

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Darrell Percy **Appellants**

AND Town of South River **Respondent**

RESPECTING Refusal

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

DATE OF HEARING September 30, 2015

IN ATTENDANCE

Jonathan Moore – Authority (former Clerk)

Marjarie Dawson – Authority

Darrell Percy - Appellant

Eddie Doody – 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 South River refusing to issue a permit to develop a single dwelling on Old Cart Road. On March 25, 2015, Mr. Darrell Percy applied to the Town of South River for permission to build a single dwelling on Old Cart Road, approximately 1000 feet from the end of the pavement. Council reviewed and refused the subject application at the April 1, 2015 Regular Meeting of Council. The Town notified the applicant of its decision in a letter dated April 7, 2015. The letter indicated Council refused the subject application and stated an appeal may be filed within fourteen (14) days.

In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (the “Act”), Mr. Percy initiated the appeals process with the Eastern Newfoundland Regional Appeal Board on April 21, 2015. Additionally, the appeal was made in writing and included the following: a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee as required under section 42(5) of URPA.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Compass* 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 South River Municipal Plan and Development Regulations, 1995

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Minister’s Development Regulations, NLR 3/01

Matters presented to and considered by the Board

How is the subject property zoned?

The Board accepts that the subject property is designated and zoned Residential. The Board reviewed the Residential Use Zone Table in Schedule “C” of the Town’s Development

Regulations and found that single dwellings are considered permitted uses in the Residential zone.

Did the Town have the authority to refuse Mr. Percy's application?

The Board accepts that the Town has the authority to refuse an application in the event it is contrary to the Town's Regulations. The Town's decision letter dated April 7, 2015 indicated that Council was uncertain of the location of the land. The Board learned at the hearing that a legal survey was submitted with the appellant's application to Council. Additionally, Mr. Percy was requested at the April 1, 2015 Regular Meeting of Council to confirm the land location for Council. The Board also learned that Councillors Joyce and Arthur Petten own the property adjacent to the appellant's property and therefore were aware of the location. Therefore, the Board is unclear as to why the decision letter indicated that the Authority was unclear on the location of the appellant's property. Since reasons were not provided by the Town in the decision letter and the Town could not provide an explanation of the refusal at the hearing, the Board finds the Authority's refusal questionable.

Did the Town communicate its decision appropriately?

No. The Board reviewed section 21 of the Town's Development Regulations which requires the Authority to state the reasons for refusing a permit. The decision letter dated April 7, 2015 does not include reasons for refusal. The Town conceded at the hearing that Council did not provide reasons at the April 1, 2015 Regular Meeting of Council. Therefore, the Board found that the Town did not satisfy section 21 as reasons for the refusal were not provided in writing to the appellant.

Were Councillors in a conflict of interest at the April 1, 2015 Regular Meeting of Council?

The Board heard arguments pertaining to conflict of interest and indicated to the appellant that the Board does not have the jurisdiction to make a ruling on the matter within the confines of the *Municipalities Act, 1999*. However, the Board determined that while the appellant was using the term conflict of interest, the arguments were related to bias. According to the *Faulkner v. City of Mount Pearl*, 2015 NLTD(G) 118 Supreme Court case, the Board may consider a ground of appeal based upon bias and overrule a decision of council if it acted with improper bias.

The Board learned at the hearing that two councillors, Joyce Petten and Arthur Petten, own land

adjacent to the appellant and voted against the appellant's proposed development for reasons unknown. The Board found that this created an apprehension of bias against the appellant's proposed development. Therefore, the Board determined that Councillor Joyce Petten and Councillor Arthur Petten should abstain from voting on the appellant's subject application due to the apprehension of bias. The Appellant also argued that Councillor David McLean was in conflict of interest at the April 1, 2015 since he is apparently good friends with Councillor Joyce Petten and Councillor Arthur Petten. Again, the Board considered this argument related to bias, not conflict of interest. The Board determined that the Petten's supposed friendship with Councillor McLean did not suggest a reasonable apprehension of bias on the part of Councillor McLean when he voted on the Appellant's application at the April 1, 2015 Regular Meeting of Council.

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 it was not evident the Town of South River had the authority to refuse Mr. Darrell Percy's application since reasons for refusal were not provided. That is to say, the Town of South River, with the exception of Councillor Joyce Petten and Councillor Arthur Petten, must reconsider Mr. Percy's application and make a decision in accordance with the Town's Municipal Plan and Development Regulations. If the Town refuses Mr. Percy's application again, the Board directs the Town to comply with section 21 of the Town's Development Regulations when communicating its decision to Mr. Percy by including reasons for the refusal.

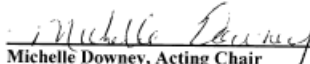
Order

Based on the information presented, the Board orders that the decision made by the Town of South River on April 1, 2015 to refuse Mr. Darrell Percy's application to develop a single dwelling near Old Cart Road, be vacated.

The Board further orders that the Town of South River pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

The Town of South River and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 30th 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