

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Rodney Squires **Appellants**

AND Town of Logy Bay – Middle Cove – Outer Cove **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
 Harold Porter
 Mary Thorne-Gosse

DATE OF HEARING September 29, 2015

IN ATTENDANCE

Rodney Squires – Appellant
James Goodwin – Lawyer for Appellant
John Kennedy – Authority
Richard Roche – Authority
Janet Roff – Interested Party
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Logy Bay – Middle Cove – Outer Cove refusing to issue a permit to Mr. Rodney Squires for the purpose of developing a single family dwelling with an associated hobby farm at 32-34 Klondyke Road. Council first considered the application at the August 11, 2014 Regular Meeting of Council. The decision to refuse Mr. Squires' application was made on April 13, 2015 at the Regular Meeting of Council. On two separate occasions, the Town sought advice from a planning consultant who recommended the application be refused. The Town notified Mr. Squires' of its decision in a letter dated April 14, 2015. The letter indicated Council's reasons for refusal and the applicant's right and process to appeal.

In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (the "Act"), Mr. Squires initiated the appeals process with the Eastern Newfoundland Regional Appeal Board on April 21, 2015. Additionally, Mr. Squires included the required information as per section 42(5) of the Act.

In accordance with the *URPA* a public notice of the appeal was published in *The Telegram* on September 15, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on September 2, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Logy Bay-Middle Cove-Outer Cove Municipal Plan and Development Regulations, 2005

Minister's Development Regulations, NLR 3/01

Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Are single dwellings and hobby farms allowed within the Rural zone?

The Board reviewed Schedule "C" of the Town's Development Regulations which outlines what uses are permitted and discretionary within the Town's use zones. The subject site is located within the Rural zone. The Board accepts that single dwellings may be considered by Council in conjunction with a permitted or discretionary use. The Town determined that hobby farming is

not considered an agricultural use, which is listed as permitted in the Rural zone. Agriculture is defined in Schedule “A” of the Town’s Development Regulations as follows:

AGRICULTURE: Horticulture, fruit growing, grain growing, crop growing, seed growing, dairy farming, bee keeping, the breeding or rearing of animals for food, skins, or fur, the use of land, meadow land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of land. Agriculture includes primary processing of onsite products.

The appellant’s lawyer states that the Town’s literal interpretation of agriculture is incorrect. The Board found that the Town’s definition of *agriculture* does not clearly exclude hobby farms.

Does the property have frontage on a publicly maintained road?

No. The Board heard from the Appellant and the Authority that Klondyke Road would need to be extended according to Town standards in order to obtain road frontage. The Board reviewed section 4.3.5 of the Town’s Municipal Plan which states that all development must front on a publicly maintained street.

Did the Town have the authority to refuse Mr. Squire’s application?

Yes. The Board found that the Town had the authority to refuse Mr. Squire’s application as the subject property does not front directly onto a street. The Board reviewed section 9 of the Town’s Development Regulations and determined that the Town may refuse an application if it is premature by reasons of the site lacking adequate road access. Section 9 states:

Neither a permit nor approval in principle shall be issued for development within the Planning Area when, in the opinion of the Council, it is premature by reason of the site lacking adequate road access, power, drainage, sanitary facilities, or domestic water supply, or being beyond the natural development of the area at the time of application unless the applicant contracts to pay the full cost of construction of the services deemed necessary by the Council and such cost shall attach to and upon the property in respect of which it is imposed.

Did the Town satisfy section 22 of the Town’s Development Regulations?

The Board reviewed section 22 of the Town’s Development Regulations which requires the Town to state the reason for refusing a permit. The Board reviewed the Town’s refusal letter dated April 14, 2015 and determined that while the Town had the authority to refuse the appellant’s application, the reasons for refusal should be altered to state that the subject property does not meet the frontage requirements outlined in section 4.3.5 of the Town’s Municipal Plan.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 Logy Bay-Middle Cove-Outer Cove had the authority to refuse Mr. Squire's application as the subject property is contrary to section 4.3.5, Access and Public Street, of the Town's Municipal Plan. However, the Board determined that the reasons indicated in the Town's April 14, 2015 refusal letter should be deleted and replaced with an explanation pertaining to frontage.

Order

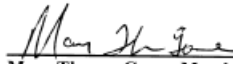
Based on the information presented, the Board orders that the refusal issued by the Town of Logy Bay-Middle Cove-Outer Cove on April 14, 2015 to Mr. Rodney Squires concerning 32-34 Klondyke Road, be varied.

The Town of Logy Bay-Middle Cove-Outer Cove and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 29th day of September, 2015.


Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board


Harold Porter, Member
Eastern Newfoundland Regional Appeal Board


Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board

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