

Central Newfoundland Regional Appeal Board

Appeal #	15-006-057-047
Appellant(s)	Gerry Locke (on behalf of Gideon Tucker)
Respondent / Authority	Town of Lewisporte
Board Members	Chair : Gerald Thompson (Acting) Member: David Oxford Member: William Carter
Date of Hearing	March 10, 2020

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Gerry Locke
Representatives for the Authority	Brian Peckford, Manager, Town of Lewisporte Todd Champion, Public Works Superintendent, Town of Lewisporte
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Christopher Hardy, MCIP
Interested Parties	Janice Dawe Graham Norman

The provision for appeal is enabled under section 42 of the *Urban and Rural Planning Act, 2000*.

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1. Board's Role

The role of the Central Newfoundland Regional Appeal Board is to determine if the Town of Lewisporte acted in accordance with the *Urban and Rural Planning Act, 2000* the Town of Lewisporte's municipal plan and development regulations when it issued an order to Gerry Locke (on behalf of Gideon Tucker) on February 6, 2019 ordering that fence on Mr. Tucker's property on 7 Russan Street in the Town of Lewisporte be removed within 14 days.

2. Background

Gideon Tucker installed a fence in late 2018 at the rear of the subject property (7 Russann Street) in the Town of Lewisporte. Mr. Tucker applied for a development permit in September; however, the ownership of the land is in dispute and therefore a permit was not issued (the application was also not rejected).

Because the fence had been installed without a permit being issued, the Town issued an order on February 6, 2019 to remove the fence. The Order outlined the following:

- That section 102(1) of the *Urban and Rural Planning Act, 2000* gives the Town the authority to order the removal of development that occurred without a permit from the authority,
- That Regulation 7 of the Town's development regulations requires that development within the Town's planning area be done only with a permit issued by the Town,
- That Regulation 5 of the Town's fence regulations requires that the construction of a fence within the Town's planning area be done only with a permit issued by the Town,
- The consequences of not complying with the Order, and
- That the Order could be appealed and how to file an appeal.

3. Validity

Section 42 (4) and (5) of the Act state:

42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

42. (5) An appeal shall be made in writing and shall include

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

According to the documents provided, the appeal was filed on February 19, 2019. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

4. Grounds of Appeal

This appeal is based on the following section of the Act: Section 42.(1)(c) (the issuance of a stop work order).

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

(a) an application to undertake a development;

(b) a revocation of an approval or a permit to undertake a development;

(c) the issuance of a stop work order; and

(d) a decision permitted under this or another Act to be appealed to the board.

The Appellant is appealing the stop work order on the ground that that the issuance of the Order was an "overreach or over reaction" by the Town's representative, Mr. Peckford.

5. Planner's Technical Analysis

Legislation and Regulations

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000

Town of Lewisporte's Municipal Plan and Development Regulations

Analysis

The Town's development regulations outline in Regulation 7 that development shall not occur within the Town's planning area without a development permit from the Town. Development is defined in the *Urban and Rural Planning Act, 2000* as "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".

Technical analysis prepared by:



Christopher Hardy, MCIP

Technical Reviewer for the Newfoundland and Labrador
Regional Appeal Boards

6. Presentations during the Hearing

Planner

There was no contesting of what was presented by Mr. Hardy by the Appellant or Authority.

Appellant

It was presented by Mr. Locke, in his representation of Mr. Tucker, that:

- Effort was made by Mr. Tucker to obtain a permit but no formal response was provide by the Town of Lewisporte
- The fence continued to be built without this permit being in place despite knowing it was needed

Authority

The Town of Lewisporte, as represented by Mr. Peckford, stated that:

- Under Section 102.1 of Urban and Rural Planning Act, 2000 (URPA 2000), they have the right to issue a Stop and Removal Order
- In Section 5 of the General Fencing Regulations of the Town of Lewisporte clearly states that a fence cannot be erected without a permit
- Based on the Regulations noted above, the Town of Lewisporte felt they were within their right to issue that the fence be removed within 14 days.
- It was recognized that there is a land dispute between Mr. Tucker and his neighbor but the Stop and Removal Order was issued in direct violation of the fence being constructed without a permit.

7. Conclusion

It was determined that a permit was applied for by Mr. Tucker on September 18, 2018 to construct a fence on his property located at 7 Russhann Street after some of the fencing was already in place. As this process of assessing the permit application was progressing, the constructing of the fence continued, which led to the issuing of the Stop and Removal Order.

The Board has determined that the Town was within its authority to issue the Order dated February 6, 2019 based on the following regulations/legislation:

- That section 102(1) of the *Urban and Rural Planning Act, 2000*, gives the Town the authority to order the removal of development that occurred without a permit from the authority,
- That Regulation 7 of the Town's development regulations requires that development within the Town's planning area be done only with a permit issued by the Town,
- That Regulation 5 of the Town's fence regulations requires that the construction of a fence within the Town's planning area be done only with a permit issued by the Town,

Based on the information presented, the Board determined that the Town of Lewisporte has the authority, and exercised it appropriately, to issue the Stop and Removal Order.

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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.

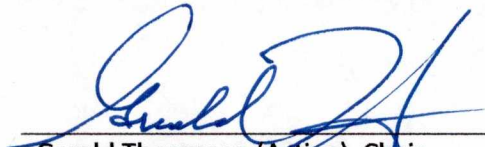
Board's Order

Based on the information presented, the Board orders that the decision by the Town Lewisporte on February 6, 2019 to issue a Stop and Removal Order to Mr. Tucker be confirmed.

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).

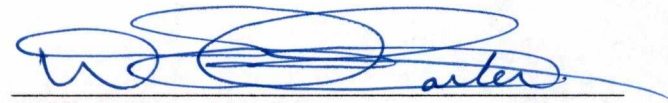
DATED at Gander, Newfoundland and Labrador, this 10 of March, 2020.



Gerald Thompson (Acting), Chair
Central Newfoundland Regional Appeal Board



David Oxford, Member
Central Newfoundland Regional Appeal Board



William Carter, Member
Central Newfoundland Regional Appeal Board