

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Neil Hillier **Appellant**

**AND** Town of Whitbourne **Respondent**

**RESPECTING** Approval

**BOARD MEMBERS** Michelle Downey – Acting Chair  
Harold Porter  
Bruce Strong

**DATE OF HEARING** November 27, 2015

**IN ATTENDANCE**

Neil Hillier – Appellant  
Crystal Peddle – Authority  
Don Mercer – 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 Whitbourne issuing an approval to Mr. Don Mercer for the purpose of constructing a five (5) lot unserviced residential subdivision on Main Street, Whitbourne. On September 15, 2015, Mr. Mercer submitted his development application to the Town of Whitbourne for approval. The Town approved Mr. Mercer's application on September 16, 2015 at a Regular Meeting of Council. The Town notified Mr. Mercer in a letter dated September 17, 2015 that his application was approved subject to conditions.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, Mr. Neil Hillier, an interested third party, filed an appeal with the Eastern Newfoundland Regional Appeal Board on September 22, 2015 in response to the permit issued to Mr. Mercer. 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 November 3, 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 Whitbourne Municipal Plan and Development Regulations, 2013

### Matters presented to and considered by the Board

#### **Does the proposed development require a Groundwater Assessment?**

Yes. The Board learned that according to the Department of Environment and Conservation, Water Resources Management Division, a Level I Groundwater Assessment is required for an unserviced residential subdivision of five (5) or more lots.

The Board asked the Authority's representative at the hearing whether Council was aware that a Groundwater Assessment is required. The Authority indicated that Council is familiar with the Groundwater Assessment process and understood that a Groundwater Assessment would be required for

Mr. Mercer's proposal. The Board notes that the Town did not include this stipulation as a condition of the Approval issued to Mr. Mercer.

**Did the Town have the authority to approve Mr. Mercer's application?**

The Board accepts that the Town has the authority to approve residential subdivisions within the Mixed Development zone. According to the September 16, 2015 Regular Meeting of Council minutes, the Board found that Council issued an approval to Mr. Mercer. The Town attached three conditions to the approval regarding dust control, hours of operation and the requirement of monthly status updates regarding the development. The Board questions why the Town did not also require approval from the Department of Environment and Conservation, Water Resources Management Division. The Town stated at the hearing that Council issued an approval in principle and that approval is required from all necessary government departments. However, this was neither stated in the September 16, 2015 Council meeting minutes nor was it outlined in the September 17, 2015 decision letter issued to Mr. Mercer. While the Board accepts that the Town had the authority to approve Mr. Mercer's application, the Board will order the Town vary its decision to reflect the requirements of the Department of Environment and Conservation, Water Resources Management Division regarding a Level I Groundwater Assessment.

**Did the Town properly notify Mr. Mercer of Council's decision?**

The Board found that the Town notified Mr. Mercer in writing of Council's decision. However, the Board determined that the Town did not notify Mr. Mercer of his right and process to appeal as required under section 5 of the *Minister's Development Regulations, NLR 3/01*. Section 5 states:

*Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the*

- (a) person's right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

**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 Whitbourne had the authority to approve Mr. Mercer's application. However, the Board concluded that the Town should have included a condition requiring Mr. Mercer seek approval from the Department of Environment and Conservation, Water Resources Management Division. Therefore, the Board will vary the decision made by Council on September 16, 2015 to include a condition requiring Mr. Mercer consult with the Department of Environment and Conservation, Water Resources Management Division concerning a Level I Groundwater Assessment for the proposed unserviced residential subdivision. The Board orders the Town to issue a revised decision letter including the above noted condition to Mr. Mercer. In accordance with section 5 of the *Minister's Development Regulations, NLR 3/01*, the revised decision letter should also include Mr. Mercer's right and process to appeal.

**Order**

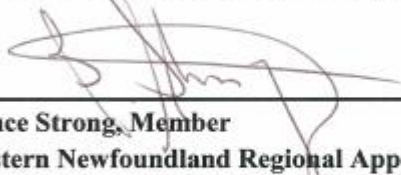
Based on the information presented, the Board orders that the approval made on September 16, 2015 by the Town of Whitbourne concerning a five (5) lot unserviced residential subdivision at 155-161 Main Street issued to Mr. Don Mercer, be varied.

The Town of Whitbourne 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 27<sup>th</sup> day of November, 2015.

  
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**Michelle Downey, Acting Chair**  
**Eastern Newfoundland Regional Appeal Board**

  
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**Bruce Strong, Member**  
**Eastern Newfoundland Regional Appeal Board**

  
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**Harold Porter, Member**  
**Eastern Newfoundland Regional Appeal Board**