

DECISION

Facts

This appeal arises from the Town of Paradise issuing a removal order to Mr. Garrett Mahoney concerning the development of a gate across a private access road without a permit.

Upon learning that the gate was erected without a permit, the Town recommended to Mr. Mahoney that he submit an application for the gate.

On December 10, 2015, Mr. Mahoney applied to the Town of Paradise for permission to install a “driveway gate” for 99A Ortega Drive.

The Town issued a Building Permit (the “Permit”), subject to conditions, to Mr. Mahoney for the installation of a gate on the access road leading to 99A Ortega Drive on December 11, 2015.

On December 15, 2015, the Town rescinded the Building Permit for reasons outlined in the December 15, 2015 Council Meeting minutes as well as Notice of Decision to Rescind Permit dated December 16, 2015.

Mr. Mahoney filed an appeal with the Eastern Newfoundland Regional Appeal Board on January 22, 2016. According to the Appeal Summary Form, the removal order was issued by the Town on January 6, 2016, and Mr. Mahoney received the Removal Order on January 11, 2016.

Therefore, it appears that Mr. Mahoney filed his appeal within the fourteen (14) day time frame prescribed in section 42(4) of the *Act*. The appeal was made in writing and included a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee as required under section 42(5) of the *Act*.

In accordance with the *Act* a public notice of the appeal was published in *The Telegram* on February 10, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on May 15, 2017.

The Board learned at the hearing that quieting of titles is underway before the Supreme Court of NL and there are land ownership issues at play in this area of Ortega Drive; however, the Board makes no comment with respect to the land ownership issues raised at the appeal.

At the hearing, the Board was provided with argument and email evidence that Mr. Mahoney obtained agreement and commitment from the other two landowners to each pay for one third of the gate.

The Board learned that, despite the evidence to suggest that other parties agreed in principle, the parties subsequently changed their support for the gate.

The Town then rescinded the permit and subsequently issued a removal order for the gate, which formed the subject of this appeal.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Paradise Municipal Plan and Development Regulations, 2004

Matters presented to and considered by the Board

Did the appellant undertake development without a permit?

The Board learned from the appellant that a gate had been constructed some 5 years prior. The appellant approached the Town for a permit on behalf of himself and two other neighbouring property owners. While the Town issued a permit for the gate on December 11, 2015, that permit was later rescinded on December 15, 2015. Therefore, the Board finds that there was no permit for the gate.

Did the Town have the authority to issue the Removal Order?

In accordance with URPA and the Town's Municipal Plan and Development Regulations, development must not occur without permit from the municipal authority. The Board found that a gate had been in existence for a number of years in the absence of a permit, that an application for a gate had been approved subject to conditions, and that the permit for the gate was later rescinded.

Therefore, the Board found that the Town had the authority to issue the order under section 102(1) of the *Urban and Rural Planning Act, 2000*. Section 102(1) 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.

Did the Town issue the Order in accordance with the Act?

Yes. The Board reviewed Part XI of the *Act* which outlines the procedure an authority must follow when issuing orders under section 102 of the *Act*. The Board confirmed that the Order was served by registered mail to Mr. Mahoney in accordance with section 107(1) of the *Urban and Rural Planning Act, 2000*. Section 107(1) states:

Unless otherwise stated in this Act, a notice, order or other document required to be given, delivered or served under this Act is sufficiently given, delivered or served where delivered personally or sent by registered mail addressed to the person at the latest known address of that person.

The Order also noted the appellant's right and process to appeal as per section 5 of the *Minister's Development Regulations, NLR 3/01*.

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

(a) person's right to appeal the decision to the board;

- (b) *time by which an appeal is to be made;*
- (c) *right of other interested persons to appeal the decision; and*
- (d) *manner of making an appeal and the address for the filing of the appeal.*

The Board determined that in accordance with section 109(4) of the *Act*, the Town confirmed the Order at the next Council meeting which was held on January 19, 2016.

Did the Town act in contravention of the Urban and Rural Planning Act when it acted upon the removal order and had the gate taken down?

Yes. The Board learned that the Removal Order was issued by the Town on January 6, 2016, and received by the appellant on January 11, 2016. The appeal was filed on January 22, 2017. The Secretary to the Eastern Newfoundland Regional Appeal Board sent correspondence to the Town respecting the registration of the appeal in a letter dated January 27, 2016, stamped received by the Town on January 29, 2016. This correspondence notes that, in accordance with URPA S. 45(1) and the Minister's Development Regulations S. 8(1), no work related to the development matter under appeal shall proceed pending a decision of the Board. The Board learned at the hearing that the Town removed the gate on April 12, 2016. The Board therefore found that the Town was in contravention of the Act when it removed the gate while the matter was under appeal.

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 Paradise had the authority to issue the Order to Mr. Mahoney and did so in accordance with the *Urban and Rural Planning Act, 2000*. Therefore, the Board upholds the Removal Order issued on January 6, 2016 concerning the gate located at 99A Ortega Drive.

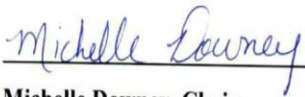
Order

Based on the information presented, the Board orders that the decision made by the Town of Paradise to issue an Order to Garrett Mahoney on January 6, 2016 regarding the removal of the gate located at 99A Ortega Drive, be confirmed.

The Town of Paradise and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern 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.

DATED at Mount Pearl, Newfoundland and Labrador, this 13th day of June, 2017.



Michelle Downey, Chair

Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member

Eastern Newfoundland Regional Appeal Board



Raelene Thomas, Member

Eastern Newfoundland Regional Appeal Board

