

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Craig Sturge **Appellant**

AND Town of Paradise **Authority**

RESPECTING Matter under appeal Respecting Refusal of an Application for approval to subdivide property and develop a second residential building lot on property at 160 St. Thomas Line, Paradise (MAE File #:15-006-054-036)

BOARD MEMBERS Chair – Cliff Johnston
Member – Paul Boundridge
Member - Robert Warren

DATE OF HEARING October 26, 2018

IN ATTENDANCE

Appellant: Michael Sturge and Patricia Sturge; Hedley Rowe, on behalf of Appellant
Respondent: Town of Paradise – Alton Glenn, Director of Planning and Development
Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Paradise Council denying on September 6, 2016 an Application from Craig Sturge to subdivide property at 160 St. Thomas Line into two (2) residential building lots (homestead lot plus new lot for a new single dwelling). The subject property is zoned Residential Low Density (RLD) and Conservation (CON). The Council decision was sent to the applicant in a letter dated September 16, 2016, which conveyed the following:

- The application was contrary to recommendations by staff and by technical engineering consultants concerning access points and potential flooding (staff report regarding infill development along St. Thomas Line, adopted by Council on May 15, 2012; the Traffic and Transportation Study prepared for the Town in 2011), and
- That Council used their discretionary powers of authority to refuse the application.

On the same date the Appellant received a copy of the letter dated September 14, 2016.

On October 3, 2016 the Appellant filed an Appeal package with the Secretary of the Appeal Board. The grounds of appeal presented were:

1. Basing the refusal on a traffic study is irrelevant as there is already a house on the subject property,
2. There is enough room to accommodate the proposed development, and
3. Other similar developments have received permits from Council in recent years.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of appeal was published in The Telegram newspaper and a notice of the time, date and place of the hearing was provided to the appellant and the authority as required by *the Urban and Rural Planning Act, 2000*.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Paradise Municipal Plan 2004 and Town of Paradise Development Regulations 2004

Matters presented to and considered by the Board

Q: What is the significance of the Conservation (CON) Zone in the Town's consideration of the subject subdivision development application?

A: The Town's Development Regulations 2004 state that in the Conservation Zone:

“Generally, no development will be permitted within 15 metres of rivers or streams, or within 30 metres of the shoreline of lakes and ponds. Certain public works and passive recreational open space uses, such as walking and hiking trails, may be permitted as long as they will not be detrimental to the environmental and aesthetic quality of the area. Development of these areas will be subject to the approval of the federal Department of Fisheries and Oceans, and/or the provincial Department of Environment and Conservation. Boating, swimming, and water recreation activities may be permitted in this zone.

The Town's Development Regulations 2004 did not permit residential development in the Conservation Zone. At the hearing the Respondent advised that the practice of the Town is not to allow any part of a residential building lot to be located in the Conservation Zone.

Q: What is the relevance of the traffic study to the consideration that the Town gave to the subject application?

A: In 2011, Hatch Mott MacDonald prepared the Paradise Transportation Study and in 2014 the Town adopted a Transportation Plan. The Transportation Study recommended that access should be controlled along major roadways within Paradise, including St. Thomas Line, as redevelopment occurs on these streets, residential access should not be allowed.

Subsequently, at the May 15, 2012 Regular Meeting of Council, Council considered a report from the Town's Department of Public Works and the Department of Planning concerning infill development along St. Thomas Line. This report made recommendations as to where infill should be allowed along the street. The land in the area of 160 St. Thomas Line was not designated to accommodate new residential building lot development. This report was accepted by the Town Council on May 15, 2012 and is still in effect.

Q: Did the Town act in accordance with Town's Development Regulations when it refused the application?

A: In processing this application, the Town considered the zoning of the proposed new building lot. A portion of the proposed new lot is located in the Conservation Zone. This zone does not allow single dwellings or any portion of a residential building lot. Further, Section 10(1) of the Town of Paradise Development Regulations 2004 requires Council to take into account "...any other considerations which are, in its opinion, material..." In the case of this application, the Town considered the Paradise Transportation Study and the staff report concerning infill development and access for St. Thomas line adopted by Council on May 15, 2012 to be relevant.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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 was acting within its authority under the Town's Development Regulations 2004 to reject the application to subdivide property at 160 St. Thomas Line into two (2) residential building lots (homestead lot plus new lot for a new single dwelling). The Board has determined that the Town Council had the discretion under Section 10.1 of the Town's Development Regulations 2004 to consider any other factors that were in its opinion to be relevant to the review of the application, including suitable access points for residential infill development along St. Thomas Line. Therefore, the Board confirms the Respondent's decision and denies this appeal.

ORDER

Based on the information presented, the Board orders that the decision of the Town of Paradise of September 6, 2016 to reject the application to subdivide property at 160 St. Thomas Line, Paradise into two (2) residential building lots (homestead lot plus new lot for a new single dwelling) be confirmed.

The Respondent and the Appellant(s) 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 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(s).

DATED at St. John's, Newfoundland and Labrador, this 5th day of November, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boudridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board