

PUBLIC HEALTH APPEAL BOARD
IN THE MATTER OF THE *PUBLIC HEALTH ACT*,
CHAPTER P-37, R.S.A. 2000
AND ITS *REGULATIONS*
IN THE MATTER OF A PRELIMINARY APPLICATION TO
THE PUBLIC HEALTH APPEAL BOARD BY DAVID LOWE
OF THE ORDER OF AN EXECUTIVE OFFICER
ISSUED BY ALBERTA HEALTH SERVICES
IN WHITECOURT DATED OCTOBER 16, 2015
ADJOURNMENT AND OTHER PRELIMINARY MATTERS
HEARING HELD NOVEMBER 17, 2015

Appearances

David Lowe, Appellant

J. Mark Raven-Jackson, Legal Counsel, Alberta Health Services/Respondent

Decision

1. The appeal hearing will be adjourned to a date that is satisfactory to all parties and the Board during the period from December 2, 2015 to December 11, 2015 and will commence at 10:00 am at the Sangudo Community Hall.
2. The Board declines to compel any witnesses to attend the appeal hearing at this time.
3. All written evidence, submissions, affidavits, case law, photographs, or documents of any kind, which will be referenced or relied upon by a party at the appeal hearing, as well as a list of potential witnesses that will give evidence at the hearing, shall be submitted to the Board, and to the other parties to the appeal in electronic format, six days prior to the appeal hearing date that is set. The parties are required to bring to the hearing, sufficient hard copies of the items referred to above for use by the Board and the other parties at the appeal.

Introduction

The Order of an Executive Officer dated October 16, 2015 was issued pursuant to the *Public Health Act* and its *Regulations* regarding a residential property located at 4911 51 Avenue Sangudo, Alberta.

The Order directed the Owners to complete repairs on the property, declared the premises unfit for human habitation and ordered the occupants to vacate the premises on or before October 23, 2015.

An appeal hearing date had been set for November 25, 2015 in Whitecourt, Alberta.

Issues

1. Whether an adjournment of the appeal hearing ought to be granted and whether the hearing ought to be in Sangudo or another location.
2. Whether the Board ought to compel certain witnesses to attend the appeal hearing as requested by the Appellant.
3. Whether the parties ought to disclose the evidence and written submissions that will be submitted to the Board at the appeal hearing, prior to the appeal hearing.

Appellant's Submissions

The Appellant submitted that if the appeal hearing is on November 25, 2015, he would like it to be in Sangudo because of work related obligations he has in Sangudo on that date. An adjournment would give more opportunity to prepare for the hearing which would be fair and result in a more complete hearing. If the hearing location is in a location other than Sangudo, it might be more difficult for him to call witnesses.

The Appellant requests the following witnesses to attend the hearing so that he may cross examine them:

- Mr. Beila, the Building Inspector that inspected the property and whose report was attached to the Executive Officer's Order; and
- Shane Hussey, the Director of Alberta Health Services who supervised the Executive Officer that issued the Order.

In addition, the Appellant requested that an affidavit of a safety codes officer from Lac Ste. Anne be admitted into evidence at the appeal hearing.

The Appellant also submitted that he has not been provided with any evidence from Alberta Health Services pertaining to the Order and he wants to review the evidence prior to the hearing. This includes any affidavits submitted to the registrar at land titles to register a notice on title to the property.

In addition, the Appellant stated that the Order exaggerated the condition of the property and that he was denied a fair hearing prior to the Order being issued and was convicted summarily by a kangaroo court without due process.

The Appellant also questioned why he would need to submit a Freedom of Information request in order to receive a transcript of the preliminary hearing and the appeal hearing.

Alberta Health Services' Submissions

Alberta Health Services' counsel did not object to changing the date of the hearing or the location. He requested that if the hearing is located in Sangudo that the start time be set for 10 am to allow parties enough time to attend at that location.

With respect to compelling witnesses, Alberta Health Services does not plan to call either of the witnesses that the Appellant wishes to cross examine. Regarding the building inspector, the Executive Officer consulted with this third party and relied on his report in part to compile the Order and in exercising her discretion to issue the Order. However, the Appellant has not raised the issue of the state of the building in the appeal and that is what the report addressed. The Appellant's appeal is regarding the process of issuing the order and not with the condition of the building; therefore, the evidence of the building inspector is not at issue.

Regarding the supervisor of the Executive Officer, there were email exchanges with the Appellant that can be admitted into evidence at the hearing but there was no substantive discussion between the Appellant and the supervisor relating to the Order or the state of the property. The matters raised by the Appellant with the supervisor are related to human resource matters and not with the Order that was issued.

