

2014

Hfx No. 431696

SUPREME COURT OF NOVA SCOTIA

Between:

MUNICIPALITY OF THE DISTRICT OF GUYSBOROUGH

and

**THE HEIRS AT LAW OF JOSEPH FOGARTY, JAMES P. FOGARTY AND
FRANK FOGARTY**



RESPONDENTS

ORDER

SGD.
P.P.R.
J.

BEFORE THE HONOURABLE JUSTICE PETER ROSINSKI IN CHAMBERS:

UPON the first motion for date and directions in this matter being heard on October 23, 2014;

AND UPON a second motion for date and directions in this matter being heard on November 10, 2014;

AND UPON reading the Affidavit of Frank Fogarty and the other materials filed herein and hearing from Robert Grant, Q.C. for the Applicant and Frank Fogarty, one of the Respondents, appearing in person;

IT IS HEREBY ORDERED THAT:

1. A further motion for date and directions shall be held on January 15, 2015 at 11:00 a.m. at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia.
2. All of the materials filed with the Court to date in this proceeding shall be made available on the Municipality of the District of Guysborough's website and shall remain available on the website until the Court approves their removal. *(including this Order)*
3. Notice of this proceeding shall be given to the individuals with mailing addresses listed in Exhibit "A" of the Affidavit of Frank Fogarty.
4. Notice of this proceeding shall be given to the individuals named in "Exhibit C" of the Affidavit of Betty Dobson at the addresses indicated in the Exhibit. Where mailing addresses are not available, the Municipality of the District of Guysborough (the "Municipality") shall make its best efforts to obtain mailing

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P.P.R.
J.

addresses by contacting those individuals by phone where a phone number is available.

5. Notice to the persons referred to in paragraphs 2 and 3 shall be by way of registered mail. This Notice shall contain a cover letter from counsel for the Applicant explaining briefly the proceeding, the reason why the individual was contacted and a method for the person notified to view the materials filed with the Court to date on the Municipality's website.
6. The Municipality shall make its best efforts to post a notice of this proceeding, in the form of short explanation of this proceeding with a link to the additional information on the Municipality's website, on the following social media websites on or before November 28, 2014:
 - (a) the "Save Fogarty's Cove" Face Book Page;
 - (b) the "Black Point – Fogarty's Cove Quarry Environmental Concerns" Face Book Page;
 - (c) the "@BlackPtQuarry" Twitter Account; and
 - (d) the "Black Point Quarry Project" website.
7. Notice of this proceeding shall be published in the Globe and Mail, the Chronicle Herald, the Cape Breton Post, the Guysborough Journal, the Reporter, and the Casket once a week for a period of two consecutive weeks with the second advertisement being published approximately twenty (21) days before the second motion for date and directions.
8. The published form of the Notice shall read as follows:

*Fogarty Expropriation, Black Point, Nova Scotia
Hfx No. 431696*

Take Notice that a court proceeding is being held in the Supreme Court of Nova Scotia Hfx No. 431696 to determine title to two pieces of land in Guysborough County bearing PIDs 35044056 and 35214014, belonging to the heirs at law of Joseph Fogarty.

The land is vacant and has been expropriated by the Municipality of the District of Guysborough. An independent appraisal of the land values it at \$140,000.

Joseph Fogarty died intestate in 1907 at Fox Island, Guysborough, Nova Scotia with eight children surviving him. The heirs at law of Joseph Fogarty are named as respondents in this proceeding because the last deed to the properties was a deed to Joseph Fogarty, dated July 13, 1897.

The heirs at law of Michael Vincent Fogarty (died 1977) have claimed an interest in the properties based on the use and occupation of the properties by Michael Vincent Fogarty and his descendants.

Any person wishing to view the materials filed in this proceeding may do so on the Municipality's website at <http://www.modg.ca/residents/fogarty-expropriation-informaiton>.

Any person with an interest in these lands should contact Tipper McEwan of Stewart McKelvey at PO Box 997, 1959 Upper Water Street, Suite 900, Halifax, Nova Scotia B3J 2X2 (tmcewan@stewartmckelvey.com), 902.444.1743 or appear at the Law Courts, 1815 Upper Water Street, Halifax, Nova Scotia, B3J 1S7 on January 15, 2015 at 11:00 a.m.

9. The filing for any Amended Notice of Application or any Notices of Contest, shall be deferred until such date as set at the third motion for date and directions in order for notice to be given of this proceeding in accordance with this order.

DATED at Halifax, Nova Scotia this 25th day of November, 2014.



PROTHONOTARY

JESSICA RENFERT
Deputy Prothonotary

