

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Thomas Clarke **Appellant**

AND Petty Harbour-Maddox Cove **Respondent**

RESPECTING Approval

BOARD MEMBERS Vicki Connolly – Chair
Harold Porter – Member
Michelle Downey – Member

DATE OF HEARING March 24, 2015

IN ATTENDANCE

Thomas Clarke – Appellant
John Dinn – Support for Appellant
Stephanie Stack – Authority
Mary Bishop – CBCL consultant for the Authority
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 Petty Harbour-Maddox Cove deciding to conditionally approve Mr. Thomas Clarke's application to construct a single dwelling at 28-36 Motion Bay Road Extension. The Town considered Mr. Clarke's application at the October 6, 2014 Regular Meeting of Council and resolved to approve his application, subject to conditions. The Town notified Mr. Clarke of its decision in a letter dated October 7, 2014. The letter indicated the conditions Mr. Clarke must satisfy prior to the Town issuing a building permit and noted his right and process to appeal Council's decision.

Mr. Clarke filed his appeal with the Eastern Newfoundland Regional Appeal Board on October 9, 2014 against Council's conditional approval. The appeal was filed in accordance section 42 of the *Urban and Rural Planning Act, 2000* and as such, included: a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on November 2, 2013 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 Petty Harbour-Maddox Cove Municipal Plan and Development Regulations, 1999
Town of Petty Harbour-Maddox Cove Municipal Plan and Development Regulations, 2014
Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

What is permitted in the Residential Medium Density zone (RMD)?

The Board confirmed that single dwellings are permitted within the RMD zone in the Town of Petty Harbour-Maddox Cove in accordance with the RMD Use Zone Table in Schedule "C" of the Town's Development Regulations, 1999.

In accordance with section 85 of the Town's Development Regulations, the Board acknowledges that "uses that fall within the Permitted Use Classes set out in the appropriate Use Zones shall be permitted by the Authority in that Use Zone."

Did the Town have the authority to issue an Approval subject to conditions?

The Board reviewed the Town of Petty Harbour-Maddox Cove Development Regulations, 1999 and confirmed that the Town has the authority to attach conditions to a development approval as per section 20(2) of the Town's Development Regulations. Section 20(2) states:

The Authority may attach to a permit or to outline planning permission such conditions as it deems fit in order to ensure that the proposed development will be in accordance with the purposes and intent of these Regulations.

Did the Town have the authority to require the appellant to upgrade Motion Bay Road Extension?

The appellant stated at the hearing that the Town did not inform him of the road extension requirements. While the Board acknowledges there may have been confusion at the time the appellant applied for Crown land, the Board accepts that the Town is required to make development decision in accordance with the Town's policies and regulations outlined in the Town of Petty Harbour-Maddox Cove Municipal Plan and Development Regulations. Section 4(3) of the Town's Municipal Plan, 1999 states that all residential development "shall be located on a lot which fronts directly on a publicly maintained road capable of providing proper access for fire trucks and other needed services." The Board determined at the hearing that Mr. Clarke's property does not front on a publicly maintained road. Therefore, the Board accepts that the Town of Petty Harbour-Maddox Cove had the authority to require Mr. Clarke to upgrade Motion Bay Road Extension in order to satisfy section 4(3) of the Town's Municipal Plan, 1999.

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.

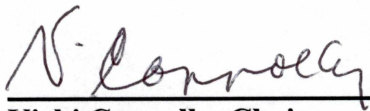
Based on its findings, the Board determined that the Town of Petty Harbour-Maddox Cove had the authority, and exercised it appropriately when it issued a conditional approval to Mr. Thomas Clarke to develop a single dwelling at 28-36 Motion Bay Road Extension.

Order

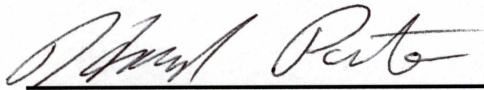
Based on the information presented, the Board orders that the decision made by the Town of Petty Harbour – Maddox Cove on October 6, 2014 to conditionally approve the application submitted by Thomas Clarke for the purpose of developing a single dwelling at 28-36 Motion Bay Road Extension, be confirmed.

The Town of Petty Harbour-Maddox Cove and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

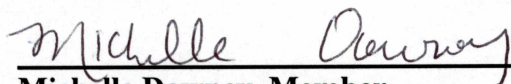
DATED at St. John's, Newfoundland, this 24th day of March, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member
Eastern Newfoundland Regional Appeal Board