation is associated with the intended or actual construction of a building or thing referred to in subparagraphs (i) to (iii);

(g) "development" means the carrying out of building, engineering, mining or other

operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the

- (i) making of an access onto a highway, road or way,
- (ii) erection of an advertisement or sign,

- (iii) construction of a building,

- (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation, and excludes the

- (v) carrying out of works for the maintenance, improvement or other alteration of a building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building,

- (vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,

- (vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and

- (viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling;

Section 102(1) of URPA enables Council to issue an order against a building or development that is contrary to a plan or regulations. Stop Work, removal, and restoration is captured under such orders. In this case, Council noted "No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.

Where a building is erected without a permit as is required by section 194 of the Municipalities Act, Section 404(1)(e) of the Municipalities Act authorizes the Town to order a person to pull down, stop construction, or destroy a building and restore the site to its original state.

Q: Did the Town act appropriately in issuing the Removal Order on September 27, 2018?

A: Section 19 of the Town's Development Regulations state that:

19. Deferment of Application

- (1) The Authority may, with the written agreement of the applicant, defer consideration of an application.
- (2) Applications properly submitted in accordance with these Regulations which have not been determined by the Authority and on which a decision has not been communicated to the applicant within eight weeks of the receipt thereof by the Authority, and on which consideration has not been deferred in accordance with regulation 18(1), shall be deemed to be refused

The Board notes that the Town did not seek the approval of the Appellants prior to making its decision of July 23, 2018 to defer the development application. The Board also notes that the Town did not make a decision on the Appellants' development application prior to issuing the Removal Order on September 27, 2018.

Conclusion

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Pouch Cove acted in accordance with the Urban and Rural Planning Act 2000 and the Town of Pouch Cove Municipal Plan and Development Regulations and the Municipalities Act, 1999 when it issued the Removal Order to Jess Puddister and Tim Ward.

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 determined that while the Town does have the authority under the Urban and Rural Planning Act 2000, the Municipalities Act, 1999 and the Town of Pouch Cove Municipal Plan and Development Regulations to issue a Removal Order, the Board has determined that the Town did not make a development decision regarding the June 11, 2018 development application submitted by the Appellants.


ORDER

Based on the information presented, the Board orders that the Removal Order dated September 27, 2018 from the Town of Pouch Cove to the Appellants to remove the Tiny Home from the property located at Lot 1, 24-42 Shoe Cove Road, Pouch Cove, be reversed and no further action shall be taken by the Town regarding the temporary parking of the Tiny Home until the Town makes a decision on the Appellant's development application.

In accordance with Section 44(3) of the Urban and Rural Planning Act 2000, the Board further orders the Authority pay an amount equal to the Appeal filing fee of \$230.00 to the Appellants.

The Authority and the Appellants are bound by this 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 10 days after the Board's decision has been received by the Appellants.

Dated at Portugal Cove-St. Philips, Newfoundland and Labrador, this 19th day of September, 2019



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board