

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-024
Appellant(s)	Keith Houlihan
Respondent / Authority	Town of Witless Bay
Date of Hearing	May 14, 2021

Board Members

Chair	Cliff Johnston
Member	Carol Ann Smith
Member	Robert Warren

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Keith Houlihan
Representatives for the Authority	Pat Curran, CAO; Geraldine Caul, Town Clerk
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Kim Blanchard, MCIP, presented by Elaine Mitchell, MCIP
Interested Parties	

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 is to determine if the Town of Witless Bay made an error when it refused an application from Keith Houlihan to develop a single family dwelling on Jockey's Lane. The Board must determine if the Town of Witless Bay acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Witless Bay Municipal Plan and Development Regulations when the decision was made on August 12, 2020.

Presentations During the Hearing

The following is a summary of the verbal presentations made during the Appeal Hearing. Written submissions were provided by both the Appellant and the Authority, prior to the Appeal Hearing, and these written materials have been reviewed and considered by the Board.

1. Planner's Presentation

On June 4, 2020, Keith Houlihan, the owner of property at Jockey's Lane in the Town of Witless Bay, applied to construct a single detached home on property on Jockey's Lane. On August 12, 2020, Council refused the application. In its written letter of refusal, Council stated its reason for refusal was that *"there is not adequate land for access to the property"*, and advised the applicant of the right to appeal Council's decision. On August 25, 2020, the applicant, Mr. Houlihan, submitted an appeal against Council's decision to refuse the development.

The Appellant is appealing the development approval based on the following grounds:

- The written refusal of the development application indicates that "Council has determined that there is not adequate land for access to your property".
- Mr. Houlihan argues that Jockey's Lane is an established road within the community of Witless Bay:
 - It has always been a listed road, with has sign posts on both entrances. For many years, it was snow cleared, maintained, and used by a full time resident.
 - Jockey's Lane is listed on the Town's Integrated Community Sustainability Plan (ICSP) as a road. This enables access to Federal Funding for Community Development.
 - Jockey's Lane is listed as a road on the Town's Limits of Service Road Mapping.

Mr. Houlihan argues inequity in Council's treatment of him; stating that, at taxpayer's expense, the Town is extending Mallowney's Lane by 500ft, thereby giving access to private landowners, but is requiring him to upgrade an existing public road (Jockey's Lane).

According to the Town of Witless Bay Development Regulations, the subject property is zoned "Residential (RES)". A single dwelling is a permitted use in the Residential zone, subject to the development standards outlined in the RES use zone table. The minimum lot size required is 1860 m² and frontage is 30 metres.

The application indicates the subject lot size is 1950 m² and frontage is 31 metres. It would appear from the survey that the subject property is part of a larger parcel (over a hectare). It would appear that the overall parcel has an existing developed portion with frontage on Harbour Drive, and the overall development of the land would be subject to

a subdivision application to enable the proposed new home to be located to the rear on a portion of the overall lot that would have frontage and access at Jockey's Lane.

In accordance with the Town's Municipal Plan and Development Regulations, and per policy 3.2.1.2 and regulation 48, all residential development must take place on a lot that fronts on a publicly maintained road. In controlling development and responding to applications, Council is to examine applications on the basis of its policies and regulations, and may approve an application, approve it with conditions, or refuse it.

Road works of the Town Council are treated differently than road works by a private developer. Council has the authority to permit private roads, and to impose conditions and specifications to ensure satisfactory standards for public use, per section 164 of the *Municipalities Act*. Council also 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*.

In accordance with Municipal Plan policy 4.4, Development Control, Council has authority to approve, refuse, and place conditions on development. In accordance with Municipal Plan policy 3.2.1.2, Council has authority to require a developer to be responsible for costs to provide roads and services in a new subdivision development.

2. Appellant's Presentation

The Appellant is arguing that Jockey's Lane is a public road and that maintenance and upgrades are the responsibility of the Town Council.

The Appellant advised the Board that it has been the Town Council's choice not to maintain Jockey's Lane over the last number of years despite the fact that Jockey's Lane is registered road in the Town's ICSP, adopted by Council.

3. Authority's Presentation

The CAO of the Town of Witless Bay conceded that Jockey's Lane is identified in the Town's ICSP; however, it is not a publicly maintained road, and has not been maintained for many years. He also advised the Board that the subject section of Jockey's Lane is little more than a cart path, and it has not and is not currently being considered for improvement under the Town's Capital Works Program.

In response to a question from the Board, neither Mr. Curran nor Ms. Caul could provide clarity on the wording in the Town's Refusal letter to the Appellant. Specifically, "*There is not adequate land for access to the property.*"

Board's Analysis

Q. Did the Town Council have the authority to deny the application from the Appellant to construct a single family home on property located on Jockey's Road?

A. The Board has determined that the Town had the Authority to deny the application.

While the Board notes that the subject property is zoned "Residential" under the Town's Development Regulations, which allows a single detached dwelling as a permitted use, and the subject property appears to have sufficient lot area and lot frontage, the property is located on a public road which is not currently maintained by the Town.

In accordance with the Town's Municipal Plan and Development Regulations, and per policy 3.2.1.2 and regulation 48, all residential development must take place on a lot that fronts on a publicly maintained road.

Board's Conclusion

After reviewing the information presented to this Board, the Board concludes that the Authority correctly exercised its authority under the Municipalities Act, 1999, the Urban and Rural Planning Act, 2000 and the Town's Municipal Plan and Development Regulations when it made its decision on August 12, 2020 to deny the application from the Appellant to construct a single detached dwelling on property located on Jockeys Lane.

The Board notes for the information of the Town of Witless Bay that Regulation 22 of the Town's Development Regulations requires that the Town Council provide reasons when refusing or attaching conditions to a permit. The reason for refusal provided by the Town to the Appellant was: *"There is not adequate land for access to the property."* The Board feels that this wording is very unclear and the Town needs to be more clear and concise in its decisions to applicants.

Board's Order

The Board orders that the decision of the Town of Witless Bay Council made on August 12, 2020 to reject the application from Keith Houlihan to construct a single detached dwelling on property located on Jockey's Lane, Witless Bay, be confirmed.

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

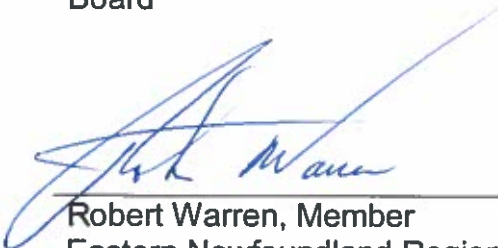
DATED at St. John's, Newfoundland and Labrador, this May 14th, 2021.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal
Board