

**CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Kevin and Elva Harding **Appellant(s)**

**AND** Town of Fogo island **Respondent**

**RESPECTING** Stop Work and Removal Order

**BOARD MEMBERS** Stephen Burbridge, Chair  
Barry Thomson, Member  
Bill Carter, Member

**DATE OF HEARING** August 22, 2018

**IN ATTENDANCE**

Authority: Amanda McGrath, Clerk / Town Manager, Town of Fogo Island  
Daphne Coles, Executive Assistant, Town of Fogo Island

Appellant(s): Kevin Harding  
Elva Harding

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

## **DECISION**

### **Facts/Background**

On July 31, 2017 the Town of Fogo Island issued an Order to Kevin and Elva Harding concerning the construction of a deck without permission at 87 Main Street, Fogo Island, NL. The Order noted that the Town was exercising its authority pursuant to *Urban and Rural Planning Act, 2000* and the Town's development regulations. The Order noted the implications of non-compliance and noted the right and process to appeal the Order.

Mr. and Mrs. Harding received the Order in August 8, 2017 and subsequently filed an appeal with the Central Newfoundland Regional Appeal Board on August 14, 2017. The appellants are appealing on the grounds that they had previously received a building permit for an extension to their residence, at the same address, and that this extension included the deck. Furthermore, it is their position that the Town of Fogo Island cannot issue a permit for the deck at this time.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in the Advertiser on April 25, 2018. A notice of the time, date, and place of the Hearing was provided to the appellants and respondent by registered mail.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Fogo Island Municipal Plan and Development Regulations

### **Matters presented to and considered by the Board**

**Did the original building permit, as approved by the Town of Fogo Island, include the construction of a new deck concurrent with the extension of the residence at 87 Main Street?**



No. The original Application for Permit that was signed by the appellants on June 8, 2015 clearly states that there was to be a 24 x 24 extension to the home. The permit does not reference the construction of a new deck or any other concurrent development.

**Did the Town of Fogo Island have the authority to issue Stop Work and Removal Order for the deck at 87 Main Street?**

Yes. The Boards finds that the Town did have the right to issue the subject Order. Regulation 7 of Section B of the Town's development regulations clearly states that:

*"No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority."*

Furthermore, in such cases where development does proceed without a permit, Section 102(1) of the *Urban and Rural Planning Act, 2000* enables the authority to issue orders for non-compliant development:

*"Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state.."*

**Did the Town of Fogo Island exercise its authority appropriately in issuing Stop Work and Removal Order for the deck at 87 Main Street?**

The Board finds that the Town of Fogo Island did exercise its authority appropriately in issuing the subject Stop Work and Removal Order with respect to the deck construction at 87 Main

Street in the Town of Fogo Island. The Order was issued by the Town on July 31, 2017 and served to the appellants on August 8, 2017.

### **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 the facts presented, the Board determined finds that the Town of Fogo Island did have the authority to issue the subject Stop Work and Removal Order. Furthermore, it is the finding of the Board that the Town exercised this authority appropriately in issuing the Order for the deck removal at 87 Main Street.

Therefore, the Board confirms the Authority's decision to issue a Stop Work and Removal order to the appellant on July 31, 2017.



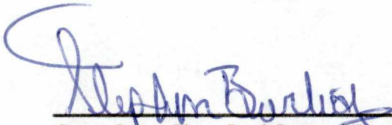
**Order**

Based on the information presented, the Board orders that the decision by the Town of Fogo Island to issue a Stop Work and Removal Order to Kevin and Elva Harding on July 31, 2017 be confirmed.

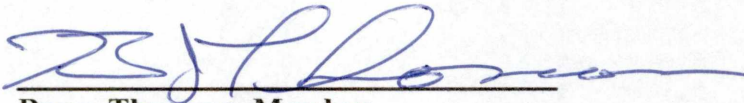
The Respondent and the Appellant(s) are bound by this decision of the Central Newfoundland Regional Appeal Board.

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 Grand Falls Windsor, Newfoundland and Labrador, this 22 day of August, 2018



**Stephen Burbridge, Chair**  
**Central Newfoundland Regional Appeal Board**



**Barry Thomson, Member**  
**Central Newfoundland Regional Appeal Board**



**Bill Carter, Member**  
**Central Newfoundland Regional Appeal Board**