

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN William Pollett **Appellant**

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

RESPECTING Removal Order

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

DATE OF HEARING November 17, 2015

IN ATTENDANCE

William and Danette Pollett - Appellants
Heather Ivany – Authority
Gary Anthony - 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

On June 8, 2015, the Town of Pilley's Island issued a permit to William and Danette Pollett for the purpose of constructing a 12' x 16' deck at 17A Spencer's Dock. On June 29, 2015, the Town discovered the deck at 17A Spencer's Dock was being built contrary to the June 8, 2015 permit and a Stop Work Order was issued to Mr. and Mrs. Pollett. The Town requested and received a subsequent development application on June 29, 2015. The Town considered and refused the latter application at the June 29, 2015 Regular Meeting of Council.

Subsequently, the Town resolved to issue a Removal Order to Mr. and Mrs. Pollett concerning the extension to the deck at 17A Spencer's Dock at the June 29, 2015 Regular Meeting of Council. This appeal arises from that June 29, 2015 decision of Council to issue a Removal Order to Mr. and Mrs. Pollett.

The Town verbally notified Mrs. Pollett on June 30, 2015 that Council had issued a Removal Order. The Town issued the Order under section 102 of the *Urban and Rural Planning Act, 2000* as a result of the development contravening section 7 of the Town's Development Regulations. The Order required Mr. and Mrs. Pollett remove the non-conforming development and restore the site to its original condition within two weeks of the date of the Order. The Order also noted Mr. and Mrs. Pollett's right and process to appeal the Town's decision.

Mr. Pollett initiated the appeals process against the Removal Order with the Central Newfoundland Regional Appeal Board on July 16, 2015. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Urban and Rural Planning Act, 2000* and included the required information as per 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 September 9, 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 September 9, 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, 1995

Matters presented to and considered by the Board

Did Mr. and Mrs. Pollett adhere to the June 8, 2015 Permit?

The Board found that the appellants constructed an extension onto the deck that was not previously approved by the Town. The Authority illustrated to the Board that the extension did not comply with the Town's Development Regulations or the June 8, 2015 Permit with a visual.

The Board learned that the subject cabin is located within a Summer Cottage zone in the Town of Pilley's Island. According to the Summer Cottage Use Zone Table in Schedule C of the Town's Development Regulations, the minimum side yard requirement is 7.5 metres. The Town stated that the extension is located two (2) inches from the side property line and therefore is non-compliance with the Summer Cottage standards.

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

The Board reviewed section 102 of the *Urban and Rural Planning Act, 2000*. The Removal Order was issued pursuant to section 102(1), which states:

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.

The Board confirmed at the hearing that the appellants did not have a permit for the extension to the deck, and therefore contravened section 7 of the Town's Development Regulations. Section 7 requires a permit for development prior to construction commencing. Additionally, the Board learned that extension did not comply with the side yard requirements outlined in the Summer

Cottage zone. Therefore, the Board accepts that the Town had the authority to issue the Removal Order under section 102(1) of the *Urban and Rural Planning Act, 2000* as the extension to the deck contravenes the Town's Development Regulations.

Did the Town accurately issue the Order to Mr. and Mrs. Pollett?

The Board reviewed section 107 of the *Urban and Rural Planning Act, 2000* which outlines how an order issued under section 102 of the *Urban and Rural Planning Act, 2000* must be served. The Board confirmed at the hearing that the Town served the Removal Order to Mr. and Mrs. Pollett via registered mail on July 2, 2015. Ms. Heather Ivany, Town representative, presented the Board with the registered mail confirmation slip indicating delivery on July 2, 2015.

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.

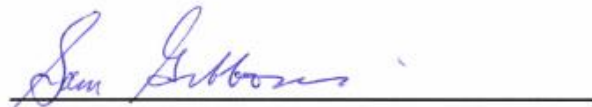
Based on its findings, the Board determined that the Town of Pilley's Island had the authority to issue the Removal Order to Mr. and Mrs. Pollett and did so in accordance with the *Urban and Rural Planning Act, 2000*. That is to say, the Removal Order, dated July 2, 2015, issued by the Town of Pilley's Island to Mr. and Mrs. Pollett remains in effect.

Order

Based on the information presented, the Board orders that the Removal Order dated July 2, 2015 issued by the Town of Pilley's Island to William and Danette Pollett concerning the development of a deck at 17A Spencer's Dock, Pilley's Island, be confirmed.

The Town of Pilley's Island and the appellants 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