



# Municipalities Newfoundland and Labrador Convention

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# Regional Appeal Boards

- *Municipalities Act* and *Urban and Rural Planning Act* allow certain decisions to be appealed to a Regional Appeal Board:
  - Process;
  - Jurisdiction;
  - Recent cases of interest;
  - Points to consider

# What CAN be Appealed to a Board?

- Application to undertake a development (Approval, Rejection or re. Conditions)
- Issuance of a stop work order
- Revocation of permit
- Order under 404(1) of *Municipalities Act* (similar powers and rights of appeal re. Corner Brook and Mount Pearl)
  - Removal Orders, stop causing a nuisance, ...

## What CAN'T be Appealed to a Board?

- Everything else...
- Board only has the jurisdiction given by legislation or by necessary implication
- **ALSO**, *URPA* expressly says a decision to adopt, approve or proceed with a plan, scheme development regulations and amendments and revisions is “*final and not subject to an appeal.*” Also no right of compensation for reduction in value further to application of the *URPA* or a plan under *URPA*. i.e. Refusal to rezone not subject to appeal.

# Jurisdiction of the Board

- Role is to ensure that municipalities follow the requirements of the *Municipalities Act, Urban and Rural Planning Act* and their Municipal Plan and Development Regulations
- Board can confirm, reverse or vary a Council's decision, impose conditions and/or direct a Council to carry out its decision
- Board **CANNOT** “*make another decision that overrules*” a municipality's discretionary decision, **but can** consider if discretion properly exercised

# Board Structure

- Board hears cases at various points throughout the year
- 3 Board Members will hear a case
- Board Members do not necessarily have any legal training
- Required to provide written reasons

# WHO can Appeal?

- Person or association of persons “*aggrieved of a decision*” than can be appealed i.e. Virtually anyone...
- Development with respect to appeal or an order under Appeal “*shall not proceed or be carried out, pending a decision of the board.*”

# Appeal – Formal Requirements

- Appeals have to be in writing and include:
  - Summary of decision appealed from;
  - Grounds for the appeal;
  - Required fee
- Has to be filed “*not more than 14 days after the person who made the original application appealed from has received the decision being appealed.*”



# Hearing Process

- Very informal
- No formal rules of procedure
- Municipality would have been required to file certain documents in advance, and Board has a Technical Advisor
- No witnesses or cross-examination in the normal “Court” sense
- Typically try to keep hearings focused and argued in less than one hour

# Appealing a Board decision?

- Board decisions can be appealed to Supreme Court on a “*question of law or jurisdiction*”
- Board can have legal counsel at Court but rarely does so
- Court can either confirm the Board’s decision or send back to Board with opinion as to error

## Petty Harbour-Maddox Cove (2015 Supreme Ct)

- Town issued permit to build house
  - Neighbor appealed
  - Board ruled permit not properly issued. Upheld by Supreme Court
  - Permit vacated
- House was substantially built by time permit was vacated...

## Petty Harbour-Maddox Cove (2015 Supreme Ct)

- Two Significant findings by Court:
  1. Court gave deference to Board's decision i.e. Considered whether Board's decision was "reasonable", not whether it was "correct"
  2. As it was a third-party appeal, Court looked to when neighbor was aware of permit and their right to appeal. (Permit issued May 14, work started May 14, appeal filed July 14)

## Petty Harbour-Maddox Cove (2015 Supreme Ct)

- Permit holder had substantially built the house between permit issuance in May and filing of Appeal in July
- That person will be unhappy...
- Can Town be liable?
- As long as a municipality exercises its legislative and quasi-judicial functions in good faith, cannot be liable in negligence
- **BUT** test also looks to whether Town's actions were "*markedly inconsistent*" with the legislative context

# Mount Pearl (2015 Supreme Ct)

- City issued permit for affordable senior's housing development
- Appeal by various residents, alleging bias/conflict of interest of various councilors and that City's flood mapping was out-dated
- Permit upheld by Board
- Supreme Court upheld most of Board's decision but sent it back to Board to deal with one issue re. allegations of bad faith (those allegations subsequently denied by further reasons of Board)

# Mount Pearl (2015 Supreme Ct)

- Two significant findings by Court:
  1. Appeal of Board's decision is "*on the record*". Can only introduce new evidence in very limited circumstances.
  2. Board cannot consider allegations of conflict of interest, **BUT** can consider allegations of bias. Similar concepts, but important distinction, particularly for councilors.





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If you have specific questions related to these materials or their application to you, you are encouraged to consult a member of our firm to discuss your needs for specific legal advice relating to the particular circumstances of your situation.

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