

DECISION

Facts/Background

This appeal arises from the February 2, 2018 decision of the Town of Paradise to issue an Order to Natasha Paddock to immediately reinstate the drainage swale at the rear of her property at 3 Hillsdale Crescent to the satisfaction of the Town and in accordance with the approved subdivision plan for phase 24A Elizabeth Park Development.

The Appellant appealed the Order on the following grounds:

- Since buying the land and building the house in 2012, with incomplete landscaping at the rear, she has been trying to complete the development and maximize the useable space in the backyard.
- Due to a swale at the rear of the property, approximately 1000 square feet of the lot on which she pays taxes to the Town is unusable.
- Two houses up from hers, a culvert had been installed and she understood it was done by the Town at the request of the residents.
- Upon contacting the Town by phone in 2014, she was advised that she could install a culvert due to drainage issues if certified by an engineer at her own expense; however, the Town would take no responsibility for drainage issues.
- She engaged an engineer and submitted her application for the culvert and swale in June 2015 and had communications challenges with the Town for many months; in November 2015, her application was refused.
- She completed the backyard landscaping, without the installation of the culvert as desired, and visually levelled the backyard with rocks to aid drainage.
- She believes the Town's behavior and lack of response was unacceptable.
- She said that, since owning the property in 2012, there have been no drainage issues or build-up of water in the area in the past or currently.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Paradise Development Regulations, 2004

Municipalities Act, 1999

Matters presented to and considered by the Board

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Paradise acted in accordance with the *Municipalities Act, 1999* when it issued an Order to Natasha Paddock.

Q: What is the drainage swale which the Appellant seeks to alter?

A: The drainage swale is required a part of the approved subdivision grading plan for the Elizabeth Park Subdivision, Phase 24A in which the subject property is located.

Q: Does the location of the drainage swale conform to the approved storm grading/drainage plan?

A: It is unclear from the information presented. The unstamped survey provided by the Appellant shows a designated location for the swale close to the rear lot line of the subject property; however, from statements made by the Appellant (and not denied by the Town) the swale appears to have been placed in a different location that makes the Appellant's rear yard less useable.

Q: Was the original swale altered following approval by the Town and receipt of a Permit from the Town?

A: In June 2015 the Appellant applied for approval to install a culvert to fill in the swale at the rear of the subject property. On October 28, 2015 Council made a decision to reject the application; the Appellant was advised of this (served a Notice of Refusal) on December 2, 2015. Consequently, the swale was modified by the Appellants without approval or a Permit from the Town.

Q: When did the Town become aware that the original swale had been modified by the Appellant?

A: On January 31, 2018, a complaint was received by the Town that the property at the rear of 3 Hillside Crescent, 85 Brougham Drive, was being flooded. Site visits by Town staff revealed that both 85 and 87 Brougham Drive had large amounts of water present in their rear yards. Town staff noted that the swale at the rear of the property at 3

Hillsdale Crescent had been filled in and a fence constructed. Placement of fill in the swale appeared to be blocking water from draining to the catch basin on the opposite side of the property. Following this, on February 2, 2018 the Town issued the order to remove the fill from the swale and to restore it to its original condition.

Q: Did the Town have the authority to issue the Order in question to the Appellants?

A: Yes, the Town of Paradise has authority pursuant to the Municipalities Act, 1999, Section 404(1) (k) & (l), which states:

“(1) A council may make an order that:

(k) the construction, filling in or removal of a ditch, drain or culvert or connection to a storm drainage system constructed or made without a permit or not in accordance with the terms of a permit or regulations of the council be stopped; and

(l) that the owner or occupier of real property remove from that property, solid waste, noxious substances and substances or things which may be a hazard to public health and safety or which adversely affects surrounding properties. “

Q: Did the Town correctly apply the provisions of the Municipalities Act as pertaining to the property which is the subject of this appeal?

A: Based on the evidence provided by the Appellant and the Authority, it is the Board’s opinion that the Authority did correctly apply the provisions of the Municipalities Act.

Q: Has the Town previously approved other requests for modification of approved subdivision drainage plans involving drainage swales and/or culverts?

A: The Town Representative advised that in previous instances it has received and considered requests from property owners for modification of approved subdivision drainage plans. Requests would be evaluated by the Town on an individual basis and may involve consultation with others - the developer of subdivision, neighbours and utility companies.

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.

It is the opinion of the Board that the Order for reinstatement of the swale to the satisfaction of the Town of Paradise was found to be warranted based on the evidence presented to the Board. Therefore the Board will uphold the Order dated February 2, 2018 that was issued to the Appellant.

In closing, it is observed by the Board that further dialogue between the Appellant and the Town (and other nearby property owners, if applicable) might aid in finding a satisfactory solution to enable satisfaction of the Town's drainage requirements while potentially allowing increased area for practical usage of the Appellant's rear yard (and those of other property owners).

ORDER

Based on the information presented, the Board orders that the Order dated February 2, 2018 from the Town of Paradise to the Appellant to immediately reinstate the drainage swale on property located at 3 Hillsdale Crescent to the satisfaction of the Town, in accordance with the approved subdivision plan, be confirmed.

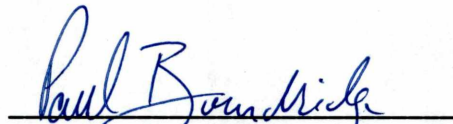
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 Mount Pearl, Newfoundland and Labrador, this 5th day of March, 2019.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Bountridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board