

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Tony Stuckless **Appellant**

AND Town of Point Leamington **Respondent**

RESPECTING Removal Order

BOARD MEMBERS Sam Gibbons – Chair
Fred Parsons – Member
Norm Austin – Member

DATE OF HEARING January 13, 2016

IN ATTENDANCE

Tony Stuckless – Appellant

Wilfred Mercer – 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 the Town of Point Leamington issuing a Removal Order to Mr. Tony Stuckless regarding barriers situated at the end of his property located at 1 Main Street. The Town issued the Order pursuant to section 404(1) of the *Municipalities Act, 1999*. The Order required Mr. Stuckless to remove said barriers within fourteen (14) days from the receipt of the Order.

Mr. Stuckless filed an appeal against the issuance of the above noted Removal Order with the Central Newfoundland Regional Appeal Board on November 3, 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 Advertiser* on December 17, 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 December 8, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Municipalities Act, 1999

Minister's Development Regulations, NLR 3/01

Town of Point Leamington Policy Book, April 2012

Matters presented to and considered by the Board

Did the Town accurately issue the Removal Order to Mr. Stuckless?

The Board reviewed section 406 of the *Municipalities Act, 1999* which outlines how an order issued under section 404 of the *Municipalities Act, 1999* must be served. The Board confirmed at the hearing that the Town served the Removal Order to Mr. Stuckless via registered mail in accordance with section 406(1) of the *Municipalities Act, 1999*.

Does the Town have the authority to order the removal of Mr. Stuckless' barriers/fence?

The Board reviewed the Town of Point Leamington Policy Book that was adopted on April 9, 2012. Even though the Town has adopted policies regarding roads and snow clearing there are no policies regarding fence placement. The Road Policy indicates that the Town will not be responsible for any damage caused to a fence located within 25 feet of the centre line of a road. The Road Policy does not require fences to be located beyond 25 feet from the centre line of a road. Therefore, the Board found that the Town does not have the authority to order the removal of a fence because a fence is located within 25 feet from the centre line of a road.

The Board learned at the hearing that the Town issued the Removal Order to Mr. Stuckless pursuant to section 404(1)(i) and (l) of the *Municipalities Act, 1999*. Section 404(1)(i) and (l) states:

A council may make an order that

(i) a fence, building, steps, erection or other object which projects into or over land reserved for a public highway or sidewalk be removed;

(l) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties.

The Authority and the Appellant confirmed at the hearing that the barriers are located on Mr. Stuckless' private property and therefore not on land reserved for a public highway or sidewalk. Therefore, the Board determined that the Town did not have the authority to issue the Removal Order pursuant to section 404(1)(i) of the *Municipalities Act, 1999*.

With respect to section 404(1)(l) of the *Municipalities Act, 1999*, the Board found that the Town did not demonstrate that the barriers are posing a hazard to public health and safety. Therefore, the Board determined that the Town did not have the authority to issue the Removal Order to Mr. Stuckless under section 404(1)(l) of the *Municipalities Act, 1999*.

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 Point Leamington did not have the authority to issue the Removal Order to Mr. Stuckless pursuant to section 404(1)(i) and (l) of the *Municipalities Act, 1999*. That is to say, the Removal Order, dated October 26, 2015, issued by the Town of Point Leamington to Mr. Tony Stuckless is null and void.

Order


Based on the information presented, the Board orders that the Removal Order issued by the Town of Point Leamington on October 26, 2015 to Mr. Tony Stuckless concerning barriers situated at the end of his property located at 1 Main Street, be reversed.

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


The Town of Point Leamington and the appellant 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 Trial Division 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 13th day of January, 2016



Sam Gibbons, Chair
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board



Norm Austin, Member
Central Newfoundland Regional Appeal Board