

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

15-006-057-028

APPEAL

BETWEEN Todd Decker **Appellant(s)**

AND Town of Fogo Island **Respondent**

RESPECTING Approval

BOARD MEMBERS Stephen Burbridge, Chair
Bill Carter, Member
Gerald Thompson, Member

DATE OF HEARING April 10, 2019

IN ATTENDANCE

Authority: Amanda McGrath, Town of Fogo Island

Appellant(s): Todd Decker and Ann Marie Adams

Interested party: Lucy Saunders

Secretary to the Central Newfoundland Regional Appeal Board: Robert Cotter

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

DECISION

Facts/Background

The Town of Fogo Island (the Authority) approved an application to develop the subject land and subsequently issued Permit # 2018-231 on September 27, 2018. The neighbours at 125 Southside Road (the Appellants) are appealing the approval on the grounds that the ownership of the land is in dispute and that a permit to develop cannot be issued while the dispute is ongoing. The permit did not outline that it could be appealed; however, correspondence sent to the Appellants on June 13, 2017 did indicate that the approval could be appealed and an appeal form was included.

Background

- October 20, 2010 Survey completed for 125 Southside Road
- August 17, 2016 Town issued Permit # 2016-224 to backfill the subject property (127 Southside Road)
- October 3, 2016 Survey completed for the subject property
- June 5, 2017 Appellants request the Town “stay all permits issued in the disputed area”
- August 23, 2018 Subject property registered with the Registry of Deeds
- September 19, 2018 Owner of subject property applied to add fill to that land
- September 27, 2018 Town approved the application for a permit and issued Permit # 2018-231
- October 6, 2018 Appellants asked Town not to issue permits for the subject property as the ownership is still disputed October 12, 2018
- The Town sent the Appellants a copy of Permit # 2018-231 and an appeal form.
- October 17, 2018 Appeal registered by the Secretary of the Regional Appeal Boards

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Fogo Island Development Regulations

Municipalities Act, 1999

Matters presented to and considered by the Board

The Appellants are appealing the refusal on the ground that the ownership of the subject property is disputed.

1. Did the Town of Fogo Island have the authority to issue a Development Permit at 127 Southside Road?

Yes. The Board finds that the Town of Fogo Island did have the authority to issue a Development Permit. Section 35(e)(ii) of the Urban and Rural Planning Act 2000 states that:

35. (1) A council or regional authority shall, to ensure that land is controlled and used only in accordance with the appropriate plan or scheme, make development regulations

(e) Respecting development permits including

(ii) The application for and issuance of permits,

Regulation 7 of the Town of Fogo Island Development Regulations reads:

“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.”

2. Did the Town of Fogo Island exercise its authority appropriately in issuing a Development Permit at 127 Southside Road?

Yes. The Board finds that the Town of Fogo Island did exercise its authority appropriately in issuing a Development Permit for the subject property. At the time of approval of the Development Application, the Town had no evidence to suggest that there was a property dispute.

The Appellants argument focused almost entirely around the alleged property dispute. **Such property disputes are outside of the jurisdiction of the Central Newfoundland Regional Appeals Board.**

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.

Based on its findings, the Board determined that the Town of Fogo Island did exercise its authority appropriately in issuing a Development Permit for the property located at 127 Southside Road.

Therefore, the Board confirms the Authorities decision to issue a Development Permit for the property located at 127 Southside Road.

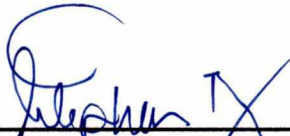
Order

Based on the information presented, the Board **confirms** the Authorities decision to issue a Development Permit for the property located at 127 Southside Road.

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 Gander, Newfoundland and Labrador, this 10 day of April, 2019



Stephen Burbridge, Chair
Central Newfoundland Regional Appeal Board



Bill Carter, Member
Central Newfoundland Regional Appeal Board



Gerald Thompson, Member
Central Newfoundland Regional Appeal Board