

**CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Paula Summers **Appellant(s)**

**AND** Town of Gander **Respondent**

**RESPECTING** Order

**BOARD MEMBERS** Stephen Burbridge, Chair  
David Oxford, Member  
Gerald Thompson, Member

**DATE OF HEARING** January 22, 2019

**IN ATTENDANCE**

Authority: Mark McWhirter, Town of Gander  
John Boland, Town of Gander

Appellant(s): Paula Summers

Secretary to the Central Newfoundland Regional Appeal Board: Robert Cotter  
Technical Advisor to the Central Newfoundland Regional Appeal Board: Christopher Hardy

## **DECISION**

### **Facts/Background**

Paula Summers (the Appellant) purchased the subject property, 11 Curtiss Avenue, in 2011. The driveway on subject property was then and is still today directly adjacent to a public trail that runs along the southern edge of the subject property. The Appellant complained to the Town of Gander (the Authority) that vehicles in her driveway had been damaged by persons using the trail. Town staff responded that the Town is not responsible for damages. After further discussion between the Appellant and Town staff, the Town issued an order on July 19, 2018 (the Order) to relocate the driveway to the northern side of the property.

### **Legislation, Municipal Plans and Regulations considered by the Board**

#### **Urban and Rural Planning Act, 2000**

*Urban and Rural Planning Act, 2000*  
*Occupancy and Maintenance Regulations*  
*Town of Gander Development Regulations*  
*Town of Gander Residential Landscaping Regulations*  
*Municipalities Act, 1999*

### **Matters presented to and considered by the Board**

The Appellant is appealing the Order on the following grounds:

**1. Did the Town of Gander not enforce its prohibition of motorized vehicles on the trail to the south of the subject property?**

The enforcement of the prohibition on motorized vehicles on the trail is outside of the jurisdiction of the Central NL Regional Appeal Board.

**2. Did the Town of Gander have the authority to issue a Removal Order for the driveway located at 11 Curtiss Ave?**

The Board finds that the Town of Gander did have the authority to issue a removal order.

Section 102(1) of the *Urban and Rural Planning Act, 2000* reads:

*“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.”*

**3. Did the Town of Gander exercise its authority appropriately in issuing a Removal Order for the driveway located at 11 Curtiss Ave?**

While the Town does have the authority to issue the Removal Order, it is not clear if the authority was appropriately exercised in this case. The Authority’s position is based on the premises that the driveway at the subject property is not an existing non-conforming use since it was not a legal structure. Section 108(1) of the *Urban and Rural Planning Act, 2000* reads:

*“Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.”*

The initial argument of the Authority was that the driveway could not legally exist in the current location because the side yard width of 2.89m does not permit the installation of a 3m wide driveway, as required by the Plan. However, upon questioning, it was further clarified that the driveway could meet these technical requirements as long as it terminated in the front yard and did not extend into the side yard. Additionally, by exercising a discretionary 10% variance, the structure could legally exist in its entirety, at the current location.

In addition to the location and size of the driveway, the Authority argued that the driveway was not in keeping with the subdivision plan which stated that all driveways were to be located on the

major side yard. As the driveway at 11 Curtiss Dr is located on the minor side yard, it would constitute an illegal structure and would, therefore, not be considered an existing non-conforming use. However, the Town has an occupancy and permitting process for all new residences. The Town did not demonstrate to the satisfaction of the Board that the driveway was excluded from this inspection and permitting process.

If the driveway existed in its current location prior to the issuance of an Occupancy Permit, the Authority would have implied their consent for the driveway location by issuing said permit. In this scenario, the driveway would in fact be legal and would, therefore, be considered an existing non-conforming use.

#### **4. Does the driveway at 11 Curtiss Ave encroach on Town of Gander property?**

Yes, however, it is unclear how much of the driveway lies on Town of Gander property. Furthermore, such an encroachment is a matter of private property ownership and is outside of the jurisdiction of the Central Newfoundland Appeals Board.

#### **5. Was the Order issued before Council voted on it?**

Yes, the Order was issued before it was approved by council. However, the Authority has correctly demonstrated that the Municipal Clerk has been empowered by council to issue such orders. As such, the fact that the order was dated and delivered prior to council's approval does not in and of itself render the Order invalid.

#### **Conclusion**

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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. URPA, 2000 42(10) states that:

*“(10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.”*

Based on its findings, the Board determined that the Town of Gander did not exercise its authority appropriately in issuing a Removal Order for 11 Curtiss Ave.

Therefore, the Board reverses the Respondent’s decision to issue a Removal Order for the driveway located at 11 Curtiss Ave. That is to say, as the Appeal Board derives its powers from *URPA 2000, Section 42 (10)*, the Appeal Board has directed that the order is void and no longer is in effect. Should the Town wish to issue another new order, they shall consider the board’s commentary and decision within.

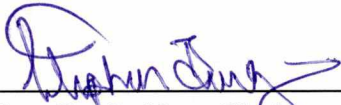
**Order**

Based on the information presented, the Board orders that the decision by the Town of Gander to issue a Removal Order to the appellant on 20 July 2018 be reversed.

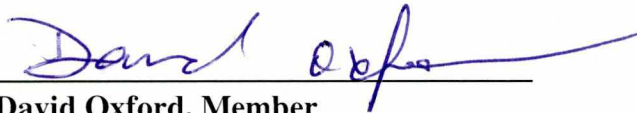
The Respondent and the Appellant(s) are bound by this decision of the Central Newfoundland Regional Appeal Board.

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 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 1 day of February, 2019



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**Stephen Burbridge, Chair**  
**Central Newfoundland Regional Appeal Board**



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**David Oxford, Member**  
**Central Newfoundland Regional Appeal Board**



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**Gerald Thompson, Member**  
**Central Newfoundland Regional Appeal Board**