

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD****URBAN AND RURAL PLANNING ACT, 2000****APPEAL**

**BETWEEN** Kim Masters **Appellant**

**AND** Town of Harbour Main-Chapel's Cove-Lakeview **Authority**

**RESPECTING** Refusal of application to erect a gate, replace existing fencing both sides from Hickey's Road to Maloney's River, and pave from Hickey's Road to Maloney's River for property located at 57A Hickey's Road.  
MAE File: 15-006-054-030  
MAE File: 15-006-054-043

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

**DATE OF HEARING** October 24, 2018

**IN ATTENDANCE**

Appellant: Kim Masters

Respondent: Town of Harbour Main-Chapel's Cove-Lakeview, Town Clerk, Marion Hawco  
Giles Ayres, Lawyer representing the Town

John Dehann, partner of Appellant

Shirley Murphy, interested party/local property owner

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 Harbour Main-Chapel's Cove-Lakeview decisions to refuse the applications from the Appellant to erect a gate, replace existing fencing both sides from Hickey's Road to Maloney's River, and pave from Hickey's Road to Maloney's River for property located at 57A Hickey's Road.

The Appellant appealed the decisions on the following grounds:

- They themselves are the clear owner of the subject property (e.g. have title to it, registered surveys, pay taxes for it, perform all the maintenance on it, and occupy);
- The Town does not have the authority to decide matters of property ownership;
- The Town is obliged to treat all people fairly and equally.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* 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**

Municipalities Act, 1999

Urban and Rural Planning Act, 2000

Interim Development Regulations, 2003

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

**Q:** Does the Appellant require a permit to undertake the proposed work on the subject property?

**A:** Yes, at the appeal hearing on October 24, 2018, the Town Clerk verbally advised the Board that a permit is required for these undertakings where they border a public road.

**Q:** Does the Town have the authority to require proof of ownership in considering an application for approval?

**A:** Yes, Sections 407 (1) (2) of the Municipalities Act, 1999 provides that council may require an applicant to submit all information the Council determines necessary to process applications. This could include proof of ownership of property which is subject of an application.

### **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 decisions of the Town of Harbour Main-Chapel's Cove-Lakeview to deny the applications from the Appellant to erect a gate, replace existing fencing both sides from Hickey's Road to Maloney's River, and pave from Hickey's Road to Maloney's River for property located at 57A Hickey's Road was within the authority of the Town, under the provisions of the Municipalities Act, 1999, the Urban and Rural and Planning Act, 2000 and the Interim Development Regulations, 2003.

Sections 407 (1) (2) of the Municipalities Act, 1999 provides that council may require an applicant to submit all information the Council determines necessary to process applications. In the matter of this appeal, it appears that the Town was of the opinion that it did not have sufficient information to confirm validity of the ownership of the property under application and thereby denied the application.

The Board is of the opinion that in making its decision to deny the application that the Town should have referenced the applicable sections under the Municipalities Act to deny the application. Further, the Town did not cite this legislation when notifying the Appellant of their decision.

**ORDER**

The Board orders that the decision of the Town of Harbour Main-Chapel's Cove-Lakeview to deny the application from the Appellant to erect a gate, replace existing fencing both sides from Hickey's Road to Maloney's River, and pave from Hickey's Road to Maloney's River for property located at 57A Hickey's Road be confirmed.

The Respondent and the Appellant 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 29<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**