

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Philip Hodder **Appellant**

AND Town of Deer Lake **Respondent**

RESPECTING Refusal

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

DATE OF HEARING May 26, 2016

IN ATTENDANCE

Philip Hodder – Appellant

Damon Clarke - Authority

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

Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Background

Mr. Philip Hodder (the “Appellant”) applied to the Town of Deer Lake for a permit to construct a single dwelling at the end of Sunrise Crescent on September 21, 2015. The Town refused Mr. Hodder’s application at the September 28, 2015 Regular Meeting of Council due to the lack of frontage and municipal services. On October 2, 2015, the Appellant requested permission to construct the dwelling prior to constructing the road. Council denied this request on October 13, 2015. The Appellant requested permission from the Town to construct a road with water and sewer to his property. Council considered and approved, subject to conditions, his request at the October 26, 2015 Regular Meeting of Council. The Town notified Mr. Hodder of Council’s decision in a letter dated October 26, 2015. Discussions ensued regarding the Town’s requirements outlined in the October 26, 2015 letter between the Town and the Appellant.

Facts

This appeal arises from the Town refusing to issue a permit to Mr. Hodder on January 11, 2016 at a Regular Meeting of Council for the purpose of developing land for two more homes without curbs, gutter and sidewalks at the end of Sunrise Crescent.

Mr. Hodder filed an appeal with the West Newfoundland Regional Appeal Board against Council’s January 11, 2016 decision. The Appellant filed his appeal on February 3, 2016, thus complying with section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”). Additionally, the Appellant 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 Western Star* on February 17, 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 Deer Lake Municipal Plan and Development Regulations, 2005

Matters presented to and considered by the Board

How is the property zoned?

The Board learned that the properties Mr. Hodder would like to develop (Parcel No. 1B-2013 and Parcel No. 2B-2013) are located in an Agriculture zone according to the Town of Deer Lake Municipal Plan and Development Regulations. This is illustrated in Map 1 attached to this Decision. Upon reviewing the Agriculture Use Zone Table in Schedule C of the Town's Development Regulations, the Board confirmed that single dwellings may be considered by Council as an accessory use as outlined under Condition 21.

Did the Town have the authority to refuse Mr. Hodder's request?

The Board accepts that the Town has the authority to require road standards, such as curbs, gutters and sidewalks pursuant to the Town's Development Regulations. Specifically, the Board found that the Town has the discretionary authority under section 58(2)(a) to request serviced roads have curbs and gutters. Additionally, the Board confirmed that sidewalks may be required under section 58(2)(1) at the discretion of Council. The Town indicated at the hearing that while these regulations may not have been followed in the past, the Town has committed to adhering to the Town's Development Regulations on a go-forward basis. Therefore, the Board determined that the Town had the authority to refuse Mr. Hodder's request for development in accordance with section 58(2) of the Town's Development Regulations.

In addition to the road design standards, the Board found that the Town had the authority to refuse Mr. Hodder's application due to the zoning of the property. As noted above, single dwellings may only be permitted as an accessory use in the Agriculture zone. Based on Mr. Hodder's submissions, it did not appear Mr. Hodder intended to develop single dwellings accessory to a permitted use.

Did the Town adequately notify the Appellant of Council's decision?

According to section 22 of the Town's Development Regulations, when a Town refuses an application, it must provide reasons for that refusal in writing. The Board reviewed the decision letter dated January 22, 2016 and found that the reason indicated satisfied section 22 of the Town's Development Regulations.

When a decision is subject to appeal, Council must state the right and process to appeal that decision 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.

The Board reviewed this requirement with the Authority at the hearing. The Board learned that while the Town did not state, in writing, the right to appeal to Mr. Hodder, the process was expressed verbally to Mr. Hodder when the decision was issued. While section 5 of the *Minister's Development Regulations*, NLR 3/01 was not met, the Board acknowledges that this did not hinder Mr. Hodder from appealing the subject decision in accordance with section 42 of the *Urban and Rural Planning Act, 2000*.

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 Deer Lake had the authority to refuse the subject application for not only the road design standards but also the fact the properties are located in an Agriculture zone. In accordance with Condition 21 of the Agriculture Use Zone Table, single dwellings may only be permitted as an accessory use. Therefore, the Board will vacate Council's decision and order Council to reconsider Mr. Hodder's application in accordance with the Agriculture Use Zone in Schedule C of the Town's Development Regulations. That is to say, taking into consideration the contents of this Decision of the West

Newfoundland Regional Appeal Board, the Town must reconsider the application at a Regular Meeting of Council, render a new decision on the application, and then issue a decision letter to Mr. Hodder. If the Town decides to refuse the application again, then the decision letter issued to Mr. Hodder must clearly articulate the reasons for Council's refusal in accordance with section 22 of the Town's Development Regulations and note the right and process to appeal Council's decision in accordance with section 5 of the *Minister's Development Regulations*, NLR 3/01.

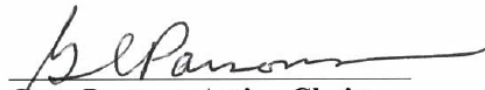
ORDER

Based on the information presented, the Board orders that the decision made by the Town of Deer Lake on January 11, 2016 to refuse Mr. Hodder's request to develop land for two homes at the end of Sunrise Crescent, be vacated.

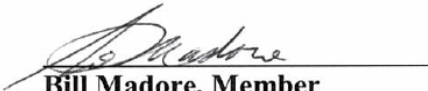
The Town of Deer Lake is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

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.

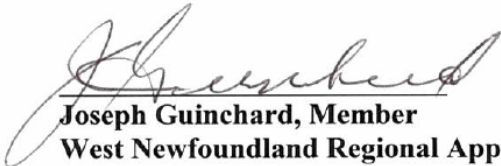
DATED at Steady Brook, Newfoundland and Labrador, this 26th day of May, 2016.



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

Map 1



Agriculture

Parcel No. 1B-2013

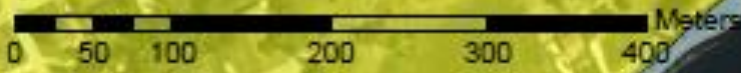
Parcel No. 2B-2013

Sunrise Crescent

Residential

Goose Arm Road

Designated Floodway



Environmental Protection

