

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-027
Appellant(s)	Trevor and Linda Fowler
Respondent / Authority	Town of Brigus
Date of Hearing	March 24, 2021

## Board Members

Chair	Clifford Johnston
Member	Carol Ann Smith
Member	Robert Warren

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Linda Fowler
Representatives for the Authority	Byron Rodway, Mayor; Ralph Trickett, Councillor; Wayne Rose, Town Manager; Katie O'Flaherty, Assistant Town Clerk
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	Gerald French, Sr.; Gerald French Jr.; Kelly French; - Operators of Crowhill RV Park; John Crosbie, lawyer for Crowhill RV Park owners; Lori Pike and Trudy Bartlett – supporters of the Appellants

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 whether the appeal filed by Mr. and Mrs. Fowler (the Appellants) on behalf of the residents of Old Road, Brigus, regarding an expansion to the Crowhill RV Park located at 395 Conception Bay Highway, Brigus, is within its jurisdiction. The Town of Brigus (the Authority) has not submitted any supporting documentation as requested by



the Secretary to the Appeal Boards but has informally indicated that no development application has been submitted for an expansion to the RV Park and the Town has not issued a development permit. Photos submitted by the Appellants indicates that work is underway.

## Presentations during the Hearing

### 1. Planner's Presentation

Mr. and Mrs. Fowler (the Appellants) submitted an appeal on behalf of residents of Old Road, Brigus, regarding an expansion of an existing RV park located at 395 Conception Bay Highway, Brigus. While the Town (the Authority) has not submitted any documentation as requested by the Secretary to the Appeal Board, it informally indicated that no application has been received for an extension to the existing RV Park and that Council has not made a development decision.

The Appellant indicates that the work was underway despite the appeal being filed. As the Town provided no documentation, there is no indication whether the property owner was informed that an appeal was filed or the requirement under section 45 (1) of the *Urban and Rural Planning Act, 2000* that work cease pending a decision of the Board.

Only the Board can determine whether the appeal filed by the Appellants is within its jurisdiction after hearing from all parties. Only the Board can determine whether the appeal filed by the Appellants is within its jurisdiction after hearing from all parties.

### 2. Appellant's Presentation

The owners of the Crowhill RV Park are expanding their park into the Appellants' residential area. There are five (5) households on Old Road, Brigus which are affected by this proposed expansion. The impacts include devaluation of residential properties, noise levels, public safety, etc. The area residents have expressed their concerns verbally and in writing to the Town. The park operators are currently doing work on site in preparation of the expansion of the RV Park.

### 3. Authority's Presentation

Mayor Rose advised the Board that the owners/operators of Crowhill RV Park have not made a formal development application to the Town for the expansion of the RV Park nor have any approvals/permits been issued by the Town for the park's expansion. The only permit which has been issued was for a boundary fence.

The Town indicated that Councillors met with the proponent for exploratory discussions and subsequently met with residents to discuss the proposed expansion.



#### 4. Interested Parties

Mr. Crosbie, the solicitor for the owners of the RV Park indicated that no application has yet been submitted by the park owners to the Town for the expansion to the park. An application will be submitted when this appeal process is completed. He also noted that the only work undertaken to date has been tree cutting on land adjacent to the existing RV Park.

Trudy Bartlett, area resident, stated they met with the Town of Brigus on August 23, 2020, and at that meeting, they were told the RV park expansion is going ahead, would be approved by the Town, and the Town offered the residents a buffer zone.

### Board's Analysis

**Q:** Does the Board have the jurisdiction to hear this appeal?

**A:** In accordance with Section 42 of the Urban and Rural Planning Act, the Board has determined that it lacks jurisdiction to hear this appeal. The matter being appealed does not involve an application to undertake development or a decision to allow/approve 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.*

*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.*



# 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* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

As per section 42 of the Act, a decision that can be appealed is limited to decisions based on an application. In this case, there was no development application submitted to the Town.

The Board has determined that it has no jurisdiction to hear this appeal, as there is no formal development application nor has a formal development decision been made by the Authority.

The Board makes the following comments/observations:

From comments made to the Board at the appeal hearing, it appears that development is taking place at the property adjacent to the existing Crowhill RV Park in the absence of development approval or permits from the Town. The Board strongly recommends that Council take note of the following sections of the Town of Brigus Development Regulations and the Urban and Rural Planning Act, 2000.

Section 3.1 of the Brigus Development Regulations states that no one shall carry out any development unless a permit has been issued by the Authority.

*3.1 Permit to Develop Required*

*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 Council.*

The permit must also be issued in writing in accordance with section 3.2 of the Brigus Development Regulations.

*3.2 Decisions of Council*

*Decisions made by Council with respect to a permit required by these Regulations shall be made in writing, and state the reasons for a refusal of, or conditions attached to a permit. Council shall also advise the person to whom the decision applies of their right to appeal, in accordance with Section 42 of the Act and the requirements of Section 3.21 of these Regulations.*



Council has an obligation to enforce its Municipal Plan and Development Regulations under section 3.16 of the Brigus Development Regulations.

*3.16 Stop Work Order and Prosecution*

*1. Where a person begins a development contrary or apparently contrary to these Regulations, Council may order that person to pull down, remove, stop construction, fill in or destroy that building or development and may order the person restore the site or area to its original state, pending final adjudication in any prosecution arising out of the development;...*

Section 12 of the Urban and Rural Planning Act, 2000 states that the Brigus Municipal Plan and Development Regulations are binding on Council.

*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.*

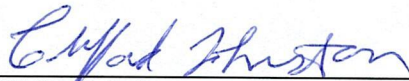
# Board's Order

The Board has determined that it has no jurisdiction to hear this appeal, as there is no formal development application on file with the Town of Brigus respecting a proposed expansion of the Crowhill RV Park at 395 Conception Bay Highway, Brigus, nor has a formal development decision been made by the Authority.

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 5 of April, 2021.



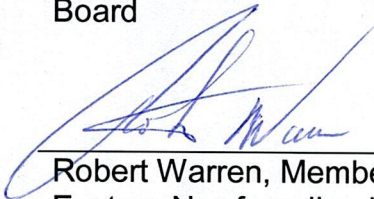
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Clifford Johnston, Chair  
Eastern Newfoundland Regional Appeal  
Board



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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