

# West Newfoundland Regional Appeal Board

Appeal #	15-006-064-010
Board Members	Chair: Lloyd Walters Member: Boyd Noel Member: Derrick House
Date of Hearing	October 14, 2020

## In Attendance

Appellant	Edwin Broaders
Representatives for the Appellant(s)	Tammy Higgins
Respondent/Authority	Town of Hawkes Bay
Representatives for the Authority	Mayor Garcien Plowman
Secretary to the Board	Robert Cotter
Technical Advisor to the Board	Elaine Mitchell, MCIP

The provision for appeal is enabled under s. 42 of the *Urban and Rural Planning Act, 2000* (The Act).

## Board's Role

The role of the West Newfoundland Regional Appeal Board is to determine if the Town of Hawkes Bay acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Protected Road Zoning Regulations* and the Hawkes Bay Municipal Plan and Development Regulations when it issued an order to Mr. Edwin Broaders (the Appellant) on May 27, 2019 ordering that development of an access to Route 430 at 17 Main Street, Hawkes Bay, stop and that the access be removed and the site restored to its original condition.

## Background

The Appellant made an access to Route 430 near Playground Road. The Town of Hawkes Bay issued the Order on May 27, 2019. The stop work order ordered that development stop upon service of the order and that the development be removed and the site restored.

The order outlined the following:

- That section 102 of the *Urban and Rural Planning Act, 2000* (the Act) gives the Town the authority to issue an order where development has been undertaken contrary to a plan or development regulations;
- That section 7 of the Hawkes Bay Development Regulation specifies that no person shall carry out development without a permit;
- That development occurred without a permit from the Town or Service NL;
- That the construction of the access within out a permit was contrary to the Hawkes Bay Development Regulations;
- The consequences of not complying with the Order; and
- That the Order could be appealed and how to file an appeal.

## Validity

Section 42 (4) and (5) of the Act state:

*42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.*

*42. (5) An appeal shall be made in writing and shall include*

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

According to the documents provided, the appeal was filed on June 3, 2019 and the order was dated May 27, 2019. The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

## Grounds of Appeal

This appeal is allowable under following section of the Act: Section 42 (1)(c) (the issuance of a stop work order).

*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 stop work order based on the following grounds:

- An access was previously available onto Playground Road which was barricaded by the Town;
- A second access is required to facilitate tractor trailers visiting the business;
- A permit from Service NL was obtained for an accessory building associated with a proposed nursery but that permit contained a condition requiring the parking lot closest to Playground Road remain barricaded;
- An alternate access is required but the location proposed by the Department of Transportation and Works is not feasible; and
- Other businesses have accesses in close proximity to stop signs.

The Board's authority is restricted to those grounds with respect to compliance with legislation and regulations. The Board will determine whether Council's decision to issue a stop work order on May 27, 2019 to the Appellant was in accordance with the Act, the *Protected Road Zoning Regulations* and the Hawkes Bay Municipal Plan and Development Regulations. The consideration with respect to historical access to the subject property via Playground Road and the permit conditions for an accessory building on the subject site is beyond the Board's jurisdiction.

## Planner's Technical Analysis

### Legislation and Regulations

The applicable legislation with respect to this appeal is:

*Urban and Rural Planning Act, 2000*

## Land Use Planning

The Board considered the following technical advice.

Under *section 102* of the Act, Council has the authority to issue an order where a person has undertaken development contrary to a plan or development regulations.

*(1) Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state.*

*(2) A person ordered to carry out an action under subsection (1) shall be served with that order and shall comply with the order at the person's own expense.*

*(3) An order made under this section continues in force until revoked by the council, regional authority, authorized administrator, or minister that made the order.*

*(4) A council, regional authority, authorized administrator or the minister may, in an order made under this section, specify a time within which there shall be compliance with the order.*

*(5) Where a person to whom an order is directed under this section does not comply with the order or a part of it, the council, regional authority, authorized administrator or minister may take the action that it considers necessary to carry out the order and any costs, expenses or charges incurred by the council, regional authority, authorized administrator or minister in carrying out the order are recoverable against the person against whom the order was made as a debt owed to the council, regional authority, authorized administrator or the Crown.*

According to *section 2 (g)* of the Act, making an access onto a highway, road or way is development.

*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 the*

*(i) making of an access onto a highway, road or way,*

*(ii) erection of an advertisement or sign,*

*(iii) construction of a building,*

*(iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,...*

Section 4 (1) of the *Protected Road Zoning Regulations* states that a person shall not carry out development within the protected road building control lines without a permit.

