

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Edward Vickers **Appellant**

AND Town of Witless Bay **Authority**

RESPECTING Matter under appeal – Approval of a gazebo on property at
0 Muldowney’s Lane/Gallows Cove, Town of Witless Bay
(MAE File #: 15-006-054-037)

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

DATE OF HEARING October 17, 2018

IN ATTENDANCE

Appellant: Edward Vickers

Respondent: Town of Witless Bay – Geraldine Caul, Town Clerk/Manager

Interested parties that presented at the hearing: Gary and Ann Marie Churchill

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 Witless Bay approving on January 9, 2018 (and ratifying the Minutes of January 9, 2018 on February 13, 2018) the application from Gary and Ann Marie Churchill to construct a gazebo on land located on 0 Mallowney's Lane, Witless Bay. The subject property was zoned Rural at the time the application was submitted in August, 2015.

On February 14, 2018 the Appellant filed an Appeal package with the Secretary of the Appeal Board. The grounds of appeal can be summarized as follows:

1. Council failed to follow procedural guidelines.
2. Council acted on an erroneous set of facts.
3. Council acted in abuse of statutory condition on which its authority is based.
4. Council acted in excess of its legislative authority.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of appeal was published in The Telegram newspaper on October 3, 2018; 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 Witless Bay Municipal Plan and Town of Witless Bay Development Regulations

Matters presented to and considered by the Board

Q: For the purpose of this appeal, how is the gazebo defined and classified under the Town's Development Regulations?

A: The gazebo appears to fall under the definition of Outdoor Assembly, which can be allowed as a Discretionary Use in the Rural Zone.

Q: Before making a decision to approve the gazebo, did the Council follow the procedures required by the Town's Development Regulations?

A: This application has an extensive history involving the Town, the Applicants and the current Appellant. In March and April of 2016 the application for the gazebo was advertised by the Town for public review and comment by publication of a Discretionary Use Notice.

On December 7, 2017 the Eastern Newfoundland Regional Appeal Board ordered that the decision made by the Town of Witless Bay Council on May 10, 2016 to deny the Churchills' application to develop the gazebo at the subject property be reversed. The Board further ordered that the application must be considered a Discretionary Use decision as per Section 90 of the Town's Development Regulations. The Board ordered that the original application dated August 6, 2015 from the Churchills remains valid as it was advertised and responses had been received. The Board further ordered that in exercising its discretion, the Council must consider any objections or comments received in response to the advertising already completed by the Town. As there was no appeal to the Supreme Court of the Board's decision of December 7, 2017, the Board's Order stands.

In accordance with the Appeal Board's December 2017 Order, the Council rescinded its May 10, 2016 decision to reject the application and proceeded, as per the Order of the Board, to reconsider the application as per Section 90 of the Town's Development Regulations, and all public input received by the Town in 2016 regarding the application. Council approved the application on January 9, 2018.

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 discretionary authority under the Town's Development Regulations, and Section 90 in particular, and as per the Order of December 7, 2017 of the Eastern Newfoundland Regional Appeal Board. Section 42(11) of the *Urban and Rural Planning Act, 2000* directs that "Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision."

Therefore, the Board confirms the Respondent's decision of January 9, 2018 to approve a gazebo at 0 Mullowney's Lane under Discretionary Use of Council under Section 90 of the Town of Witless Bay Development Regulations.

ORDER

Based on the information presented, the Board orders that the decision of the Town of Witless Bay of January 9, 2018 to approve a gazebo at 0 Mullowney's Lane under Discretionary Use of Council under Section 90 of the Town of Witless Bay Development Regulations 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 Portugal Cove-St. Philip's, Newfoundland and Labrador, this 26th day of October, 2018.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board