

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Beulah Payne and Ralph Ganzer **Appellant**

AND Town of Pilley's Island **Respondent**

RESPECTING Order

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Shawn Feener – Member

DATE OF HEARING February 17, 2015

IN ATTENDANCE

Ralph Ganzer – Appellant
Beulah Payne – Appellant
Heather Ivany – Authority
Dennis Vincent – Authority
Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from a decision made by the Town of Pilley's Island to issue an order to Beulah Payne regarding the extension constructed onto an existing building located at 22 Water Street. The Order was issued under the authority of section 102(1) of the *Urban and Rural Planning Act, 2000* and the subject development is contrary to section 7 of the Town of Pilley's Island Development Regulations. The Order required Ms. Payne to remove the development deemed non-compliant with the *Urban and Rural Planning Act, 2000*, the *Municipalities Act, 1999* and the Town of Pilley's Island Development Regulations, and restore the site to its original condition within two weeks. The Order further noted Ms. Payne's right and process to appeal the Order.

Beulah Payne and Ralph Ganzer appealed the Order issued by the Town of Pilley's Island with the Central Newfoundland Regional Appeal Board. The appeal was filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* on November 6, 2014. The appeal was made in writing and included the following: a summary of the decision being appealed; grounds for the appeal; and the appeal filing fee as required under section 42(5) of 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 Nor'Wester* on January 28, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on January 13, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Pilley's Island Municipal Plan and Development Regulations, 2010

Matters presented to and considered by the Board

Did the appellant have a permit to enclose the porch and deck?

The Board heard arguments from the Town as well as the appellant regarding the footprint of the building and whether it changed. The appellant argued that she did not extend the footprint of the house but enclosed an existing deck and porch for the purpose of a bedroom. To determine whether a permit was necessary for the work completed, the Board reviewed the definition of development as defined in the *Urban and Rural Planning Act, 2000*, which 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 [...]

The Board determined that enclosing a deck and porch for the purpose of making a bedroom is making a material change in the use. Furthermore, the Board reviewed section 7 of the Town's Development Regulations which states that all development requires prior approval from the Town. While the Board acknowledges the appellant received three permits from the Town, those permits were for general repairs only and not for development.

Did the Town have the authority to issue the Order under section 102(1) of the *Urban and Rural Planning Act, 2000*?

The Board accepts that the Town has the authority to issue an order under section 102(1) of the *Urban and Rural Planning Act, 2000* when development is contrary to the Town's Municipal Plan and/or Development Regulations. The Board determined that the appellant did not have a permit for development, only general maintenance, and therefore contravened section 7 of the Town's Development Regulations.

Additional Information considered by the Board

The Board heard arguments from Ms. Payne regarding issues surrounding the bureaucratic process for obtaining a permit. The Board learned that the Town received a letter from the Department of Environment and Conservation in 2007 which directed the Town to require all development proposals within fifteen (15) metres of the high water mark be referred to the Department first, before the Town issued a permit. The Town indicated that it was following these directives when it requested Ms. Payne seek approval from the Department of Environment and Conservation prior to issuing a permit. While the Board acknowledges these arguments and challenges Ms. Payne encountered, it had no bearing on the Board's decision.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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.

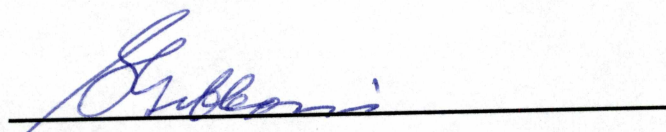
Based on its findings, the Board determined that the Town of Pilley's Island had the authority under the *Urban and Rural Planning Act, 2000* to issue the Order to Ms. Beulah Payne and did so accordingly.

Order

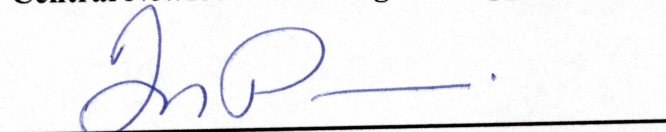
Based on the information presented, the Board orders that the Order of October 28, 2014 issued by the Town of Pilley's Island to Ms. Beulah Payne concerning development at 22 Water Street, be confirmed.

The Town of Pilley's Island and the appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

DATED at Grand Falls - Windsor, Newfoundland and Labrador, this 17th day of February, 2015.



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Shawn Feener, Member
Central Newfoundland Regional Appeal Board