

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Sheldon Brinson **Appellant(s)**

AND Town of Carmanville **Respondent**

RESPECTING Order

BOARD MEMBERS Stephen Burbridge, Chair
Bill Carter, Member
Gerald Thompson, Member

DATE OF HEARING April 10, 2019

IN ATTENDANCE

Authority: Diane Goodyear, Town of Carmanville
Keith Howell, Town of Carmanville

Appellant(s): Sheldon Brinson

Secretary to the Central Newfoundland Regional Appeal Board: Robert Cotter
Technical Advisor to the Central Newfoundland Regional Appeal Board: Christopher Hardy

DECISION

Facts/Background

Mr. Sheldon Brinson (the Appellant), since the summer of 2018, has stored mounds of gravel/stone and operated heavy equipment on his vacant piece of property at 113 Main Street in the Town of Carmanville. The Town of Carmanville (the Authority) issued a 'stop work and removal' order on the basis of safety concerns, mineral workings uses being prohibited from the 'mixed development' zone and the development being undertaken without a permit. The Town issued The Order on December 10, 2018 to remove the mounds of gravel/stone, outlining the following:

- That §404(1)(i) of the Municipalities Act, 1999, gives the Town the authority to order the removal of "solid waste, noxious substances, and substances or things which may be a hazard to public health and safety...",
- The operation of heavy equipment and storage of gravel/stone is considered mineral workings and not permitted within the 'mixed development' zone,
- That the Appellant did not seek permission or approval to use his property for this purpose. That if a request was submitted, the use would not have been approved since it does not constitute a permitted or discretionary use within the zone as stated in the Town of Carmanville Municipal Plan and Development regulations.

BACKGROUND

Chronology

Chronology assembled from the material submitted by the Appellant and the Authority:

July 27, 2018

August 22, 2018

The Town sent a notice to the appellant in writing that the storage of mounds of gravel is not permitted without the approval of council and not permitted within the zone as outlined in the Town's Municipal Plan November 26, 2018 Town resolved to proceed with issuance of an order as presented in the minutes of meeting December 10, 2018 Issuance of stop work and removal

order to the Appellant by the Town of Carmanville

December 13, 2018 Stop work and removal order hand-delivered to the Appellant

December 19, 2018 Appeal registered by the Secretary of the Regional Appeal Boards

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Carmanville Development Regulations

Municipalities Act, 1999

Town of Carmanville Schedule C

Zone Title Mixed Development Zone (Md) (Carmanville)

Permitted Use Classes – (see Regulation 85)

All use classes within the residential dwelling uses division, recreation open space, fishing and marine uses.

Discretionary Use Classes – (see Regulation 86)

All use classes in the general assembly division, collective residential, bed and breakfast establishments, commercial residential. All use classes in the business or personal services use group, all use classes in the mercantile group, service station, light industry, antenna

Matters presented to and considered by the Board

1. Did the work conducted at 113 Main Street constitute a development?

Yes. Section 1(g) of the *Urban and Rural Planning Act, 2000* states:

“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.”

It is apparent to the Board that the work carried out at this site was of a mineral nature. By the admission of both parties, the work carried out at 113 Main Street constituted development.

2. Did the Town of Carmanville have the authority to issue a Stop Work and Removal

Order for the development located at 113 Main Street?

Yes. The Board finds that the Town of Carmanville did have the authority to issue a Stop Work and Removal Order. Section 404(1)(i) of the Municipalities Act, 1999 states that:

404. (1) A council may make an order that

(j) a person who causes a nuisance contrary to the regulations of the council cease causing that nuisance;

Furthermore, section 25 of the Town of Carmanville Development Regulations reads:

“Where a person begins a development contrary or apparently contrary to these regulations the Authority may order that person to stop the development.”

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 of Carmanville did exercise its authority appropriately in issuing a Stop Work and Removal Order for the property located at 113 Main Street.

Therefore, the Board confirms the Authorities decision to issue a Stop Work and Removal Order for the property located at 113 Main Street.

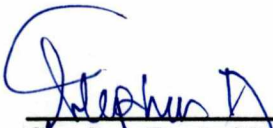
Order

Based on the information presented, the Board **confirms** the Town of Carmanville's decision to issue a Stop Work and Removal Order for the property located at 113 Main Street.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central 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 Gander, Newfoundland and Labrador, this 10 day of April, 2019



Stephen Burbridge, Chair
Central Newfoundland Regional Appeal Board



Bill Carter, Member
Central Newfoundland Regional Appeal Board



Gerald Thompson, Member
Central Newfoundland Regional Appeal Board