

Urban and Rural Planning Act, 2000
Eastern Newfoundland Regional Appeal Board
Appeal No.15-006-067-008

BETWEEN

Chris Warren

APPELLANT(S)

AND

Town of Holyrood

RESPONDENT / AUTHORITY

Date of Hearing February 22, 2022
Place of the Hearing Capital Hotel, St. John's

Board Members	
Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Paul Boundridge, MCIP

Appearances

Chris Warren	Appearing on his own behalf
Travis Payne	Solicitor for Town of Holyrood
Robert Stacey	Director of Infrastructure and Public Works, Town of Holyrood
Don Battcock	Developer
Elaine Mitchell, MCIP	Technical Advisor to the Boards
Robert Cotter	Secretary to the Board(s)

The authority for appeals derives 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 is to determine an appeal filed by Mr. Chris Warren against a decision by the Town of Holyrood to approve a permit for the construction of a fence extending into Crawley's Road was in accordance with legislation and as ordered by Justice Daniel M. Boone on December 7, 2021.

Presentations at the Hearing

The following is a synopsis/summary of the verbal presentations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, as well as representatives for the Appellant, the Authority, and the Developer.

1. Technical Advisor's Presentation

On May 29, 2020, Mr. Chris Warren (the Appellant) appealed a decision of the Town Holyrood (the Authority) to approve Don Battcock's application to construct a fence extending into Crawley's Road by approximately 3.5 metres along Conception Bay Highway.

On February 10, 2021, the Eastern Regional Appeal Board (the Board) heard this appeal and issued a written decision on April 1, 2021. The Board found that the Town did not have the authority to authorize the construction of a fence on a portion of a public right of way at Crawley's Road.

The Board has determined that the Town did not have the authority to authorize the construction of a fence by an adjacent private property owner on a portion of a public right of way at Crawley's Road. The Board has not been able to ascertain that there is applicable legislation, which authorizes the Town to allow an adjacent private property owner to fence or encroach upon a portion of a public right of way while the right of way remains in the public domain. Further, the Town's Application Form to construct a fence clearly states that the property owner is responsible for ensuring that all fences are erected within their legal property boundaries.

On these grounds, the Board reversed the Town's decision, made on May 29, 2020, to allow the construction of a fence on the portion of the public right away located at Crawley's Road. The Board ordered the removal of the fence on or before June 15, 2021.

Mr. Battcock filed an appeal of the Board's decision with the Supreme Court of Newfoundland and Labrador, General Division on April 14, 2021 as provided for in Section 46 of the Urban and Rural Planning Act, 2000 (the Act).

Justice Daniel M. Boone heard the matter on December 7, 2021 and issued a written decision. In the decision, Justice Boone determined that the appeal of the Board's decision was on a question of law. Justice Boone noted that section 163 of the Municipalities Act, 1999 states that the Town owns and can control all highways not

vested in the Crown and that includes the right of sell land, grant an easement or manage it through the Town's development control powers*. Justice Boone further notes that section 165 (2) of the Municipalities Act, 1999 gives the Town authority to allow development on a public roadway. As the Board did not explain why it interpreted the Municipalities Act, 1999 as not including the authority to allow development over a portion of the roadway, Justice Boone found that the Board's interpretation was in error.

Justice Boone overturned the Board's decision and ordered that the Board's decision and order of April 1, 2021 be vacated. The matter was returned to the Board for determination in accordance with the interpretation of the Municipalities Act, 1999 that provides the Town the authority to approve Mr. Battcock's construction of the fence over a portion of Crawley's Road.

Grounds of Appeal

This appeal is based on the following section of the Act: Section 42.(1)(a) (an application to undertake a development).(a) (an application to undertake a development).(a) (an application to undertake a development).

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 a 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.

The Appellant is appealing the decision based on the following grounds:

- The Town does not have the right to approve the construction of a fence on a public right of way.
 - The fence will restrict future development of the right of way.
- Legislation and Regulations

The applicable legislation with respect to this appeal is:

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

Under both the Holyrood Development Regulations and the Holyrood Fence Regulations, the Town has the authority to approve the construction of a fence. In addition, section 165 (2) of the Municipalities Act, 1999 specifies that structures cannot occur within a street

without written approval of Council. This section also gives Council the authority to impose conditions.

2. Appellant's Presentation

The Appellant reiterated points outlined in his written appeal and also as originally presented in his presentation to the Board on February 10, 2021. He asked the Town to confirm if construction of the fence commenced without first receiving a permit. He noted that the fence is impeding access to his property from Conception Bay Highway.

3. Authority's Presentation

Mr. Stacey, Town Director of Infrastructure and Public Works advised the Board that Crawley's Road is a public right of way, not a public street, and that the Town does not undertake any maintenance on the right of way.

Mr. Payne noted that the permit for the fence was issued correctly by Town staff, in accordance with the Town's Fence Regulations.

4. Developer's Presentation

Mr. Battcock advised the Board that in consultation with the Town that permission had been provided for construction of the fence, in accordance with the Town's regulatory requirements.

Analysis

Q. Does the erection of a fence constitute "Development"?

A. The Urban and Rural Planning Act, 2000 includes a definition of building which includes a "structure, erection, alteration or improvement placed on, over or under land ..." and development which includes "the carrying out of building, engineering, mining or other operations in, on or over land ...". The Board accepts that a fence meets the definition of "Development".

Q. Did the fence require a permit?

A. Regulation 7 of the Town of Holyrood Development Regulation requires that a permit for development be issued by the Authority.

Q. Did the Developer have a permit from the Town to undertake the development?

A. Yes. The Town issued a permit for the fence on May 29, 2020.

Q. Who owns the Right of Way known as Crawley's Road?

A. Under Section 163 of the Municipalities Act*, the Town of Holyrood owns and controls all highways not vested in the Crown.

Q. Does the issue of a permit to the Owner of 411 Conception Bay Highway for the construction of a fence on part of the public Right of Way, known as Crawley's Road, comply with the Town's Development Regulations, Fence Regulations and the Municipalities Act?

A. Yes. In accordance with Justice Daniel M. Boone's decision of December 7, 2021, Section 165(2) of the Municipalities Act gives the Town of Holyrood authority to allow development on a public roadway.

"(2) A person shall not break up the surface of a public highway, sidewalk or bridge or erect or place a structure or erection in, on or under them without the prior written approval of the town council and in accordance with conditions imposed by the council in its approval."

Board's Conclusion

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 that complies with the applicable legislation, policy and regulations.

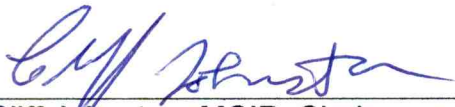
Board's Order

The Board concurs that the Town of Holyrood had the Authority under Section 163 and 165(2) of the Municipalities Act, 1999, and the Town of Holyrood Municipal Plan and Development Regulations when it issued a permit to Don Battcock on May 29, 2020 for the construction of a fence on a portion of the public right of way off Conception Bay Highway, known locally as Crawley's Road. The Board thereby, confirms the Town's decision of May 28, 2020 to issue a permit to Don Battcock for the construction of a fence on a portion of the said public right of way.

The Respondent 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 Board's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 22nd day of February, 2022.



Cliff Johnston, MCIP, Chair
Eastern Newfoundland
Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland
Regional Appeal Board



Paul Boundridge, MCIP, Member
Eastern Newfoundland
Regional Appeal Board