

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Ian Mercer **Appellant(s)**

**AND** Town of Portugal Cove-St. Philips **Authority**

**RESPECTING** Refusal to construct single dwelling  
MAF 15-006-044-044

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Robert Warren  
Member - Carol Ann Smith

**DATE OF HEARING** October 19, 2018

**IN ATTENDANCE**

Respondent: Town Manager/Engineer, Portugal Cove-St. Philips, Chris Milley

Respondent: Planning Co-coordinator, Portugal Cove-St. Philips, Les Spurrell,

Appellant: Ian Mercer

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

Christopher Hardy, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

## **DECISION**

### **Facts/Background**

This appeal arises from the Town of Portugal Cove-St. Philips rejecting an application from Ian Mercer to construct a single dwelling at 37-39 Beaver Creek Road.

On September 29, 2016, the Appellant applied to the Town of Portugal Cove-St. Philips (the Authority) to construct a single dwelling at 37 – 39 Beaver Creek Road, Portugal Cove-St. Philips. On May 25, 2010, the Appellant was conditionally approved to construct a single dwelling. On October 31, 2012, the Appellant was again conditionally approved to construct a single dwelling. At a public meeting of Council held on October 18, 2016, the Appellant's application to develop the subject property was refused by Council. On October 19, 2016, correspondence to that effect was sent to the Appellant.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* on September 28, 2018 and a notice of the time, date, and place of the Hearing was provided to the Appellant and Respondent.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

Town of Portugal-St. Philips Municipal Plan and Development Regulations 2014 - 2024

### **Matters presented to and considered by the Board**

**Q:** Why was the Appellant's application dated September 29, 2016 refused by Council on October 18, 2016?

**A:** The application was denied as the proposed site for development is located within a floodway as appearing in the Town's Municipal Plan and Development Regulations. Section 65 (2) of the Regulations (Environmental Protection) prohibits the proposed development.

**Q:** Did the Appellant have prior approvals for development at 37-39 Beaver Creek Road?

**A:** Yes, the Appellant received conditional approvals May 25, 2010 and October 31, 2012.

**Q:** Do these previous approvals support development at 37-39 Beaver Creek Road?

**A:** No, both approvals lapsed without request from the Appellant for additional one year extensions. Thereby the Appellant subsequently submitted a new application to the Town on September 29, 2016.

**Q:** Under what planning documentation was the Appellant's September 29, 2016 development application reviewed?

**A:** This application was reviewed and processed under the Town of Portugal Cove-St. Philips Development Regulations 2014-2024.

**Q:** Is the proposed single dwelling as per the September 29, 2016 application in a designated floodway?

**A:** Yes, the proposed development is located within a floodway identified by the Department of Environment and Climate Change which has been incorporated into the Town's Municipal Plan and Development Regulations (Sch. E-Environmental Protection Overlay).

### **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 of Portugal Cove-St. Philips was within its authority to deny the Appellant's application dated September 29, 2016.

**Order**

Based on the information presented, the Board orders that the decision of the Town of Portugal Cove-St. Philips on October 18, 2016 to deny Ian Mercer's application for a single dwelling located at 37-39 Beaver Creek Road 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 24<sup>th</sup> day of October, 2018.



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**Cliff Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**



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**Carol Ann Smith, Member**  
**Eastern Newfoundland Regional Appeal Board**



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**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**