

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN

Millbrook Development Inc.

Appellant(s)

Town of Kippens

Respondent

RESPECTING:

Counsel for Millbrook Developments Inc. (the Appellant) filed a third party appeal with respect to the decision of the Kippens Town Council (Council) to recognize the agricultural use of the Aucoin property, located at 40 Simon Drive, as an existing non-conforming use

BOARD MEMBERS

Lloyd Walters, Chair
Leona Gillette, Member
Boyd Noel, Member

DATE OF HEARING

September 24, 2019

IN ATTENDANCE

Appellants:

Dennis Rowe, Millbrook Development Inc.
Shawn Boyd, Millbrook Development Inc.

Respondent:

Johnathan Dale, Solicitor for Town of Kippens (Via Phone)
Leonard Hann, CAO Town of Kippens
Interested Party: Shanna O'Quinn

Robert Cotter, Secretary to the West Newfoundland Regional Appeal Board
Elaine Mitchell, Technical Advisor to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

On October 11, 2018 Council made motions #147/18, #148/18 and #149/18 at a Regular Meeting of Council to issue a stop work and removal order to the owner of 40 Simon's Drive, Kippens, ordering the removal of two sheds that were constructed/installed without a permit and all advertisements/signs and all longers and wire fences that were constructed without a permit, all animals (other than pets) as defined by legislation from the property. Compliance was required by June 1, 2019.

On October 31, 2018 Council made motion #151/18 at a Special Meeting of Council to rescind the removal orders issued on October 15, 2018 to the Aucoin family farm.

On November 7, 2018 Council made motion #156/18 at a Regular Meeting of Council to adopt the October 31, 2018 Special Council Meeting minutes. Council made several additional motions; #169/18 to grant a permit in principle for an existing animal structure at 40 Simons Drive based on size and intensity (number and type of animals) to be confirmed by staff, #170/18 to grant a permit in principle for an existing animal structure at 40 Simons Drive based on size and intensity (number and type of animals) to be confirmed by staff, #171/18 to grant a permit to repair a fence at 40 Simons Drive to be in full compliance with appropriate regulations, #173/18 to recognize 40 Simons Drive, the Aucoin Family Property, as existing non-conforming use under section 108 of the Urban and Rural Planning Act and #174/18 to rescind the removal orders issued from the Aucoin Family Farm on October 15, 2018.

On November 28, 2018 The Town informed Gerard Aucoin in writing of its decision to recognize the Aucoin family property as an existing non-conforming use under section 108 of the Urban and Rural Planning Act.

On November 28, 2018 an appeal was filed on behalf of Millbrook Developments Inc.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Kippens Development Regulations

The provision for appeal is enabled under section 42 of the Urban and Rural Planning act.(URPA).

The Urban and Rural Planning Act 2000 (URPA) section 42 (1) specifies the decisions that can be appealed as follows:

- application to undertake development;
- revocation of an approval or permit to undertake development;
- issuance of a stop work order; and
- a decision permitted under this or another Act.

The Board was presented with written arguments from council for the appellant and the respondent prior to the appeal being heard. The Board reviewed all submissions received as well as arguments heard on the day of the appeal. The Board was presented with opposing arguments regarding the validity of the appeal and whether the Board had jurisdiction to hear the appeal in question.

After due consideration and deliberation of Section 42(1) of URPA and the arguments presented, the Board has determined that the appeal does not meet the requirements set out under that sections of the act as a decision which may be appealed to the Board.

Section 42(2) further, specifically restricts the Board from hearing certain appeals; stating

“ ..plans, scheme, development regulations and amendments and revisions of them is final and not subject to appeal”.

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.

Based on its findings, the Board determined that the appeal is outside the jurisdiction of the Board.

Therefore, the Board cannot make a determination under the *Urban and Rural Planning Act 2000*, to *confirm, reverse, or vary* the Respondent's decision.

Order

Based on the information presented, the Board determined that it does not have jurisdiction in this matter and cannot issue an order to confirm, reverse or vary the matter as submitted.

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

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).

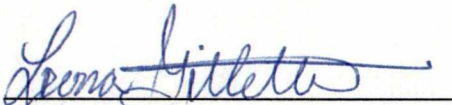
DATED at Corner Brook, Newfoundland and Labrador, this 24th day of September, 2019



Chair
West Newfoundland Regional Appeal Board



Member
West Newfoundland Regional Appeal Board



Member
West Newfoundland Regional Appeal Board