

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Paul Hurley **Appellant**

AND Town of Fogo Island **Respondent**

RESPECTING Refusal

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

DATE OF HEARING November 17, 2015

IN ATTENDANCE

Paul Hurley – Appellant
Amanda McGrath– Authority
Susan Cull – Authority
Andrew Shea – 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 of the Town of Fogo Island rejecting an application for the purposes of building a cottage and a shed in Oliver's Cove, Tilting, Fogo Island. The Town of Fogo Island approved Paul Hurley's application "in principle" on August 6, 2013 pending all municipal regulations were followed and approval of all other licenses, and/or permits from Government, as well as the style of the building be of traditional heritage style. After further investigation, the Town refused Dr. Hurley's building permit during the Council Meeting of December 17, 2013. Dr. Hurley was informed, in writing, of the decision on January 7, 2014.

On January 15, 2014, Paul Hurley appealed Council's decision to refuse his application to the Central Newfoundland Regional Appeal Board. The grounds of appeal are summarized below:

1. Council has no inherent powers and can only refuse or grant development approvals in accordance with its Regulations, in this case the *Interim Development Regulations*, NLR 137/03.
2. Under Section 5(6) of the *Interim Development Regulations*, NLR 137/03 "approval in principle" is not an appropriate response to a permit application. Council has three (3) choices with regards to applications for a permit:
 - a. Council may grant a permit, subject to terms and conditions;
 - b. Council may grant a permit, without terms and conditions; or
 - c. Council may reject an application for a permit.
3. In this case, on August 6, 2013, Council approved a permit subject to terms and conditions, which is a conditional approval under section 5(6)(a).
4. Once Council made a conditional approval under Section 5(6)(a), Council had no power or authority under the *Interim Development Regulations*, NLR 137/03 to reconsider the matter again, therefore, Council erred in law when it reconsidered the August 6, 2013 conditional approval of the appellant's application to develop.
5. The appellant states that Section 5(3) of the *Interim Development Regulations*, NLR 137/03 is ultra vires the authority granted to the Minister under Section 34 of the Urban and Rural Planning Act, 2000 and that the Council has no authority to refuse the appellant's request for development and therefore the Council's refusal to grant the

official permit to develop to the appellant was an error of law.

6. The appellant states that Section 34(1)(b) allows the Minister to prescribe that an application for the development of land within a planning area not be approved by the Council unless it conforms to standards referred to the Council by the Minister. The considerations set out in Section 5(3) of the *Interim Development Regulations*, NLR 137/03 are not “standards” – they are broad, general considerations and there is no authority granted to the Minister to authorize the Council to refuse approval of a development application based upon broad, general considerations and use of broad, general discretion on the part of council.

The Central Newfoundland Regional Appeal Board held a hearing on October 1, 2015. The Board confirmed the Town of Fogo Island’s decision to reject Dr. Hurley’s application to develop his property at Oliver’s Cove, Tilting, Fogo Island. That decision was appealed to the Supreme Court of Newfoundland and Labrador, Trial Division on May 8, 2015. Justice Raymond J. Halley vacated the Central Newfoundland Regional Appeal Board’s decision as it was found not correct. Justice Halley referred the matter back to the Central Newfoundland Regional Appeal Board in accordance with Justice Halley’s opinion.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Pilot* on February 26, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on September 9, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Interim Development Regulations, NLR 137/03, NLR 137/03

Matters considered by the Board

Does the Town of Fogo Island have the authority to issue an “approval in principle”?

This is a question the Board explored in the October 1, 2014 decision. The Board learned from Justice Halley’s decision that the addition of “in principle” did not “diminish the Town’s authority to grant the permit to the Appellant.” Therefore, the Board found that the Town, under

the authority of section 6(a), had the authority to grant a permit to Dr. Hurley, subject to conditions.

Did the Town have the authority to refuse Dr. Hurley’s application?

The Board considered and reviewed Justice Halley’s decision. As outlined on page 9 of Justice Halley’s decision, once a permit is granted under the Interim Development Regulations, NLR 137/03, NLR 137/03, the Town may only cancel that permit as per section 8(1) of the Interim Development Regulations, NLR 137/03, NLR 137/03. Section 8(1) states:

A permit may be cancelled by a council or regional authority where

(a) development has commenced or is carried out that is contrary to terms and conditions imposed under a permit; and

(b) a development permit was issued in error.

As outlined in paragraph 25 of Justice Halley’s decision, the Board accepts that neither 8(1)(a) or 8(1)(b) apply. Therefore, as indicated in paragraph 26 of Justice Halley’s decision, the Town of Fogo Island did not have the authority to reject the appellant’s application and therefore the decision to reject “has no force or effect.”

Conclusion

In arriving at its decision, the Board reviewed the Supreme Court of Newfoundland and Labrador decision received from Justice Raymond J. Halley.

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 Fogo Island did not have the authority under the Interim Development Regulations, NLR 137/03, NLR 137/03 to reject Paul Hurley’s application to develop land located in Oliver’s Cove, Tilting, Town of Fogo Island. That is to say, the August 6, 2013 Resolution of the Town of Fogo Island to approve Dr. Hurley’s application stands.

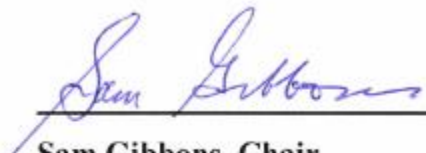
Order

Based on the information presented, the Board orders that the decision to reject Paul Hurley's application to develop in Oliver's Cove, Tilting made by the Town of Fogo Island on December 17, 2013, be vacated.


The Board further orders that the Town of Fogo Island pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

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


DATED at Grand Falls-Windsor, Newfoundland Labrador, this 17th day of November, 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