

**SUMMER VILLAGE OF SUNBREAKER COVE  
SUBDIVISION AND DEVELOPMENT APPEAL BOARD  
MARCH 31, 2017  
HEARING AND DECISION**

**CALL TO ORDER**

The Chair called the hearing to order at 10:00 a.m.

The Board, Secretary and Council for the appellant were introduced.

The procedure of the hearing was outlined by the Chair. Upon conclusion it was asked if there were any questions or concerns regarding the rules of the procedure. Hearing none the CAO was asked to outline the purpose of the Hearing.

**PURPOSE OF THE HEARING**

The purpose of this Hearing is to hear an appeal against the \$1,500.00 fine imposed by Council resolution #1023/16 and #1053/17 for construction without a development permit, and the Development Authority Decision given to Sylvie Bissonette and Denis Pelletier by the Summer Village of Sunbreaker Cove's Development Officer issued on February 15, 2017 for the proposed development of a landing, addition and shed on the Environment Open Space in front of the property.

**IN THE MATTER OF AN APPEAL** by the homeowner, Sylvie Bissonette and Denis Pelletier, appealing the Development Authority's decision to deny a permit for construction of a landing, addition and shed on the Environment Open Space in front of the property at 1211 Pine Road, Lot 8, Block 4, Plan 413NY.

**BEFORE** the Summer Village of Sunbreaker Cove Subdivision and Development Appeal Board:

Alternate Chairman Teresa Beets

Member Gib Clark

Member Garry Will

**THIS IS AN APPEAL ON** the Development Authority's decision of February 15, 2017.

**UPON NOTICE BEING GIVEN** by letter to the appellant/applicant and owners of property located within 200' radius of the proposed development on March 3, 2017 and in the Sylvan Lake News on March 16th and 23rd, 2017.

## **BACKGROUND**

The Subdivision and Development Appeal Board Secretary advised that Sylvie Bissonette and Denis Pelletier, residents of 1211 Pine Road, are appealing the Development Authority's decision of February 15, 2017, to deny the application because the proposed development does not fall under a permitted or a discretionary use in the Environmental Open Space District (EOS), under the Land Use Bylaw #99/13.

## **OBJECTIONS TO ANY MEMBERS HEARING THE APPEAL**

The Chair asked the board members to introduce themselves along with the Recording Secretary, Appellant, Appellant representative and the representative for the Applicants.

The Secretary asked if any members of the Subdivision and Development Appeal Board felt that they should disqualify themselves from hearing the appeal before them. No one disqualified themselves.

The Secretary then asked if Sylvie Bissonette had any objection to any of the Subdivision and Development Appeal Board members. There were no objections stated.

## **READING OF APPEAL LETTER FROM SYLVIE BISSONETTE**

The Secretary read the appeal written from Sylvie Bissonette which was received at the office on March 2, 2017. The appeal letter stated the reasons for appeal were miscommunication and wrong information received from her Realtor and the Summer Village Office.

## **DETERMINING JURISDICTION**

Phyllis Forsyth, CAO, provided the Board with information on the Duties of the Subdivision and Development Appeal Board and the requirements for determining Board jurisdiction to hear the appeal.

The Board went in camera to determine jurisdiction at 10:16.

The meeting reconvened at 10:28.

The Subdivision and Development Appeal Board has determined it does have jurisdiction in order to provide the appellant an opportunity to be heard.

## **DEVELOPMENT OFFICER REPORT**

Koralyn Coughlin, Development Officer, gave her report. She stated that a

complaint on January 6<sup>th</sup>, 2016 regarding trees being cut down on the municipal reserve in front of 1211 Pine Road. After communication with Sylvie Bissonette, two trees were removed that were healthy (to accommodate a future deck) and the others were dead/dangerous. Development Officer reminded appellant that this area is not their property and any further tree removal will need office approval and any development on the reserve requires a development permit.

On March 29<sup>th</sup> 2016, Sylvie inquired about applying for a different development located on their parcel and again asked about the building guidelines of constructing a smaller deck closer to their dock. At this time Development Officer recommended proposing an application which may go to MPC, as this was my first time encountering a development on a municipal reserve in the Summer Village a permit couldn't be issued.

On April 8<sup>th</sup> 2016, a development permit was issued to the residents for the project located on their property. Entering into an encroachment agreement for the existing staircase on the reserve was one of the development permit conditions. The encroachment agreement was signed by the residents on April 8<sup>th</sup> 2016, and states:

- “Development permit applications are made to the Summer Village and approvals are obtained from the Summer Village for any maintenance and repair work undertaken to the encroachment”, and
- “The Owner covenants and agrees with the Summer Village that the said encroachment shall not at any time hereafter be enlarged or extended beyond the designation set forth in Schedule “A” and that in the event of default of this covenant, the Summer Village may terminate this agreement, or alternately may give notice requiring the Owner to correct such default by removing, the enlargement or extension within thirty (30) days of the day the Summer Village gives notice of such default.”
- An original copy was mailed to the residents after registration on title on April 27<sup>th</sup> 2016.

