

Central Newfoundland Regional Appeal Board

Appeal #	15-006-064-032
Appellant(s)	GGR Developments Ltd. (Stareg Holdings Ltd.)
Respondent / Authority	Town of Buchans

1. Board's Role

The role of the Central Newfoundland Regional Appeal Board is to determine if the Town of Buchans acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Municipalities Act, 1999* when it issued an order to the Appellant on September 3, 2019 ordering that a segment of a building be demolished and the neighbouring segment be made weather tight.

2. Background

Robert Regular (the Appellant) is the owner of Lot 89D at 59 Church Street in the Town of Buchans. The Town's Council determined that the subject building segment is dilapidated, and, by way of a motion on August 28, 2019, ordered the Appellant to:

- Demolish Segment D of the building located at Lot 89 at 59 Church Street,
- Restore the site to its original state, and
- Restore the end of the adjacent building to a "state that protects [it] from all types of weather and climate."

The Order also outlined that the Appellant had 60 days to comply with the Order, that section 404(5) of the *Municipalities Act, 1999* gives Council the authority to recover costs from having to do the work if the recipient of an order does not, that not complying with the Order is an offense under section 419(1) of the Act, and the consequences of not complying with the Order as per section 420 of the Act.

The Order included the right to appeal.

Chronology

Fall 2018	Vandalism reported to the Owner's representative by the Mayor.
Mid-August 2019	Arrangements made by Appellant to repair or board-up vandalised properties.
August 28, 2019	Council meeting at which the decision to issue the Order was made.
September 13, 2019	Order delivered to the Appellant.
September 17, 2019	Appeal filed with the Secretary of the Regional Appeal Boards.

3. Validity

Sections 42 (4) and (5) of the *Urban and Rural Planning Act, 2000* state:

42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

42. (5) An appeal shall be made in writing and shall include

- (a) a summary of the decision appealed from;
- (b) the grounds for the appeal; and
- (c) the required fee.

According to the documents provided, the appeal was filed on September 17, 2019. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

4. Grounds of Appeal

Section 42 of the *Urban and Rural Planning Act, 2000* outlines what can be appealed:

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

- (a) an application to undertake a development;
- (b) a revocation of an approval or a permit to undertake a development;
- (c) the issuance of a stop work order; and
- (d) a decision permitted under this or another Act to be appealed to the board.

This appeal is based on the following section of the Act: Section 42.(1)(c) (the issuance of a stop work order). The Appellant, by way of a legal representative, is appealing the Order based on the following grounds:

1. Councillors who participated in the meeting at which the decision was made to issue the Order may be in a conflict of interest,
2. The Council does not have the authority to order the repair of the adjacent building,
3. The Appellant was not made aware of the dilapidated state of the subject building before the Order was issued,
4. The Town has not adopted a definition of what constitutes dilapidated,
5. That the Appellant has demonstrated two weeks before the Order was issued that he was addressing the issue(s) (e.g., had applied for a permit to do work to the subject property),
6. The Town has interfered with the Appellant's ability to address the issue(s).

5. Planner's Technical Analysis

Legislation and Regulations

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Procedural Compliance

The *Municipalities Act, 1999* outlines in s. 404(1)(f) that “a council may make an order”:

(f) where a building is in a dilapidated state, or is, in the opinion of the council, unfit for human habitation, or another use for which it is then being used, or is a public nuisance, the owner or occupier is to pull down, remove, fill in or otherwise destroy the building and restore the site to its original state, or make the disposition or alteration of the building that the order directs;

As per the above section of the Act, Council may determine that a building is “unfit for human habitation” and order the owner or occupier to make the “alteration of the building that the order directs”.

Section 207(1) of the Act states the following regarding conflict of interest:

207. (1) A councillor shall not vote on or speak to a matter before the council or a committee of the council where

(a) the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;

(b) the councillor has a monetary interest directly or indirectly in the matter;

(c) a relative of the councillor has a monetary interest in the matter;
or

(d) the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.

