

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

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-040
Appellant(s)	Ron Harte
Respondent / Authority	Town of Witless Bay
Date of Hearing	April 22, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Carol Ann Smith

Also in Attendance

Appellant(s)	Ron Harte
Representatives for the Appellant(s)	Anita Dunn
Representatives for the Authority	Shawn Kavanagh, Town Manager
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Witless Bay (the Authority) to rescind a decision to proceed with road works to extend and upgrade Mullowneys Lane, Ragged Beach, is in accordance with the Urban and Rural Planning Act, 2000. The Authority made the decision to rescind the motion on October 8, 2021.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Municipalities Act, 1999
- Town of Witless Bay Municipal Plan and Development Regulations

Background:

Mr. Ron Harte (the Appellant) filed an appeal concerning a decision made by the Town of Witless Bay (the Authority) to rescind a decision to proceed with roadworks to extend and upgrade Mullowneys Lane, Ragged Beach. The Authority made the decision to rescind the motion on October 8, 2021.

Presentations During Hearing

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

Technical Advisor:

On May 19, 2020, the Authority voted to extend Mullowneys Lane 168 metres from the turnaround and upgrade the right-of-way to the existing standards.

On June 1, 2020, Ms. Melanie LaFosse submitted an appeal against Council's decision. The Board heard this appeal on March 23, 2021. In its decision, the Board determined that section 42 of the Urban and Rural Planning Act, 2000 (the Act) limits its jurisdiction to determine decisions and the Authority's decision did not involve an application to undertake development or a decision to approve development.

Ms. LaFosse appealed to the Supreme Court of Newfoundland and Labrador. In a decision, dated August 31, 2021, Justice Noel found that the Board had not erred in law or jurisdiction in determining Ms. LaFosse's appeal. In particular, Justice Noel determined that the Board had the authority to accept the evidence given by the Authority that the right-of-way is a roadway, especially as Ms. LaFosse had an opportunity to be heard, and that the Board correctly concluded that the Authority is responsible for road works within the Town boundary. Justice Noel noted that the Board's decision was consistent with previous decisions regarding improvement to Mullowneys Lane.

In a related decision, also issued on August 31, 2021, Justice Noel quashed the Authority's decision to extend Mullowneys Lane. He noted that it was unreasonable of the Authority, given that Council was aware of the public objections and concerns that the improvements to the right-of-way were to the benefit of an individual, to permit Deputy Mayor Murphy to vote on the motion. Justice Noel stated that Deputy Mayor Murphy cannot participate in any discussion or vote if Council introduces a new motion on the extension of Mullowneys Lane or the right-of-way issue.

On September 13, 2021, Council passed a motion to proceed with road work to extend Mullowneys Lane. On October 8, 2021, Council rescinded the motion.

Note: At this point in the Appeal Hearing, the Board requested both the Appellant and the Authority to provide their comments/arguments respecting the matter of the jurisdiction of the Board to hear the appeal.

The Appellant:

Mr. Harte and Ms. Dunn expressed brief comments that in their view, the Board has the jurisdiction to hear the Appeal.

The Authority:

Mr. Kavanagh expressed to the Board that, in his view, Section 42 (1)(b) of the Urban and Rural Planning Act, 2000, does not authorize the Board to hear the Appeal, as the proposed road work is not a "development" as defined under the Urban and Rural Planning Act, 2000.

Note: At this point in the Hearing, the Board took a short adjournment to deliberate on the matter of the jurisdiction of the Board to hear the appeal.

Upon completion of its deliberations, the Board reconvened the Hearing and advised all parties that the Board had determined that it did not have jurisdiction to hear the Appeal. The Board therefore concluded the Hearing.

BOARD ANALYSIS

Q. Does the Board have jurisdiction to hear this Appeal?

A. In accordance with Section 42 of the Urban and Rural Planning Act, 2000, the Board has determined that it has no jurisdiction to hear this Appeal. The matter being appealed does not involve an application to undertake development or a decision to allow/approve a development.

Section 42 of the Urban and Rural Planning Act, 2000:

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to
- (a) an application to undertake a development;
 - (b) a revocation of an approval or a permit to undertake development;
 - (c) the issuance of a stop work order; and
 - (d) a decision permitted under this or another Act to be appealed to the board.

Section 42(1)(a) of the Urban and Rural Planning Act, 2000 enables aggrieved parties to appeal a decision with respect to "an application to undertake a development".

Reviewing the definition of development as defined by subsection 2(g) of the Urban and Rural Planning Act, 2000, creating and maintaining roads and highways by public authorities is excluded:

2. In this Act

(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises...

and excludes the

(vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,

Where highways/ roads are vested in the Town Council, infrastructure works are not considered "development" as defined by legislation, and the Town does not complete applications or issue permits to administer such undertakings of its own.

Council has the authority for the construction and maintenance of public roadways, and for taking over privately developed roads to be used by the public and vested in the Town Council, as provided by Sections 163, 164, and 165 of the Municipalities Act, 1999.

Board's Conclusion and Decision

In arriving at its decision, the Board reviewed the submissions and comments given by Parties present at the hearing, along with the technical information. The Board is bound by Section 42 of the Urban and Rural Planning Act, 2000 and therefore must make a decision which applies with the applicable legislation, policy, and regulations.

As per Section 42 of the Urban and Rural Planning Act, 2000, a decision that can be appealed is limited to decisions based on an application. In this case, there was no application submitted to the Town as the Town does not need to submit an application to itself for the proposed extension of Mullowney's Lane.

The Board has determined that it has no jurisdiction to hear this appeal.

Board's Order

The Board has determined that it has no jurisdiction to hear the appeal from Ron Harte against the decision of Town Council of Witless Bay made on October 3, 2021 to rescind the Council motion 2021-278 regarding Mullowneys Lane extension and tender as approved at the Council Meeting of September 13, 2021.

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

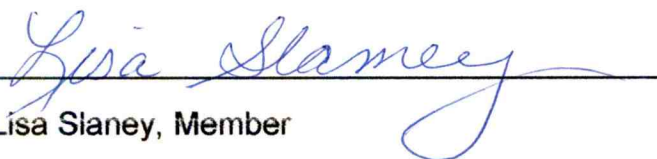
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this April 22, 2022.



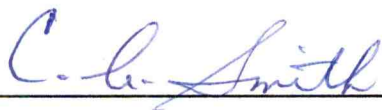
Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member

Eastern Newfoundland Regional Appeal