On October 26<sup>th</sup> 2016, a final site inspection in order to close the existing development permit file and it was noted a deck was constructed on the reserve.

On December 15<sup>th</sup> 2016, the residents were fined \$1500.00 (as per Council resolution #1053/17) due to failing to obtain a development permit to construct the landing on the municipal reserve as per Bylaw #103-14. Appellants stated they constructed a temporary landing on the municipal reserve for security and safety purposes. Residents were told to apply for a development permit for the landing as well as the shed within 30 days.

Applications are not reviewed until all documentation is received. On March 23<sup>rd</sup> 2016, the residents were granted a permit for a garage with guest house above. April 8<sup>th</sup> 2016, the deck with hot tub development permit was issues.

The residents submitted a complete application on February 15<sup>th</sup> 2017, for the construction of a landing addition and a shed to be developed on the Environmental Open Space (Lot R) in front of their property located at 1211 Pine Road (Lot 8 Block 4 Plan 413NY) and paid the \$150.00 application fee. Application was to add 144 sq. ft. to the staircase's lowest landing and place a 64 sq. ft. shed on top of the landing.

On February 16<sup>th</sup> 2017, a Notice of Decision denying application was mailed:

- The proposed development does not fall under a permitted or a discretionary use in the Environmental Open Space District (EOS), under the Land Use Bylaw #99/13, therefore
- The Development Officer nor the Municipal Planning Commission have the authority to approve a development permit for “uses” not listed under the Land Use Bylaw #99/13 as per Part One: 1.4.
- Private development any municipal owned land is prohibited, as per the Land Use Bylaw #99/13 Part Three: 4(8).
- The Summer Village's Municipal Development Plan (2003):
  - Section 5.0 addresses reserves and open spaces, the goal is to encourage preservation and protection of open spaces and green areas as much as practical, in its natural condition. An objective is, to protect and maintain the vegetation of all reserves and open spaces.
  - Section 6.0 addresses environmental protection, and an objective is to protect the lake escarpment and natural areas, and
  - As per section 7.5, all new developments shall comply with the standards and provisions of the Land Use Bylaw.
- The Summer Village's Open Space Master Plan (2016) states:
  - Reserve lands are not intended for private use by neighboring landowners, as per section 4.3.
  - The Municipality may allow existing stairs and stairways that provide access to the water's edge to remain on Municipal Environmental Reserve lands, as per section 4.5 (10), and
  - Private development on areas classified Conservation Area is strictly prohibited as per the Conservation Areas on Page 27. This development would be within this area.

Permission was then granted to undertake any maintenance and repair work to their existing staircase, with the condition that it shall not be enlarged or extended. The applicant was also told that this information should have been provided to her when she first inquired about developing on the Environmental Open Space and her \$150.00 development permit fee was returned.

#### **QUESTIONS FROM THE BOARD TO THE DEVELOPMENT OFFICER**

None.

## **APPELLANT PRESENTS CASE**

Sylvie Bissonette handed out a package including closing arguments appealing for the \$1500.00 fine, moving forward with the lower deck-shed project, and temporary landing extension. It also included emails back and forth between the appellants, Koralyn Coughlin and Phyllis Forsyth, as well as photos of trees that were flagged as unhealthy and what was cut down.

Sylvie explained that if they have not been given rules and regulations, bylaws to look at it then it is not proper to be fined for doing such wrong.

When Sylvie and Denis purchased the property the realtor told them they could build a small deck, trees on the property were flagged as unhealthy before they even moved in. Replies were not received in order for them to know what direction to take. It was explained that the Summer Village had the opportunity and the obligation to inform in a timely fashion of their position and failed to do so.

Sylvie and Denis knew their neighbors had decks and since the realtor said they could, they had no reason to think they couldn't have something. They wouldn't have built a deck if they weren't allowed. After the Summer Village did not get back to Sylvie and Denis after one year, they can't later deny those facts and fine us. The fine should be removed as the temporary deck was removed.

## **QUESTIONS FROM THE BOARD TO THE APPELLANT**

Garry Will asked if they had ever received a copy of the Land Use Bylaw, to know what was required. Also he mentioned that they can't rely on realtors, they just want to sell the house.

Sylvie replied that someone misled us and they were allowed a temporary landing.

Garry Will asked if they ever thought they were going to build a new one.

