

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Kim Masters and John Dehann **Appellant(s)**

AND Town of Harbour Main – Chapel’s Cove – Lakeview **Respondent**

RESPECTING Stop Work and Removal Order
57 A Hickey’s Road, Harbour Main, NL
File # 15-006-057-036

BOARD MEMBERS Clifford Johnson, Chair
Bob Warren, member
Damian Ryan, member

DATE OF HEARING December 11, 2019

IN ATTENDANCE

John Dehann, appellant

Kim Masters, appellant

Giles Ayres, solicitor for the Town of Harbour Main – Chapel’s Cove – Lakeview

Mike Doyle, Mayor, Town of Harbour Main– Chapel’s Cove – Lakeview

Shirley Murphy, interested party

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

The Board reviewed the technical planning report and, as the facts and chronological order of events were not contested by either party the Board accepts that:

On October 26, 2018, the Town of Harbour Main – Chapel’s Cove – Lakeview (the Authority) issued an Order to Kim Masters and John Dehann (the Appellants). Masters and Dehann received the Order on the same date of issuance. The Stop Work and Removal Order was issued concerning fencing, posts, and surveillance infrastructure erected, built and/or constructed on Paul’s Road, Harbour Main, NL. Masters and Dehann filed an appeal to challenge the Town’s Order on November 6, 2018.

BACKGROUND

Chronology

Chronology assembled from the material submitted by the Appellant and the Authority:

| | |
|---------------------|---|
| Nov 6, 2018 | <i>Appeal of the Oct 26, 2018 Stop Work and Removal Order</i> |
| Oct 30, 2018 | Written decisions of the ENRAB on previous appeals 15-006-054-030, and 15-006-054-043 pertaining to the subject property. |
| Oct 26, 2018 | <i>Stop Work and Removal Order issued by the Town Council related to the subject property at 57 A Hickey’s Road (the current matter of appeal)</i> |
| Oct 24, 2018 | ENRAB Appeal Hearings re 15-006-054-030, and 15-006-054-043. |
| Feb 6, 2018 | Council issues conditional approval at the subject property (driveway paving/ maintenance). |
| Feb 2, 2018 | Application for a development permit at the subject property (driveway paving/ maintenance). |
| Dec 19, 2017 | Written letter of refusal from Council. |
| Nov 17, 2017 | Application for a development permit at the subject property (chain/gate, fencing, paving). |

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000 (URPA, 2000)
Interim Development Regulations, 2003

Matters presented to and considered by the Board

The Board in this appeal will address the following grounds of appeals as submitted the appellant:

The Appellants' arguments against the Town's Order are summarized as follows:

- "Posts", "security cameras" and "fencing" are not "development";
- Such things do not require a permit from the Town;
- If these things were development, they would fall under their building/development permit for their house;
- Replacing existing wooden posts with metal posts is maintenance, not development;

The Board has reviewed the applicable legislation and has determined that the work carried out by the appellant's falls under the definition of development as prescribed under the *Urban and Rural Planning Act 2000*. Despite the position of the appellants the legislation clearly indicates that

(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the

- (i) making of an access onto a highway, road or way,
- (ii) erection of an advertisement or sign,
- (iii) construction of a building,
- (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,

The appellant confirmed that post, fencing and cameras were installed.

Other grounds of appeal were:

- The Town's fencing regulations only require permits where fences abut a public road, but do not require permits for fencing on side boundaries;
- Their fence is on their side boundary and does not abut a public road;

The Board was advised by the Town's representative and solicitor that the subject property is within a protected public water supply area and is now zoned Watershed under the Town's Development Regulations. Any development in this zone requires a permit to be issued by the Department of Municipal Affairs and Environment under the Water Resources Act in concert with the Town. Based on the Eastern Newfoundland Regional Board's decision October 30, 2018 regarding this same development matter at the same property, the Board is perplexed why the appellants believe a permit is not required in this appeal.

- The Town has acted with bias, discrimination and in bad faith;

The Board finds no evidence to support the alleged bias, discrimination and is acting in bad faith.

- If the Town is demanding we must have a permit for posts and security cameras then the Board must order the Town to issue a permit.

The Board is adhering to and respecting Judge Faour decision dated February 14, 2019 can therefore cannot order the Town to issue a permit.

The appellant pointed out that there were missing evidence in the appeal package and asked for a postponement of the hearing. The Board consider the request, recessed and decided to proceed with the matter. The Board permitted the missing evidenced to be presented.