Alberta Health Services' counsel submitted that until he knows the contents of an affidavit from the building codes inspector he cannot determine whether he will object to it being admitted as evidence at the hearing.

With respect to the disclosure of information in advance of the hearing, both parties have the Order, Notice of Appeal and emails. There are no additional documents. In addition, the *Public Health Act* requires that a hearing be conducted within a short period of time so the parties are not in a position to arrange for a pre-hearing under oath in advance of the hearing.

Reasons

Adjournment and Location of Appeal Hearing

The *Public Health Act* requires hearings to be conducted within 30 days of receiving an appeal but the Board may extend the time if it considers it appropriate to do so. In this instance, the Board finds it appropriate to extend the appeal hearing past the 30 days so that the parties may properly prepare for the appeal.

The Appellant may wish to call witnesses that reside in or around Sangudo and this is important for the Appellant to receive a fair and complete hearing. Alberta Health Services did not object to having the hearing in Sangudo.

The appeal hearing will be heard on a date that is satisfactory to all parties and the Board during the period from December 2, 2015 to December 11, 2015 and will commence at 10:00 am at the Sangudo Community Hall.

Compelling Witnesses

Section 5 (10) of The Public Health Act states:

For the purposes of conducting an appeal under this section, the Board has all of the powers, privileges and immunities of a commissioner appointed under the *Public Inquiries Act*.

The *Public Inquiries Act* states:

Evidence

4 The commissioner or commissioners have the power of summoning any persons as witnesses and of requiring them to give evidence on oath, orally or in writing, and to produce any documents, papers and things that the commissioner or commissioners consider to be required for the full investigation of the matters into which the commissioner or commissioners are appointed to inquire.

Attendance of witnesses

5 The commissioner or commissioners have the same power to enforce the attendance of persons as witnesses and to compel them to give evidence and to produce documents and things as is vested in a court of record in civil cases, and the same privileges and immunities as a judge of the Court of Queen's Bench.

There is no evidence that the witnesses who will attend the hearing will not be sufficient for the Board to determine the matter. There is no evidence that the two witnesses the Appellant wishes to cross examine would provide any evidence that would go to the issues that have been raised in this appeal. In addition, information these witnesses may provide if called, could be adduced from other witnesses as the Board is not obligated to follow the strict rules of evidence required by the courts.

At this time, the Board will not compel any witnesses to attend at the appeal hearing. If, at the appeal hearing the Board determines that it is necessary to hear from a particular witness in order to fully understand and decide the appeal issues it will reconsider the matter at that time.

The appeal hearing is a "de novo" hearing. There is an onus on Alberta Health Services to present the evidence necessary for the Board to confirm the Order. This includes witnesses that support their position that the Order ought to be confirmed. If they do not, the Board may vary or reverse the Order. The Appellant may call any witnesses that he believes will support his position that the Order ought to be reversed or varied.

Regarding the Appellant's request for the Board to accept an affidavit from a safety code officer at the hearing, this cannot be determined in advance. If Alberta Health Services objects to the affidavit at the hearing, the Board will consider the objections and make a ruling about whether to accept it and what weight ought to be placed on the affidavit evidence. If Alberta Health Services cannot cross examine the deposer of the affidavit that will be considered when determining the weight to be placed on the evidence.

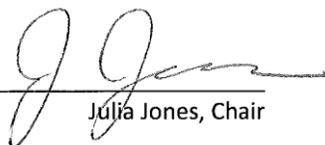
Disclosure of Evidence in Advance of the Appeal Hearing

As the appeal will be adjourned there is sufficient time for the parties to exchange information in advance of the hearing. This will assist both parties and the Board in preparing for the hearing.

The Appellant requested that his opposition to having to apply to the FOIP office to receive a transcript of this hearing and the appeal hearing be recorded. It is duly noted.

For the above reasons, the Board has decided as follows:

1. The appeal hearing will be adjourned to a date that is satisfactory to all parties and the Board during the period from December 2, 2015 to December 11, 2015 and will commence at 10:00 am at the Sangudo Community Hall.
2. The Board declines to compel any witnesses to attend the appeal hearing at this time.
3. All written evidence, submissions, affidavits, case law, photographs, or documents of any kind, which will be referenced or relied upon by a party at the appeal hearing, as well as a list of potential witnesses that will give evidence at the hearing, shall be submitted to the Board, and to the other parties to the appeal in electronic format, six (6) days prior to the appeal hearing date that is set. The parties are required to bring to the hearing, sufficient hard copies of the items referred to above for use by the Board and the other parties at the appeal.

Per 
Julia Jones, Chair

Date: November 18, 2015