

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

15-006-054-006

APPEAL

BETWEEN Christopher and Rebecca Shea **Appellant(s)**

AND Town of Pasadena **Respondent**

RESPECTING Deemed Refusal of an Application for a fence

BOARD MEMBERS Lloyd Walters, Chairperson
Helen Reid, Member
Derrick House, Member

DATE OF HEARING June 11, 2019

IN ATTENDANCE

Rebecca Shea, Appellant,

Adam Baker, solicitor, Town of Pasadena, Respondent

Robert Cotter, Secretary to the West Newfoundland Regional Appeal Board

Elaine Mitchell, Technical Advisor to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

An application to build a fence at the north and south boundaries of 3 Chestnut Drive, Pasadena, was submitted by Christopher Shea (the Appellant) on May 7, 2018. Having received no reply from the town the appellant inquired with the CAO regarding the status of the application. He was informed that if no reply was received in 30 days then he could file an appeal with the West NL appeal board. When the Town of Pasadena failed to provide a decision, the appellant filed an appeal on June 11, 2018.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Pasadena Development Regulations

The role of the West Newfoundland Regional Appeal Board is to determine whether a valid appeal has been filed. The Pasadena Development Regulations specify that an application is deemed to be refused if Council has not made a decision within 60 days. The role of the board is also to determine whether the Town of Pasadena acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Pasadena's Development Regulations.

Matters presented to and considered by the Board

What are the grounds of appeal regarding the development application for a fence?

As result of submissions the board has confirmed that the subject property is owned by the appellants. The board heard from the appellant that a walking trail passes through the property. This has created safety concerns and vandalism. The appellant outlined incidents of fires being set on their property, signs being vandalized, unauthorized use of motorized recreational vehicles and off leash dogs roaming on the property. The appellant also informed the board of her concerns regarding possible liability of the owners due to unauthorized use of their property. Fences are therefore required to address these issues and secure private property.

The Board reviewed the following:

Section 2 (g) of the *URPA* includes a definition of development. A fence is considered to be development.

Section 7 of the Pasadena Development Regulations state that development shall not be carried

out without a permit issued by Council. Section 8 states that a permit shall be issued for development that conforms to Part II and Part V of the town's development regulations, the uses, standards and requirements prescribed in Schedule C for the applicable zone and the standards set out in any other municipal regulations or controlling development, conservation and the use of land and buildings.

What is the responsibility of the town when an application is received?

The board learned during the hearing that the application from the appellants was never presented to council for consideration. The board further heard from the town clerk that only approved applications are presented to council for ratification.

The board also learned from counsel for the town that an offer was made to purchase the section of property containing the trail. This offer was refused by the owners. The board has determined that this offer to purchase did not imply consent of the applicant to defer a decision on the original application and the town did not specifically request a deferment of the decision as required under the town's regulations. The 60 day time limit elapsed and under section 19 of the Town of Pasadena development regulations the application was deemed refused on the original application to build a fence.

Did the town follow proper procedure when the application was received?

To quote Justice George Murphy in Supreme Court of NL, 58663 Newfoundland and Labrador LTD. vs West Newfoundland Regional Appeal Board in his decision dated January 16, 2019:

"Councillors are elected to make decisions and to do so in an open, public and transparent manner. A person, such as the appellant, is in my view lawfully entitled to have a clear decision made in the foregoing manner on whether their application for a development permit is approved or denied."

The board has determined that did not happen in this case, therefore the applicant has a right of appeal.

Is there a prescriptive easement?

The board reviewed all documentation submitted including the legal survey submitted by the appellant. There is no indication of a legal easement attached to this property.

Does the Town have fencing regulations?

As per the technical report “Part II, Part V and Schedule C of the Town’s Development Regulations do not contain any specific provisions related to fences except in reference to fencing specific uses such as an outdoor play space associated with a child care facility or screening for parking areas .In general terms, a fence is considered ancillary to the residential use of a property.”

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 Pasadena did not comply with its development regulations. The appellant has legal title to the property in question and fencing is development under the town’s development regulations. Therefore, the Board reverses the deemed refusal of the development permit to erect a fence on the subject property. That is to say that the board directs the town to issue a development permit for the erection of a fence in compliance with the towns development regulations.

Order

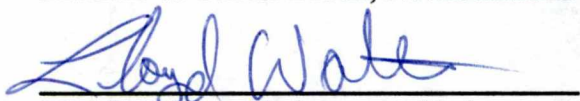
Based on the information presented, the Board orders that the decision by the Town of Pasadena be reversed. The town of Pasadena is ordered to issue a development permit as outlined within this decision.

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


In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West 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 Corner Brook, Newfoundland and Labrador, this 11th day of June 2019.



Lloyd Walters, Chairperson, Chair
West Newfoundland Regional Appeal Board



Helen Reid, Member
West Newfoundland Regional Appeal Board



Derrick House, Member
West Newfoundland Regional Appeal Board