

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN

William Murphy

Appellants

AND

Town of Portugal Cove-St. Philip's

Respondent

RESPECTING

Refusal

BOARD MEMBERS

Vicki Connolly – Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING

March 23, 2015

IN ATTENDANCE

Les Spurrell – Authority

Ashley MacKinnon – Authority

William Murphy - Appellant

Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Portugal Cove-St. Philip's refusing to issue a permit to Mr. William Murphy to subdivide his property at 41-47 Meadow Heights and construct a single dwelling on the newly subdivided parcel of land for the purpose of constructing a single family dwelling at 41-47 Meadow Heights. The Town refused Mr. Murphy's application at the September 23, 2014 Regular Meeting of Council. The Town notified Mr. Murphy of its decision in a letter dated September 24, 2014. The letter stated Council's reasons for refusal and indicated his right and process to appeal.

The appellant filed an appeal with the Eastern Newfoundland Regional Appeal Board on October 14, 2014, in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*. The appeal was made in writing and included the following: a summary of the decision being appealed; grounds for the appeal; and the appeal filing fee as required under section 42(5) of the *Urban and Rural Planning Act, 2000*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on December 13, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on March 11, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Portugal Cove-St. Philip's Municipal Plan and Development Regulations, 2000
Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Is Lark Place publicly owned and maintained?

The Board learned at the hearing that Lark Place is privately owned and maintained by those residing on Lark Place. The Board learned from the Town that the dwellings that currently exist on Lark Place are considered non-conforming uses.

Does Mr. Murphy's application comply with the Town of Portugal Cove-St. Philip's backlot development policies?

The Board accepts that backlot development may be permitted at Council's discretion in an area designated Rural Residential if the lot is a regulation size building lot with insufficient frontage. The Board learned at the hearing that the proposed lot would not meet the building lot standards outlined in the Residential Infill zone with respect to lot size. The Town indicated at the hearing that a 10% variance would not help satisfy the minimum requirements outlined in the Residential Infill zone.

Does Mr. Murphy's application comply with the Town of Portugal Cove – St. Philip's access regulations?

No. The Board learned from the Town that it cannot approve an access off Meadow Heights since it would contravene section 37(2) of the Town's Development Regulations, which states that "no vehicular access shall be closer than 10 metres to the street line of any street intersection". The intersection of Meadow Heights and Lark Place is less than 10 metres away from the proposed access to the subject site.

Did the Town of Portugal Cove-St. Philip's have the authority to refuse Mr. Murphy's application?

In accordance with section 6 of the Town of Portugal Cove-St. Philip's Development Regulations, all development located within the Planning Area boundary must comply with the Town's Development Regulations. The Board accepts that the Town has the authority to refuse an application in the event it is contrary to the Town's Regulations. At the hearing, the Town recited the policies and regulations that Mr. Murphy's application contravenes.

The Board reviewed section 22 of the Town's Development Regulations which requires the Authority to state the reasons for refusing a permit. The refusal letter dated September 24, 2014 states that Mr. Murphy's application was refused because Council determined it was contrary to a number of policies and regulations in the Town's Municipal Plan and Development Regulations. While it was demonstrated to the Board during that hearing how Mr. Murphy's

application contradicts the Town's Municipal Plan and Development Regulations, the Board is unsatisfied that the Town clearly conveyed this in the refusal letter. It was only through the process of this hearing that the Board gained a better understanding of how the policies and regulations listed in the refusal letter apply to the appellant's application. Therefore, the Board found that the Town did not fully satisfy the intent of section 22 to explain the Town's reasons for refusing Mr. Murphy's application.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties along with the technical information and planning advice.

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.

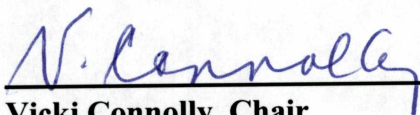
Based on its findings, the Board determined that while the Town of Portugal Cove-St. Philip's had the authority to refuse Mr. William Murphy's application to subdivide and develop a single dwelling, it did not do so in accordance with section 22 of the Town of Portugal Cove – St. Philip's Development Regulations, 2000. That is to say, the Town of Portugal Cove-St. Philip's must reconsider Mr. Murphy's application and make another decision, in accordance with the Town's Municipal Plan and Development Regulations, 2000.

Order

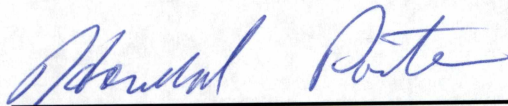
Based on the information presented, the Board orders that the decision made by the Town of Portugal Cove – St. Philip's on September 23, 2014 to refuse William Murphy's application to subdivide property at 41-47 Meadow Heights and construct a single dwelling on the newly subdivided parcel of land, be vacated.

The Town of Portugal Cove – St. Philip's and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

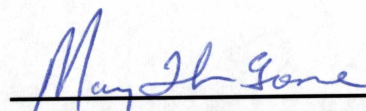
DATED at St. John's, Newfoundland and Labrador, this 27th day of March, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board