

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Giselle and Kenneth Young **Appellant(s)**

AND Town of Stephenville **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Bill Madore – Member
Joseph Guinchard – Member

DATE OF HEARING May 25, 2016

IN ATTENDANCE

Kenneth Young – Appellant

Kenneth Young Jr. – Support for Appellant

Mike Campbell – Authority (teleconference)

Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board

Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Stephenville refusing to issue a permit to Kenny Young Jr for the purpose of developing a single dwelling at 2B Blanchard's Road near Noel's Pond at the October 22, 2015 Regular Meeting of Council. The Application to Develop Land was submitted to the Town for consideration by Kenny Young Jr. (the "Applicant") in July, 2015. The Town notified Mr. Young of Council's decision in a letter dated October 26, 2015. The letter noted Council's reason for refusal and the right and process to appeal Council's decision.

On October 27, 2015, Giselle and Kenneth Young, the Applicant's parents, filed an appeal against the above noted October 22, 2015 Council decision. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "Act"), the appeal was filed within the fourteen (14) day requirement. Additionally, the appellants included the required information as per section 42(5) of the Act.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Western Star* on February 10, 2016 and a notice of the time, date, and place of the Hearing was provided to the Appellant and Authority on February 9, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Stephenville Municipal Plan and Development Regulations, 2000

Matters presented to and considered by the Board

Where is the property located?

The subject property is located at 2B Blanchard's Road which the designated Residential and zoned Residential Rural. Single dwellings are listed as permitted uses in the Residential Rural zone. The Board accepts that the property is also located within the 1:20 and 1:100 AEP Flood Zones which are defined by the Department of Environment and Conservation.

Is there development occurring within the flood zones currently?

The Board learned from the Appellant that a house is under construction and is located at a lower elevation than Mr. Young’s property. The Authority stated at the hearing that a permit had been issued by the Town without knowledge of the flood zone mapping for the house under construction.

Did the Town have the authority to issue a development permit to Mr. Young?

The Board learned at the hearing that the Town does not have the authority to approve development within the designated flood zones as delineated by the Department of Environment and Conservation. Since Mr. Young’s property is located in both the 1:20 and 1:100 AEP flood zones, the Board found that the Town did not have the authority to issue a development permit to Mr. Young.

The Board reviewed the Town of Stephenville Municipal Plan and Development Regulations, 2000 and confirmed that the Town may refuse a permitted use pursuant to section 10 of the Town’s Development Regulations, which states:

In considering an application for a permit or for outline planning permission to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Authority may, in its discretion, and as a result of its consideration of the matters set out in this Regulations, conditionally approve or refuse the application.

While the Town indicated that the Municipal Plan policies support its decision regarding the flood zone mapping, the Town did not specify which policies apply. Upon reviewing the Town’s Municipal Plan, the Board found that the Town, under section 2.3.5, shall protect environmentally sensitive lands. Section 2.3.6, Flood Risk Areas, states that “[w]henver additional areas are identified, the Town shall ensure that these areas are properly zoned under the Development Regulations.” If the Town deems Mr. Young’s property a sensitive area that could be negatively affected by flooding, then the site should be rezoned to reflect those concerns in accordance with section 2.3.6 of the Town’s Municipal Plan.

Did the Town follow proper procedure when it notified Mr. Young of Council’s decision?

The Board found that the Town of Stephenville notified Mr. Young of Council’s decision in accordance with section 21, Reasons for Refusing Permit, which states:

The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.

Additionally, the Town notified Mr. Young of his right and process to appeal in accordance with section 5 of the *Minister's Development Regulations, NLR 3/01*, which 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 provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by Section 42 of the *Urban and Rural Planning Act* 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 Stephenville had the authority, and exercised it appropriately, when it refused to issue a permit to Mr. Kenneth Young for the purpose of constructing a single dwelling at 2B Blanchard's Road.

ORDER

Based on the information presented, the Board orders that the decision made by the Town of Stephenville on October 22, 2015 to refuse the application submitted by Kenneth Young Jr. for the purpose of constructing a single dwelling at 2B Blanchard's Road, be confirmed.

The Town of Stephenville is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West 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.

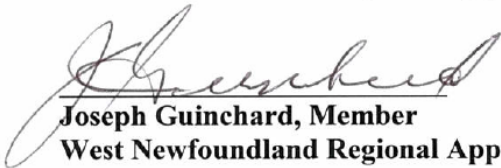
DATED at Steady Brook, Newfoundland and Labrador, this 25th day of May, 2016.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Bill Madore, Member
West Newfoundland Regional Appeal Board



Joseph Guinchard, Member
West Newfoundland Regional Appeal Board