

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Dale Mitchell **Appellant**

**AND** Town of Portugal Cove-St. Philip's **Respondent**

**RESPECTING** Removal order-Dwelling extension

**BOARD MEMBERS** Michelle Downey, Chair  
Colleen Hanrahan, Member  
Mary Thorne-Gosse, Member

**DATE OF HEARING** December 8, 2017

**IN ATTENDANCE**  
Dale Mitchell – Appellant

Ashley McKinnon - Respondent  
Les Spurrell- Respondent

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 February 15, 2012, the Town Council of Portugal Cove-St. Philip's issued a conditional building permit to Dale Mitchell for an extension to a dwelling located at 10-12 Hilltop Lane. The building permit ("Permit 12-023") granted permission to construct a dwelling extension (49.12 m<sup>2</sup>) for cold storage purposes. Further, the dwelling extension was to be used for personal use only. Officials of the Town became aware of construction at the site that was not in compliance with the permit issued. The Town issued a Stop Work Order on September 20, 2012. The Town Council issued a Removal Order on March 31, 2016 to the Estate of Marie Mitchell regarding the extension to the dwelling at 10-12 Hilltop Lane.

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

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Portugal Cove-St. Philip's Municipal Plan and Development Regulations, 2014

### Matters presented to and considered by the Board

#### **Did the Town have the Authority to issue the Removal Orders for 10-12 Hilltop Place?**

Officials of the Town Council of the Town of Portugal Cove-St. Philip's stated that the extension to the dwelling was larger than approved under the building permit. Under the *Urban and Rural Planning Act, 2000* the Town Council has the authority to issue stop work and removal orders.

#### **102. Order**

*(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.*

The Board finds that the Town Council had the authority to issue the Removal Order.

#### **Did the Town of Portugal Cove-St. Philip's exercise its authority properly in the execution of the removal order?**

The *Urban and Rural Planning Act, 2000* requires that a Town Council to give notice of the issuance of order.

**107. Service**

*(1) Unless otherwise stated in this Act, a notice, order or other document required to be given, delivered or served under this Act is sufficiently given, delivered or served where delivered personally or sent by registered mail addressed to the person at the latest known address of that person.*

The Removal Order was issued to the Estate of Marie Mitchell. Her son, Dale Mitchell, applied for and was granted the building permit. The Board was advised by representatives of the Town of Portugal Cove-St. Philip's that the removal order was posted on the property at 10-12 Hilltop Lane on March 31, 2016, which Mr. Mitchell acknowledged at the hearing. Further, a copy of the Removal Order was sent by registered mail by the Town officials to the post office box associated with the property. Mr. Mitchell accepted delivery as verified by his signature on April 5, 2016.

The Board finds that the Town Council of Portugal Cove-St. Philip's complied with the provisions of the *Urban and Rural Planning Act, 2000* with respect to providing notice of the issuance of the Removal Order.

**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 finds that the Town of Portugal Cove-St. Philip's acted in compliance with the *Urban and Rural Planning Act, 2000* when issuing the removal order and providing notice to Mr. Mitchell.

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 has the authority to make an order to confirm the decision of the Town Council of Portugal Cove-St. Philip's to issue the Removal Orders according to *Section 42(10)* of the *Urban and Rural Planning Act, 2000*

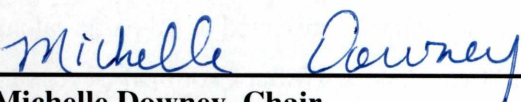
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**Order**

Based on hearing the parties and considering the evidence presented, the Board confirms the decision of the Town Council of Portugal Cove-St. Philip's to issue the Removal Order on March 31, 2016 to the Estate of Marie Mitchell respecting the property situated at 10-12 Hilltop Lane.

The Board further orders that there will no order regarding reimbursement of the appeal filing fee of \$230.00 paid by the appellant.

The Town of Portugal Cove-St. Philip's and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

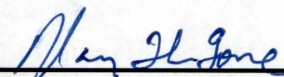
**DATED** at St. John's, Newfoundland and Labrador, this 14<sup>th</sup> day of December, 2017.



**Michelle Downey, Chair**  
**Eastern Newfoundland Regional Appeal Board**



**Colleen Hanrahan, Member**  
**Eastern Newfoundland Regional Appeal Board**



**Mary Thorne-Gosse, Member**  
**Eastern Newfoundland Regional Appeal Board**