

# Eastern Newfoundland Regional Appeal Board Decision

Appeal #	15-006-064-050
Appellant(s)	Brian Keating
Respondent / Authority	Town of Marystown
Date of Hearing	November 25, 2020

Board Members:

Clifford Johnston, Chair

Paul Boundridge

Robert Warren

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Brian Keating
Representatives for the Authority	Alje Mitchell, CAO and Director of Planning and Development
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Victoria Akerele
Interested Parties	

## Presentations During the Hearing

### 1. Planner's Presentation

During the hearing, the Board heard technical details about the subject property and the provisions from the Marystown Municipal Plan and Development Regulations from the Planner.

The Board learned from the technical report given by the planner at the hearing that the proposed laydown yard was categorised by the Town as a Discretionary Use, requiring public consultation (issuance of a public notice) before it could be considered by Council at a Regular Meeting of Council; that a Notice was placed in a local newspaper that was responded to by some residents of Tolt Road who expressed concerns about potential adverse impacts from the proposed development upon the Tolt Road area residents; that these concerns were taken into consideration by the Town in making its discretionary decision to reject the development application; and that the reasons for the Council decision were relayed in writing to the Appellant.

The Board and all parties had no questions regarding the technical report. All parties cited no objections to the events that lead to the Authority's decision, confirmed the matter under appeal and accepted the planner's report with respect to the use of the property.

### 2. Appellant's Presentation

The Board learned that the Appellant filed an appeal because the subject property is Agricultural land that had been under his family's control and usage since the 1960s for agricultural and other purposes; that he had already done some backfilling of the property to make it suitable for use as a laydown yard; that it is being used by him and his family for storage of vehicles and equipment; that there are no weight or speed restrictions on Tolt Road; and that not all residents of Tolt Road are opposed to the proposed development of the laydown yard.

### 3. Authority's Presentation

The Board learned the subject property is zoned "Resource" according to the Marystown Development Regulations. The Town had classified the proposed development as a "Contractor's Yard" – a Discretionary Use in the Resource Zone. The Town processed the application in accordance with the procedural requirements of the Town's Development Regulations – it issued a public notice and received written representations from concerned Town residents opposing the proposed development. The Town Council reviewed the written representations prior to making its decision on the application. The Authority expressed the view that the Town Council was within its discretionary authority to reject the application.

## Board's Analysis

- Q:** What is the matter under consideration by the Board?
- A:** The matter under consideration by the Board is whether the **Error! Reference source not found.** Town Council acted in accordance with the *Urban and Rural Planning Act, 2000* and the Marystown Development Regulations when Council used its discretionary powers to refuse the Appellant's application for a laydown yard at Tolt Road on March 3, 2020.
- Q:** What is the zoning of the subject property?
- A:** The subject property is zoned "Resource".
- Q:** Is the proposed laydown yard a Permitted Use or a Discretionary Use in the Resource Zone?
- A:** The proposed laydown yard is classified as a Discretionary Use in the Resource Zone.
- Q:** Did the Authority process the Discretionary Use application in accordance with the applicable sections of the Town's Development Regulations?
- A:** The Board is satisfied that the process under the Development Regulations was followed properly.

## Board's 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*, which provides the following for the Eastern Newfoundland Regional Appeal Board:

- (3) *An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed.*
- (10) *In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.*

Section 12 of the Urban and Rural Planning Act states:

*A plan and development regulations are binding upon*

- (a) municipalities and councils within the planning area governed by that plan or those regulations; and*
- (b) a person undertaking a development in the area governed by that plan or those regulations.*

The Board accepts that the *Town of Marystown Municipal Plan and Development Regulations* are binding upon the Authority.

Section 2.3.2.2 of the Town's Development Regulations gives Council direction in the consideration of discretionary uses. Based on the appeal submission, Council published the notice in the Southern Gazette. In addition, the appeal submission shows that Council received objections in response to the notice.

### *2.3.2.2 Discretionary Uses*

*The discretionary uses listed in the Use Zone Tables may be permitted at the discretion of Council, provided that they are complimentary to uses within the permitted use class, or that their development will not inhibit or prejudice the existence or the development of such uses. (Refer to the Development Standards set out in Sections 3, 4, 5, 6 and 7).*

*Council must be satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Integrated Community Sustainability Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest.*

*Council is required to provide public notice of the application in accordance with Provision 2.6.3 and has considered any objections or representations which may have been received on the matter*

Section 2.5.13 of the Development Regulations allows Council to use its Discretionary Powers to refuse an application where, based on Council's discretion the application may not be suitable for the development of the area regardless of the conformity of the application with the Development Regulations' requirement. The letter sent to the appellant indicated that Council used its 'Discretionary Powers' to refuse the application.

*2.5.13 Discretionary Decision-making Powers of Council*

*In considering an application for a permit to carry out development, Council shall take into account the policies expressed in the Integrated Community Sustainability Municipal Plan and any further scheme, plan or Regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.*

As per section 2.5.11 of the Town's Development Regulations, Council is required to state the reasons when refusing to issue a permit. Appeal submission show that Council sent a letter to Mr. Keating notifying him of Council's decision, reasons for the decision and the right to appeal Council's decision.

*2.5.11 Written Reasons for Refusing or Setting Conditions on a Permit*

*Council shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing. The Council shall also advise the applicant of their right to appeal in accordance with Section 42 of the Act.*

Section 42(11) of the Urban and Rural Planning Act, 2000 provides direction on the Appeal Board's consideration of appeal made against a decision of Council where Council employed its Discretionary Powers.

*(10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.*

*(11) 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.*

Based on the information presented, the Board determined that the Town of Marystown has the discretionary authority and that it exercised it appropriately to reject the application to establish a laydown yard on Tolt Road.

## Board's Order

Based on the information presented, the Board orders that the decision by the Town of Marystown Municipal Council on February 18, 2020 to reject a development application from Brian Keating for approval to develop a laydown yard on property at Tolt Road, Marystown, be confirmed.

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 25 of November, 2020.




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Clifford Johnston, Chair  
Eastern Newfoundland Regional Appeal Board



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Robert Warren, Member  
Eastern Newfoundland Regional Appeal Board



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Paul Boudridge, Member  
Eastern Newfoundland Regional Appeal Board