*4. (1) A person, corporation, partnership, association or other organization shall not carry out development of land within building control lines unless a permit for the development has been issued by the authority.*

According to the *Protected Road Zoning Regulations*, Route 430 is a designated protected road. All development located within protected road building control lines, which extend 100 metres of the centreline of a protected road in a municipality, is subject to the *Protected Road Zoning Regulations*. Service NL (Government Service Centre) is designated as the authority to administer the *Protected Road Zoning Regulations*.

In the Town's submission, an email from Aaron Legge, Service NL, references a Highway Access Permit which states: *"This permits authorizes EDWIN BROADERS of 17 MAIN STREET, HAWKES BAY to USE EXISTING, PERMANENT, COMMERCIAL access to Route 430 in or between the communities of HAWKES BAY approximately 50M SOUTH of PLAYGROUND ROAD."* The Highway Access Permit was not attached to the Town's submission. Mr. Legge notes that the access referenced in this Highway Access Permit is the existing access for the commercial operations at 17 Main Street, Hawkes Bay

Section 19 of the *Protected Road Zoning Regulations* specifies that access onto a protected road shall be located and constructed to meet the requirements of the Authority and the Department of Transportation and Infrastructure.

*19. (1) Accesses to protected roads shall be located and constructed to the specifications of the authority and the Department of Works, Services and Transportation.*

*(2) The authority may require the construction of service roads to reduce to a minimum the number of access points to the protected road, and in making its decision the authority shall consider the recommendations of the Department of Works, Services and Transportation.*

*(3) The authority may, where it considers it necessary, limit the number of accesses to a development and, where practical, require that access to the development be by means other than the protected road.*

The Hawkes Bay Municipal Plan and Development Regulations came into legal effect in 1995.

Section 7 of the Hawkes Bay Development Regulations states that no person shall carry out development without a permit issued by the Town.

*No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.*

Section 32 of the Hawkes Bay Development Regulations states that an access must be located to the specification of the Town so to ensure that greatest possible convenience and safety and that no vehicular access shall be closer than 10 metres to the street line of any street intersection.

*Access shall be located to the specification of the Authority so as to ensure the greatest possible convenience and safety of the street system and the Authority may prescribe the construction of service streets to reduce the number of accesses to collector and arterial streets.*

*(2) No vehicular access shall be closer than 10 metres to the street line of any street intersection.*

Both the appellant's and Town's submission reference a new access constructed by the Appellant onto Route 430 immediately adjacent to Playground Road. Copies of permits for this access from Digital Government and Service NL, Department of Transportation and Infrastructure or the Town were not provided in the submissions from the Appellant and the Town. The Town alleges that the access was constructed without permits.

## Procedural Compliance

Section 107 (1) of the Act requires that an order be delivered personally or sent by registered mail.

*107. (1) Unless otherwise stated in this Act, a notice, order or other document required to be given, delivered or served under this Act is sufficiently given, delivered or served where delivered personally or sent by registered mail addressed to the person at the latest known address of that person.*

The Order was signed by the Town Clerk/Manager. The Town's submission indicates that the Order was delivered by the Town Clerk/Manager. Additional information about this delivery is required to ensure that it was delivered personally in accordance with Section 107 (1) of the Act.

Section 109 (3) of the Urban and Rural Planning Act states that an employee of Council may issue an order. Subsection (4) requires this order to be confirmed by the majority vote of the members of council present at the next meeting and the order is considered cancelled if it is not confirmed.

*109. (3) An employee of a council or regional authority may issue an order under section 102.*

*(4) An order made by an employee referred to in subsection (3) shall be confirmed by a majority vote of the members of the council or regional authority present at the next meeting of that council or regional authority after the order is made and if the order is not confirmed in this manner, it shall be considered to be cancelled.*

By motion 18-163, made on October 21, 2018, Council gave the Town Clerk/Manager the authority to issue orders. Further information is required to determine whether the issuance of the Order subject to this appeal was authorized by Council or confirmed by Council at the meeting following the issuance of the Order in accordance with section 109 (4) of the Act.

## Presentations during the Hearing

### Planner

During the hearing, the Board heard technical details from the planner about the subject property and the provisions of the Protected Road Zoning Regulations and the Town of Hawkes Bay Development Regulations. The Board learnt that section 102 of the Act gives the Authority the power to issue an order where development occurs contrary to a municipal plan and development regulations. The Board heard evidence that an order served by an employee must be confirmed by the majority vote of Council at the next meeting and that if the order is not confirmed, it is considered cancelled in accordance with section 107 of the Urban and Rural Planning Act, 2000.