Sylvie replied, no one got back to us.

Gib Clark asked if everything they wanted to do, was that all included on the permit they applied for.

Sylvie replied, yes. They had the temporary deck and were still waiting on the Summer Village to give guidance, Koralyn saw the landing and gave a fine.

Gib Clark explained that the realtor does not speak for the Summer Village, and you can't rely on what he says.

Sylvie mentioned that they are not appealing against the realtor at all, they

assumed the Summer Village knows the Bylaws.

Dennis mentioned that they wouldn't have built the temporary deck if they knew they weren't allowed.

Teresa commented that the encroachment explains agreement, the documents would have had to been understood and then signed.

Sylvie explained that no one said they can't have a deck or a temporary deck while they fix the permanent one.

Gib asked Sylvie, didn't she think a deck, shed, stairs on the permit is a very broad statement.

Sylvie said they submitted another permit, and submitted drawings.

Teresa asked if any of the 2017 applications are still under way.

Sylvie replied no, they have been rejected.

Gib asked how big the deck was made.

Dennis replied 60x72.

Gib asked if they rebuilt the deck there.

Dennis said no, we didn't know what could have been built, no one told us any regulations or bylaws.

The Subdivision and Development Appeal Board clarified the sequence of events with the Development Officer.

#### **WRITTEN SUBMISSION IN FAVOUR OF THE APPEAL**

None.

#### **ANYONE WISHING TO SPEAK IN FAVOUR THE APPEAL**

No one.

#### **WRITTEN SUBMISSIONS IN AGAINST THE APPEAL**

None.

#### **ANYONE WISHING TO SPEAK AGAINST THE APPEAL**

No one.

#### **COMMENTS FROM REFERRAL AGENCIES**

None.

### **APPELLANT SUMMARY**

Sylvie Bissonette provided her summary to the board. She explained that bad communication with the Development Officer and with her realtor lead to the bylaw infractions.

### **DEVELOPMENT OFFICER SUMMARY**

The proposed development does not fall under a permitted or a discretionary use in the Environmental Open Space District (EOS), under the Land Use Bylaw #99/13.

The Development Officer nor the Municipal Planning Commission have the authority to approve a development permit for “uses” not listed under the Land Use Bylaw #99/13 as per Part One: 1.4.

If the applicant wishes to construct a deck/land or shed on the Environmental Open Space, an application to amend the Land Use Bylaw would need to be submitted, as per Part One: 1.11.

### **CLOSING COMMENTS FROM THE BOARD**

Garry Will stated that there are two appeals before the Board; one for development and the other for the issue of the fine. The fine was imposed by a decision of Council and the Board cannot change that.

Teresa Beets asked if Sylvie and Dennis felt they had the opportunity to state their case. They stated they had.

Teresa Beets thanked everyone for their attendance and presentations. A written decision of the Board will be made within 15 days.

The Chair declared the hearing closed at 11:54 a.m. noting no further submissions would be entertained by the board.

### **DECISION**

The Summer Village of Sunbreaker Cove Subdivision and Development Appeal Board decided to deny the appeal. Upon hearing and considering the representations and the evidence of the parties concerned the Board find the facts in the matter to be as follows:

#### **A) Penalty Applied**

1. The penalty was applied in accordance to Bylaw 103/14.

2. The penalty was imposed by Sunbreaker Cove Resolution 1053/17.

B) Permanent Deck on Public Land

1. The proposed development does not meet Land Use Bylaw 99/13.
2. The Land Use Bylaw 99/13-Part Four-Land Use District Regulations does not provide decks as a use in the Environmental Open Space.
3. The Proposed Development is contrary to Section 7.5 of the Sunbreaker Cove Municipal Development Plan (2013).
4. The proposed Development is contrary to guidance provided in the Open Space Master Plan.

It is the decision of the Subdivision and Development Appeal Board that the appeal be denied for the applicants Sylvie Bissonette and Denis Pelletier.

A) Penalty Applied.

The Subdivision and Development Appeal Board may not revoke, or amend a resolution of Council and therefore denies appeal.

B) Permanent Deck on Public Land

(ii) Section 687 (3) of the Municipal Government Act provides the proposed development conforms with the use prescribed for that land or building in the Land use bylaw, prior to the Subdivision Appeal Board allowing for appeal.

A permanent deck is not a use defined in Land Use Bylaw 99/13 and therefore the appeal is denied.

**DATED AT THE TOWN OF SYLVAN LAKE THIS 27TH DAY OF MARCH, 2017.**

**THE SUMMER VILLAGE OF  
SUNBREAKER COVE SUBDIVISION AND  
DEVELOPMENT BOARD**

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**Teresa Beets  
Board Chairman**