

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Randal Puddester **Appellant(s)**

AND Town of Bay Bulls **Authority**

RESPECTING Order to Remove temporary Accessory Building at 140 Track Road Extension, Bay Bulls (15-006-054-017)

BOARD MEMBERS Cliff Johnston, Chair
Paul Boundridge, Member
Robert Warren, Member

DATE OF HEARING October 22, 2018

IN ATTENDANCE

Randal Puddester, Appellant
Ray Jonathan Dale, Legal Counsel for 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

In December 2015 the Appellant consulted with the Town Clerk (since retired) about obtaining a Permit to erect a temporary Accessory Building to build a boat. The Appellant was allegedly advised by the former Town Clerk that a Permit was not required for a temporary Accessory Building.

On July 13, 2017 the Town sent a registered letter to the Appellant ordering removal of the temporary Accessory Building. Following receipt of a letter dated July 20, 2017 from the Appellant explaining his view of the situation and outlining his plans for temporary structure on the subject property, a Removal Order was issued on September 19, 2017 for the temporary structure citing “safety concerns to the public and liability issues”. On the same date, the Town provided the Appellant with an application form for a temporary Accessory Building.

On September 26, 2017 the Appellant filed an Appeal of the Removal Order with the Secretary of the Appeal Board.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* and a notice of the time, date, and place of the Hearing was provided to the Appellant and Respondent.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Bay Bulls Municipal Plan and Development Regulations, 2014-2024

Matters presented to and considered by the Board

Q: Is an Accessory Building allowed in the Residential (RES) Zone?

A: Yes, in accordance with Regulation 38 of the Town's Development Regulations and subject to the RES Zone Accessory Building conditions.

Q: Is a temporary Accessory Building allowed in the Town of Bay Bulls in the RES Zone?

A: Yes, Regulation 21(3) of the Town's Development Regulations provides that "Where the Authority deems necessary, permits may be issued on a temporary basis for a period not exceeding two years, which may be extended in writing by the Authority for further periods not exceeding two years."

Q: Did the Appellant apply for and obtain a permit for the temporary Accessory Building?

A: The Appellant consulted with the former Town Clerk and was allegedly verbally advised that a permit was not required for a temporary Accessory Building. Following this conversation with the former Town Clerk, the Appellant proceeded to begin construction of his Accessory Building without a permit. The Accessory Building was completed on June 20, 2017.

Q: Did the Town have the authority to issue the Removal Order?

A: Section 404(1)(e) of the *Municipalities Act, 1999* provides the Town Council with the authority to issue a Removal Order when a building is erected without a written permit. Also, Section 102(1) of the *Urban and Rural Planning Act, 2000* authorizes the Council to order the removal of development that is contrary to a plan or development regulations and to order the restoration of the subject property.

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 Town has the authority to issue the Removal Order; and a temporary Accessory Building could be allowed under the Town's Development Regulations. Further, it appears that the Appellant relied to his detriment on verbal advice from the former Town Clerk that a Permit was not required for his temporary Accessory Building.

Therefore, the Board confirms the Respondent's decision to issue the Removal Order, but with the proviso that the Order be held in abeyance to allow the Appellant to submit an application not later than December 31, 2018 to the Town to erect a temporary Accessory Building and for the Town to process and decide upon the application in due course.

Order

Based on the information presented, the Board orders that the decision be confirmed with the proviso that the Removal Order be held in abeyance to allow the Appellant to submit an application not later than December 31, 2018 to the Town to erect a temporary Accessory Building and for the Town to process and decide upon the application in due course.

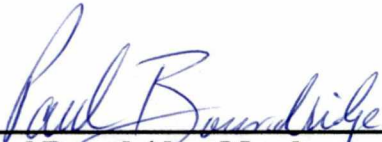
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 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).

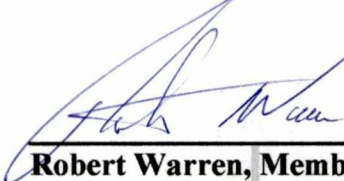
DATED at Portugal Cove-St. Philip's, Newfoundland and Labrador, this 22nd day of October, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Bountridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board