

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Leopard Canada Ltd **Appellant(s)**

**AND** City of Mount Pearl **Respondent**

**RESPECTING** Order to develop and grade lot at 10 Pembury Close

**BOARD MEMBERS** Clifford Johnston, Chair  
Robert Warren, member  
Damian Ryan, member

**DATE OF HEARING** December 11, 2019

**IN ATTENDANCE**

Paul Burgess, Solicitor for Leopard Canada

Catherine Howell, Manager of Planning and Development City of Mount Pearl

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

Tolulope Victoria Akerele, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

## **DECISION**

### **Facts/Background**

On October 15, 2018, Mount Pearl City Council (Authority) issued Leopard Canada Ltd. (Appellant) an Order to develop and grade the lot at 10 Pembury Close, Mount Pearl. The Order was issued after Council received a complaint of surface water runoff from the subject property flowing to neighbouring properties and the City Street. The Order noted that the lack of water management and control at the subject property was contrary to the applicable Acts and Regulations. The Order also outlined the appellant's right and method of appealing the Order. On October 25, 2018, the Solicitor for the Appellant initiated an appeal against the City Council on the basis that the appellant does not hold registered title to the subject property.

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

*Urban and Rural Planning Act, 2000 City Mount Pearl Act, RSNL 1990, C-16*

*City of Mount Pearl Development Regulations 2010*

*Mount Pearl Building Regulations 2011*

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

#### **Why did City issue the Order?**

The Board learned that Council responded to a complaint from a resident regarding water runoff. In response the City used regulation 102 of the *Urban and Rural Planning Act, 2000* below to issue the Order to Leopard Canada Ltd.

*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.*

*(2) A person ordered to carry out an action under subsection (1) shall be served with that Order and shall comply with the Order at the person's own expense.*

(3) *An Order made under this section continues in force until revoked by the council, regional authority, authorized administrator, or minister that made the Order.*

(4) *A council, regional authority, authorized administrator or the minister may, in an Order made under this section, specify a time within which there shall be compliance with the Order.*

(5) *Where a person to whom an Order is directed under this section does not comply with the Order or a part of it, the council, regional authority, authorized administrator or minister may take the action that it considers necessary to carry out the Order and any costs, expenses or charges incurred by the council, regional authority, authorized administrator or minister in carrying out the Order are recoverable against the person against whom the Order was made as a debt owed to the council, regional authority, authorized administrator or the Crown.*

***And***

Section 209 of the *City of Mount Pearl Act*

Removal of Waste

*209. The council may Order the removal from real property by the owner or occupier of solid waste, noxious substances and anything that poses a hazard to public health and safety or adversely affects the amenities of the surrounding property, or may remove the waste or substance and charge the owner or occupier of the real property for the costs of its collection and disposal.*

**Why did the City issue the Order to Leopard Canada?**

At the hearing the board learned from Mr. Burgess that a landownership issue was before the Court between **Leopard Canada Ltd.** and **Leopard Development**. Leopard Development is a company that is a separate entity and who are the current recognized owners of the property under appeal.

Mr. Burgess explained that Leopard Canada could not act upon the Order as they were not the rightful owners of the property at 10 Pembury Close. Mr. Burgess also advised that the City staff



were advised by the appellant, prior issuance of the Order that Leopard Canada does not own the property.

According to the City representative, the City issued the Order to Leopard Canada Ltd because the City records indicated that Leopard Canada was paying the property tax and therefore they assumed that they were the legal owner. The Board learned at the hearing that the City had not received any information that the property had been sold to Leopard Development.

Mr. Burgees advised that just because taxes are being paid does not make one the legal owner. He also added that it was in the interest of Leopard Canada to pay the taxes on the property and that Leopard Development was incapable of paying the taxes.

While the City waited for new information relating to the transfer of property and acted on the most recent information in its files, it was determined by the Board that the Order was issued to the wrong party. The matter of ownership is currently before the Supreme Court of Newfoundland and Labrador.

## **Conclusion**

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 reviewed the following:

*Urban and Rural Planning Act, 2000*

City Mount Pearl Act, RSNL 1990, C-16

City of Mount Pearl Development Regulations 2010

Mount Pearl Building Regulations

The Board has determined that the City had the authority under the above legislation to issue the Order for the remediation of the water run-off issue; however, while the City demonstrated efforts to identify the appropriate party on which to serve the Order, the Board found that the legal ownership is in fact yet to be determined by Supreme Court of Newfoundland and Labrador.

Therefore, the Board *reverses* the Respondent's decision to issue Leopard Canada Ltd an Order to develop and grade the lot at 10 Pembury Close, Mount Pearl. That is to say, reverse means that the Order is no longer in effect.

**Order**

Based on the information presented, the Board Orders that the decision made by the City of Mount Pearl to issue an Order on October 15, 2018, to Leopard Canada to develop and grade the lot at 10 Pembury Close be reversed.

The Board further Orders that, in accordance with the Urban and Rural Planning Act, 2000, the City of Mount Pearl must refund an amount of money equal to the fee paid by Leopard Canada in their appeal application (\$230).

The City of Mount Pearl 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 Trial Division 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 Portugal Cove-St. Philips Newfoundland and Labrador, this 11 day of December 2019.



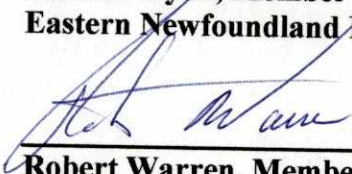
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**Clifford Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**



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**Damian Ryan, Member**  
**Eastern Newfoundland Regional Appeal Board**



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**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**