

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Wallace Lear **Appellant**

**AND** Town of Conception Bay South **Authority**

**RESPECTING** Decision to approve the Permit for general repairs to a wharf and stage at Cemetery Road, Conception Bay South (MAE File #: 15-006-044-47)

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

**DATE OF HEARING** October 22, 2018

**IN ATTENDANCE**

Wallace Lear, Appellant  
Sarah Pinsent, Legal Counsel for Appellant  
Corrie Davis, Director of Planning and Development for Town of Conception Bay South  
Sean McGrath, Development Control Officer for Town of Conception Bay South

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 November 15, 2016 the Town of Conception Bay South Municipal Council considered and gave approval to an application by Richard Lear, as Executor to the Minnie Lear Estate, to repair a wharf and stage at Cemetery Road, Conception Bay South.

On November 23, 2016 Wallace Lear, an interested third party, filed an appeal of the decision to issue a permit for the repairs with the Secretary of the Appeal Board based on the argument that the Minnie Lear Estate is not the owner of the subject property. The grounds for appeal can be summarized as follows:

- The Town did not have the authority and/or failed to properly exercise its authority when it approved the Richard Lear application for a Permit on November 15, 2016 by not further exploring and confirming legal ownership of the subject property
- The true owner of the property is not the Minnie Lear Estate but Wallace Lear.
- The work to be undertaken is not simply for “repairs” but for “development”, as defined by the Town’s Development Regulations and the Urban and Rural Planning Act, 2000.

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*

*The Municipalities Act, 1999*

*Town of Conception Bay South Municipal Plan and Development Regulations 2011*

## Matters presented to and considered by the Board

**Q:** Did the Board consider ownership of the subject property in its deliberations?

**A:** It must be recognized that the Regional Appeal Boards have a limited role in adjudicating matters relating to property ownership. Decisions of Regional Appeal Boards are bound by the legislation. In particular, the Boards are bound by Section 42 (3) of the *Urban and Rural Planning Act, 2000* which limits Boards' decisions to those which comply with the applicable plans, schemes, and development regulations in the municipality. Ownership is a private/civil matter which may ultimately have to be resolved by another process.

**Q:** What is "development"?

**A:** The *Urban and Rural Planning Act, 2000* defines development as

"development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the

- (i) making of an access onto a highway, road or way,
- (ii) erection of an advertisement or sign,
- (iii) construction of a building,
- (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,

and **excludes** the

- (v) carrying out of works for the maintenance, improvement or other alteration of a building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building.
- (vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,
- (vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and
- (viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling;

The Town of Conception Bay South Development Regulations, 2011 define "development" in the same manner as the Act.

**Q:** Would the construction contemplated by the Minnie Lear Estate for which the Town issued a permit to repair an existing wharf and stage at Cemetery Road be considered a development in the context of the above definition?

**A:** In its processing of the Minnie Lear Estate application, the Town determined that the work to be carried out was for the maintenance of said structures which would not materially affect the external appearance or use of the wharf and stage; and as such, does not constitute a development as defined under the Act or the Town's Development Regulations.

**Q:** Did the Town, following from the above, have the authority to issue the Permit to repair the wharf and shed?

**A:** The Town purports that it had the authority under Section 194 of the *Municipalities Act, 1999* to issue to approve and the Permit to Richard Lear, on behalf of the Lear Estate, to repair the wharf and stage.

## **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 has determined that the decision of the Town of Conception Bay South to interpret and classify the work on the wharf and stage as being excluded from the definition of “development” as defined under the *Urban and Rural Planning Act, 2000* and the Town of Conception Bay South Development Regulations, 2011 is reasonable. Furthermore, the Board has determined that the decision of the Town of Conception Bay South to issue a repair permit under the Section 194 of the *Municipalities Act, 1999* rather than the Town’s Development Regulations, to be appropriate and within the Town’s authority. The Board takes note that under Section 409 of the *Municipalities Act, 1999* that only decisions by a council or authority to refuse a repair permit under the Act may be appealed to a regional appeal board. The Board concurs with the Town’s position respecting Section 409 of the *Municipalities Act, 1999*.

Therefore, the Board has concluded that it has no jurisdiction in this matter to confirm, deny or vary the Town’s decision which is the subject of this appeal.

**ORDER**


Based on the information presented, the Board has concluded that it has no jurisdiction in the matter to confirm, deny or vary the Town's decision to issue a permit for wharf and stage repair to Mr. Richard Lear on behalf of the Minnie Lear Estate for property at Cemetery Road, Conception Bay South.

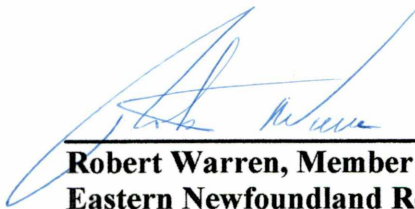
The Respondent and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 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. Philip's, Newfoundland and Labrador, this 25th day of October, 2018.

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

  
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**Paul Boundridge, Member**  
**Eastern Newfoundland Regional Appeal Board**

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