The service of an order is outlined in section 406 of the Act:

406. (1) A notice, order or other document required to be given or served under this Act or the regulations is sufficiently given or served where delivered personally or sent by registered mail addressed to the person to whom delivery or service is to be made at the latest address appearing on the records of the applicable council.

(2) Where a person to whom a notice, order or other document is to be given or served as described in subsection (1) is a corporate body, it shall be considered to be sufficiently given or served where delivered personally to a director or chief executive officer of that corporate body.

(3) Where an order which can be made under this Act cannot be given or served under either subsection (1) or (2), that order is considered served if it is posted in a conspicuous place on the property to which the order relates.

6. Presentations during the Hearing

Appellant

The Board reviewed the Appellant’s grounds.

1. Councillors who participated in the meeting at which the decision was made to issue the Order may have been in a conflict of interest,
2. The Council does not have the authority to order the repair of the adjacent building,
3. The Appellant was not made aware of the dilapidated state of the subject building before the Order was issued,
4. The Town has not adopted a definition of what constitutes dilapidated,
5. That the Appellant demonstrated two weeks before the Order was issued that he was addressing the issue(s) (e.g., had applied for a permit to do work to the subject property),
6. The Town has interfered with the Appellant's ability to address the issue(s).

The Board makes the following comments on the grounds.

1. The Board reviewed the definition of conflict of interest (see 207(1) of *Municipalities Act, 1999*): there were no reference during the hearing to quantify the argument,
2. The Board reviewed Section 404(1)(f) of *Municipalities Act, 1999* and confirms that Council does have the right to order the repair,
3. Council responded to a complaint from a resident and Council acted. The Board reviewed the letter dated November 13, 2018 to the Appellant that referenced the Town inspection. It referenced that there were issues with a falling ceiling, extreme mould and overall deteriorating conditions. As a result of the site visit, Council used Section 404(1)(f) of the *Municipalities Act, 1999* to issue the Order,
4. While there are no definition of a dilapidated state, the Act still allows council to make that determination (based on 404 of the *Municipalities Act, 1999*).
5. The role of the Board is to address the Order that is the subject of this appeal, not whether a permit was obtained or not,
6. The issue for the Board is the issuance of the Order. Once an appeal is registered, all development shall cease pending a decision of the Board.

7. Authority

The Town provided evidence that the Town responded to a resident's concern, investigated and deemed the property under 404 of the *Municipalities Act, 1999* to be in a state as defined under subsection (1)(f). The Board confirmed that Council discussed the condition of the property and made motion #271-2019 on August 28, 2019 to issue the Order.

8. Conclusion

Based on its findings, the Board determined that the Town of Buchans did properly apply section 404(1)(f) of the *Municipalities Act, 1999* in the issuance of the Order dated September 3, 2019 . Therefore, the Board confirms the Respondent's decision to issue the Order on property located at 59 Church Street, Buchans.

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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.

Board's Order

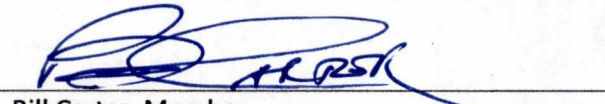
The Respondent and the Appellant(s) are bound by this decision of the Central Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central 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).

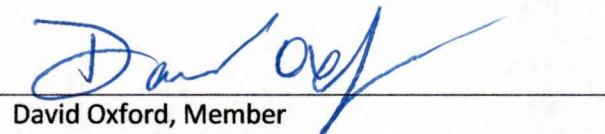
DATED at Gander, Newfoundland and Labrador, this 9 of March, 2020.



Gerald Thompson, Acting, Chair
Central Newfoundland Regional Appeal Board



Bill Carter, Member
Central Newfoundland Regional Appeal Board



David Oxford, Member
Central Newfoundland Regional Appeal Board