

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Rick and Brenda Thornhill **Appellant**

AND Town of Bishop's Falls **Respondent**

RESPECTING Stop Work Order

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

DATE OF HEARING January 13, 2016

IN ATTENDANCE

Rick and Brenda Thornhill – Appellants

Randy Drover - 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 Bishop's Falls issuing a Stop Work Order to Rick and Brenda Thornhill regarding an accessory building at 13 Eltero Park on June 26, 2015. The Order was issued pursuant to section 102 of the *Urban and Rural Planning Act, 2000* (the "Act") as a result of development commencing without a permit from the Town. The Order included three (3) directives: 1) stop work immediately upon receipt of the Stop Work Order; 2) submit a development application for the subject accessory building; and 3) remove the structure in the event a permit is denied or an application is not submitted. The Stop Work Order notified the appellants of their right and process to appeal.

Mr. and Mrs. Thornhill initiated the appeals process against the Stop Work Order with the Central Newfoundland Regional Appeal Board on July 6, 2015. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Act* and included the required information as per section 42(5) of the *Act*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Advertiser* 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

Minister's Development Regulations, NLR 3/01

Town of Bishop's Falls Municipal Plan and Development Regulations, 1990

Matters presented to and considered by the Board

Did Rick and Brenda Thornhill have a permit to develop their accessory building?

The Board confirmed at the hearing from the Authority as well as the Appellants that Mr. and Mrs. Thornhill did not apply for a permit. The Board learned that the Appellants did not apply

for a permit even after receiving the Stop Work Order from the Town. The Appellants failed to apply for a permit because they were aware of neighbours who constructed accessory buildings without a permit from the Town and was of the understanding that the Town would not issue a permit for accessory buildings.

Is a permit required for an accessory building?

Yes. The Board accepts that all development, including the construction of an accessory building, located within the Town of Bishop's Falls Planning Area boundary requires a permit from the Town in accordance with section 7 of the Town's Development Regulations. Section 7, Permit Required, states:

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.

Mr. and Mrs. Thornhill's main argument presented to the Board was about fairness. The Appellants' claimed that other accessory buildings were constructed on neighbouring properties without a permit from the Town. The Board's role is to determine whether the Town made the subject decision in accordance with all applicable policies and regulations and not to determine fairness regarding past developments.

Did the Town have the authority to issue the Stop Work Order?

The Stop Work Order was issued pursuant to section 102(1) of the *Urban and Rural Planning Act, 2000*. The Board reviewed 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 Mr. and Mrs. Thornhill did not have a permit for their accessory building and therefore, contravened section 7 of the Town's Development Regulations. Therefore, since Mr. and Mrs. Thornhill contravened the Town's Development

Regulations, the Board found that the Town had the authority to issue the Stop Work Order under section 102(1) of the *Urban and Rural Planning Act, 2000*.

Did the Town issue the Order appropriately?

Part XI, *Enforcement*, section 102-107, of the *Urban and Rural Planning Act, 2000*, outlines how an order issued under section 102 of the *Urban and Rural Planning Act, 2000* shall be served. The Board reviewed section 107 of the *Urban and Rural Planning Act, 2000* and accepts that the Town served the Stop Work Order accordingly; the Town's Public Works Supervisor served the Stop Work Order to Mr. and Mrs. Thornhill in person on June 26, 2015. The Stop Work Order included the Appellants' right and process to appeal as required under section 5 of the *Minister's Development Regulations*.

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 Bishop's Falls had the authority to issue the Stop Work Order to Mr. and Mrs. Thornhill and did so in accordance with the *Urban and Rural Planning Act, 2000*. That is to say, the Stop Work Order, dated June 26, 2015, issued by the Town of Bishop's Falls to Mr. and Mrs. Thornhill remains in effect.

Order

Based on the information presented, the Board orders that the Stop Work Order dated June 26, 2015 issued by the Town of Bishop's Falls to Rick and Brenda Thornhill concerning the development of an accessory building at 13 Eltero Park, be confirmed.

The Town of Bishop's Falls and the appellants 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