

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Matthew Dawe **Appellant**

**AND** Town of Conception Bay South **Respondent**

**RESPECTING** Conditional Approval

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

**DATE OF HEARING** November 23, 2015

**IN ATTENDANCE**

Elaine Mitchell – Authority

Cheryl Lane – Authority

Matthew Dawe – Appellant

Neil Dawe – Representative for Appellant

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 Conception Bay South conditionally approving an application to construct a single dwelling at Hopewell Gardens, Upper Gullies. On April 8, 2015, Mr. Matthew Dawe submitted his application to the Town of Conception Bay South. The Town notified Mr. Dawe in a letter dated April 27, 2015 that his application for development was approved subject to conditions.

Mr. Dawe received the Development Approval letter on May 6, 2015 and initiated the appeals process with the Eastern Newfoundland Regional Appeal Board on May 11, 2015. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”) and included the required information as per section 42(5) of the *Act*.

In accordance with the *Act*, a public notice of the appeal was published in *The Telegram* on September 8, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 21, 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 Conception Bay South Municipal Plan and Development Regulations, 2011

### Matters presented to and considered by the Board

#### **Does the Town have the authority to attach conditions to an approval?**

Yes. The Board accepts that the Town acted in accordance with section 4.11 of the Town’s Development Regulations when it attached conditions to Mr. Matthew Dawe’s development approval. Section 4.11 (2) states:

*The Authority may attach to a development approval such conditions as it deems fit in order to ensure that the proposed development will be in accordance with the purposes and intent of these Regulations.*

#### **Does the Town have the authority to require Mr. Dawe to extend municipal services?**

Yes. The Town illustrated to the Board that the appellant’s property is located beyond the Limits of Service Agreement made between the Town of Conception Bay South and the Department of Municipal

and Intergovernmental Affairs in 1992. The Board determined that the Town required the extension of municipal water and sewer services in accordance with section 4.3.19.2, Water and Sewer Services, of the Town's Municipal Plan. Section 4.3.19 states:

- 1. In areas designated for residential development where there are no municipal services, only infill development on existing public street frontages will be permitted. With the exception of areas specifically zoned Residential Estate Lot, in unserviced areas, street extensions and backland development shall not be permitted, unless full municipal services are installed to standards set by the Town, at the developer's expense.*
- 2. No new municipal water and sewer servicing for residential development shall be extended beyond the limits set out in the Limit of Servicing Agreement between the Town and the Minister of Municipal Affairs (1992) unless they are installed as part of an approved development at the expense of the developer.*
- 3. In considering proposals for development, Council shall ensure that the impacts of proposed new development projects on the Town's water, sanitary sewer and storm sewer and wastewater treatment systems are assessed.*

The Board also reviewed section 5.25, Servicing Development, of the Town's Development Regulations, which states:

- 1. Except where permitted as part of an approved Residential Estate Lot Subdivision, development of backlands or beyond the end of existing public streets, will only be permitted on the basis of full municipal water and sewer servicing.*
- 2. Servicing with on-site well and septic systems may be permitted as infill development along existing public streets.*
- 3. Where permitted, private on-site septic systems, shall be properly designed, installed and maintained. Approval for on-site septic systems is required from the Government Service Centre.*
- 4. Where development on the basis of water supply wells (either in unserviced infill areas or in a Residential Estate subdivision) an assessment of groundwater quantity and quality may be required in accordance with the Provincial Department of Environment and Conservation Groundwater Supply Assessment and Reporting Guidelines for Subdivisions Serviced by Individual Private Wells, 2009.*
- 5. Where there is insufficient groundwater yield to support any development proposed on the basis of a well, the Authority shall refuse the development.*

The Town provided an aerial photo illustrating where Hopewell Gardens terminates as well as stated at the hearing that Hopewell Gardens ends at the same location as the Limits of Service Agreement.

Therefore, the Board accepts that the Town had the authority to require Mr. Dawe extend municipal water and sewer services under section 4.3.19.2 of the Town's Municipal Plan as well as section 5.25.1 of the Town's Development Regulations.

### **Is the Town required to follow its 2011 Municipal Plan and Development Regulations?**

The appellant requested the same treatment as the neighbour located across the street (referred to as lot No. 38 in the hearing). The Board understands that Lot No. 38 was permitted to connect to municipal services without being required to extend the main line across the frontage of the property. However, that development was completed and approved under a different set of regulations; regulations that are no longer in legal effect. The Town's Municipal Plan and Development Regulations, 2011 came into legal effect on July 20, 2012. The Board determined that the Town must make development decisions in accordance with its 2011 Municipal Plan and Development Regulations as prescribed under section 12 of the *Urban and Rural Planning Act, 2000*. Section 12 states:

*A plan and development regulations are binding upon*

*(a) municipalities and councils within the planning area governed by that plan or those regulations; and*

*(b) a person undertaking a development in the area governed by that plan or those regulations.*

### **Did the Town provide proper notification of Council's decision?**

Yes. The Board found that in accordance with section 4.3 of the Town's Development Regulations, when conditions are attached to a development approval, Council must outline why it is attaching those conditions. The Board reviewed the Development Approval issued to the appellant and determined that the Town satisfied section 4.3 of the Town's Development Regulations.

Additionally, the Board concluded that the Town accurately notified the appellant of his right and process to appeal Council's decision as per section 3.5 of the Town's Development Regulations and section 5 of the *Minister's Development Regulations, NLR 3/01*.

### **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 Conception Bay South had the authority to conditionally approve Mr. Matthew Dawe's application for a single dwelling at Hopewell Gardens on April 27, 2015 and did so in accordance with the Town's Municipal Plan and Development Regulations, 2011. More specifically, the Board found that the Town had the authority to require Mr. Dawe extend municipal water and sewer services to his property as prescribed by the Town's Municipal Plan and Development Regulations, 2011. Therefore, the Board will uphold Town's decision to conditionally approve Mr. Dawe's application for a single dwelling at Hopewell Gardens, issued on April 27, 2015.

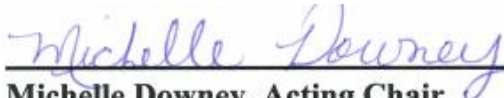
**Order**

Based on the information presented, the Board orders that the decision made by the Town of Conception Bay South to approve, subject to conditions, Mr. Matthew Dawe's application to develop a single dwelling at Hopewell Gardens, be confirmed.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board's decision has been received by the appellant.

**DATED** at St. John's, Newfoundland Labrador, this 23<sup>rd</sup> day of November, 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**