### Appellant

The Board learned that the Appellant filed an appeal because there was a historical access from the subject property at 17 Main Street, Hawkes Bay, onto Playground Road which had been in existence for 48 years and had been used by the business until recently. When the access was closed, the Appellant became frustrated because his business was negatively affected. The new access identified by Digital Government and Service NL was cost prohibitive to develop. As a result, the Appellant developed an access onto Route 430 near Playground Road without approval from Digital Government and Service NL and the Town. The Appellant raised questions about fairness because there are other business accesses in similar locations. Ms. Higgins also questioned the legal liability raised by Council with respect to the closure of the access onto Playground Road. She stated that Council had made an arbitrary decision to close the access to the subject property from Playground Road. She asked that the barriers at Playground Road be removed to allow a second access onto the property.

### Authority

Mayor Plowman explained that a permit from Digital Government and Service NL is required under the *Protected Road Zoning Regulations* before the Town can approve an application for an access onto Route 430. The Board heard from Mayor Plowman that a stop work order was issued under section 102 of the Act because development of the access was undertaken without a permit being issued by the Town.

## Conclusion

### What is the issue under consideration by the Board?

The matter under consideration is the Authority's issuance of a stop work order to Mr. Edwin Broaders (the Appellant) on May 27, 2019 ordering that development of an access to Route 430 at 17 Main Street, Hawkes Bay, stop, that the access be removed and the site restored to its original condition.

Under section 42 (1) of the Urban and Rural Planning Act, an order issued under the Act may be appealed. The Appellants filed an appeal on June 3, 2019. For details of the sections quoted below, please refer to the planner's technical analysis report.

### Did the development of the access require a permit from the Authority?

Yes. The Board determined that an access is development as defined by section 2 (g) of the Act and requires a permit under section 7 of the Hawkes Bay Development Regulations. The Board also

determined that a permit is also required from the Department of Digital Government and Service NL under the *Protected Road Zoning Regulation* because the subject site is located within the protected road building control lines. The Appellant should have obtained a permit from the Department of Digital Government and Service NL and the Town before starting construction of the access onto Route 430.

Did the Authority have the power to issue a stop work order?

Yes. *Section 102* of the Act gives the Authority the power to issue an order where development is started contrary to a municipal plan and development regulations. *Section 7* of the Hawkes Bay Development Regulations requires a permit for development and *section 4 (1)* of the *Protected Road Zoning Regulations* states that a person shall not carry out development within the protected road building control lines without a permit. The Board learnt that no permit was issued from either authority. The Board determined that issuance of a stop work order was appropriate given these circumstances and was within the Authority's powers under legislation.

Did the Authority issue the stop work order in accordance with legislation?

No. *Section 107 (1)* of the Act requires that an order be delivered personally or sent by registered mail. The Board was informed by the Authority that the order was personally served to the Appellant. The Board is satisfied that the order was served in accordance with the Act.

*Section 109 (3)* of the Urban and Rural Planning Act states that an employee of Council may issue an order. Subsection (4) requires this order to be confirmed by the majority vote of the members of council present at the next meeting and the order is considered cancelled if it is not confirmed. The Board determined that the order was not confirmed at next Council meeting and is therefore considered cancelled.

## Decision

The Board finds that the order was cancelled when Council failed to confirm it at the next Council meeting. That is to say, the order is null and void.

Despite Council failing to confirm the order, the access constructed by the Appellant was built without a permit from the Department of Digital Government and Service NL and the Town. *Section 12* of the Act states that a municipal plan and development regulations is binding upon anyone undertaking development.

*Application of plan*

*12. 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 Appellant was required to obtain a permit from the Department of Digital Government and Service NL under *section 4 (1)* of the *Protected Road Zoning Regulation* and *section 7* of the Hawkes Bay Development Regulations. Proceeding without a permit was contrary to the Act. As a permit was not obtained, the access cannot be used. That is to say, if the appellant wishes to develop an access onto Route 430, he must obtain all necessary permits. The Authority has the power to issue an order if such permits are not obtained.



In arriving at its decision, the Board reviewed all of the submissions shared with the Board prior to the hearing 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

Based on the information presented, the Board orders that the stop work order issued by the Town of Hawkes Bay to Mr. Edwin Broaders on May 27, 2019 to stop development of an access onto Route 430 be reversed as it was not confirmed at the next Council meeting and, as a result, was considered cancelled in accordance with section 109 of the Urban and Rural Planning Act, 2000.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West 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 Deer Lake, Newfoundland and Labrador, this 16<sup>th</sup> day of October, 2020.



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Lloyd Walters, Chair  
West Newfoundland Regional Appeal Board



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Boyd Noel, Member  
West Newfoundland Regional Appeal Board



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Derrick House, Member  
West Newfoundland Regional Appeal Board