

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN**                      Russell Lundrigan                      **Appellant**

**AND**                              Town of Bay Bulls                      **Respondent**

**RESPECTING**                      Approval

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

**DATE OF HEARING**                      October 1, 2015

**IN ATTENDANCE**

Russell Lundrigan – Appellant  
Reg Garland – Representative of the Authority  
Douglas Chafe – Interested Party  
Virginia Chafe – 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 Bay Bulls issuing an approval in principle, subject to conditions, to Ms. Virginia Chafe for the purpose of developing a single family dwelling at 129A Northside Road. The Town considered and approved Ms. Chafe's application subject to conditions at the July 14, 2015 Regular Meeting of Council. The Town notified Ms. Chafe of Council's decision in a letter dated July 21, 2015.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "Act"), Mr. Russell Lundrigan, an interested third party, filed an appeal with the Eastern Newfoundland Regional Appeal Board on July 28, 2015 against the above noted approval. 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 the *Act*.

In accordance with the *Act* a public notice of the appeal was published in *The Telegram* on September 1, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on September 3, 2015.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

Minister's Development Regulations, N.L.R. 3/01

Town of Bay Bulls Municipal Plan and Development Regulations, 2014

### **Matters presented to and considered by the Board**

#### **How is the subject property zoned?**

The Board reviewed the Town's Municipal Plan and Development Regulations and accepts that the subject property is primarily zoned Residential and partially located within the Mixed Development and Rural zones.

**Is backlot development allowed within the subject land use zones?**

The Board learned at the hearing from the Town’s representative that the proposed development is technically backlot development as defined by the Town’s Development Regulations but was not considered as such when Council made its decision to approve Ms. Chafe’s application. The Town’s lack of acknowledgement that the application was for backlot development does not hinder the Town’s authority to approve backlot development in a Residential designation and zone. The Board found that under section 3.2.1.13 of the Town’s Municipal Plan, backlot development may be considered by Council within the Residential designation and zone. As the subject property is primarily in the Residential zone, the Board determined that the Town had the authority to consider Ms. Chafe’s application.

**Does the subject property have access to a publicly maintained street?**

In accordance with Condition 18(c) of the Residential Use Zone Table, a backlot must have access to a publicly maintained street. It was not evident whether or not the subject property met this requirement based upon the information submitted to the Board prior to the hearing. Therefore, the Board sought clarification at the hearing. The Authority’s representative as well as the applicant demonstrated to the Board where the access would be located. The Board learned at the hearing that the applicant would be using a right-of-way owned by the Town of Bay Bulls that extends off Northside Road as well as their own property to access the subject property. The Board found that this satisfied Condition 18(c) under the Residential Use Zone Table in Schedule “C” of the Town’s Development Regulations.

**Can the Town issue a conditional approval in principle?**

In accordance with section 20 of the Town’s Development Regulations, the Town may issue an approval in principle for the erection of a building subject to further approval of detailed plans. Additionally, the Board acknowledges that section 21(2) of the Town’s Development Regulations provides the Town with the authority to attach conditions to an approval in principle. The Town of Bay Bulls attached five (5) conditions to Ms. Chafe’s approval in principle.

The appellant’s main concern raised at the hearing pertained to possible drainage and water run-off problems. The Board reviewed each condition and determined that the Town shared Mr.

Lundrigan's concern for water control as condition c) stated that the developer was responsible for the control of water and runoff. Additionally, the fact that Council issued an approval in principle, rather than a development permit, illustrates to the Board that proper consideration of the matters outlined in the conditions is necessary prior to the Town issuing a building permit.

### **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 Bay Bulls had the authority to approve in principle, subject to conditions, Ms. Virginia Chafe's application and did so in accordance with the Town's Municipal Plan and Development Regulations. Therefore, the Board confirms the Town's decision made on July 14, 2015 to approve in principle, subject to conditions, a single dwelling at 129A Northside Road.

**Order**

Based on the information presented, the Board orders that the decision made by the Town of Bay Bulls on July 14, 2015 to approve in principle subject to conditions Ms. Virginia Chafe's application to develop a single dwelling at 129A Northside Road, be confirmed.

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

**DATED** at St. John's, Newfoundland and Labrador, this 1<sup>st</sup> day of October, 2015.

  
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Michelle Downey, Acting Chair  
Eastern Newfoundland Regional Appeal Board

  
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Harold Porter, Member  
Eastern Newfoundland Regional Appeal Board

  
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Mary Thorne-Gosse, Member  
Eastern Newfoundland Regional Appeal Board