The appellant(s) pointed out that:

1. Taxes are being paid on the full of the property including the driveway
2. Quality of photos that the appellants submitted were not clear in the appeal package
3. The Order under appeal should not have been issued by the Town due to the fact that it is a matter that has been stayed by Supreme Court.

The Board determined that the above grounds that;

1. Taxes are not under the mandate of the Eastern Newfoundland Regional Appeal Board.
2. The quality of the photos did not impact the ability of the Appeal Board to render it's a decision.
3. The Board is adhering to and respecting Judge Faour decision dated February 14, 2019 which would permit either party to appeal the Town's Order.

Did council ratify the Order at a public meeting?

The appellant raised the issue of the order being properly ratified. The Order issued by the staff representative delegated by the Authority is to be ratified a next regular meeting of Council. The Board did not receive any evidence that the ratification of the Order by Council took place prior to the filing of the appeal. See section 109 of URPA, 2000. The Board accepts this position by the appellant.

Did the Town have the authority to issue the stop work order and removal order?

Yes. The Board reviewed and determined from Section 102 (1) of URPA, 2000.

Order

(1) 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.

Interested Parties

As stated in the *Rules of Procedure* interested parties are permitted to make a statement.

Shirley Murphy adjacent land owner gave a history of Paul's road that goes back to early 1900's for the purpose of supporting her position that Pauls' road was and is a public road. The Board accepts the evidence, however the evidence may be more relative to the current Supreme Court action rather than the Appeal Board's mandate.

Other grounds

The appellant cited other appeal board decisions in support of their appeal for the Eastern Newfoundland Regional Appeal Board to consider. They are:

- Gerald Gover vs Town of Torbay,
- and*
- Vincent McGrath vs Town of Kippens.

While the Board aims to be consistent with past decisions, the appeal boards are not bound by precedent and deal with each case on its own merits.

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.

In making its conclusion the Board notes that:

- The appellants admit to undertaking development without a permit and the appellant's also agree that the Supreme Court has a stay on the subject property until the land ownership is confirmed,
- The definition of development as outlined in the legislation includes the work undertaken by the appellants without a permit,
- Recognizing that the appellant's believe they will not get a permit from the town which implies that the appellants recognize that a permit is required.

The Board has determined that the Town was within its Authority to issue the stop work and removal order dated October 26, 2018. The Board notes that the Town may have committed a procedural error by not ratifying the Order in accordance 109(4.) of *URPA, 2000*. The Board also notes that the February 14, 2019 Order from Justice Faour must be adhered to by all Parties.

Finally, the Board (under Section 42. (10)*URPA, 2000*) directs the appellant not to make any further applications for said property and also directs the authority not to issue any further orders pending final hearing of the petition pursuant to the *Quieting of Titles Act*, or until such time as the court orders otherwise in relation to this property.

Therefore, the Board *confirms* the Respondent's decision to issue the Stop and Removal Order dated October 26, 2018.

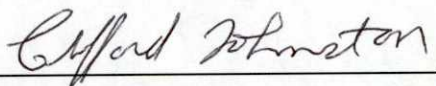
Order

Based on the information presented, the Board orders that the decision by the Town of Harbour Main Chapels Cove Lakeview on October 26, 2018 to issue an Order to stop and removal of fencing, posts, and surveillance infrastructure erected at 57A Hickey's Road, Harbour Main, be Confirmed. The Board also orders the appellant not to make any further applications for said property and also directs the authority not to issue any further orders pending final hearing of the petition pursuant to the Quieting of Titles Act, or until such time as the court orders otherwise in relation to this property.

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

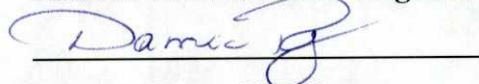
According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the Appellant(s).

DATED at Portugal Cove-St. Philips Newfoundland and Labrador, this 13 day of December 2019.



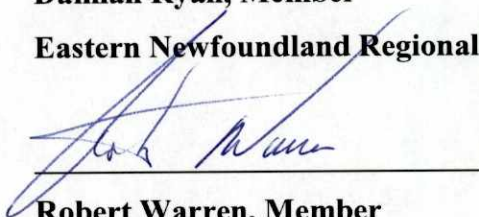
Clifford Johnston, Chair

Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member

Eastern Newfoundland Regional Appeal Board



Robert Warren, Member

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