

**WEST NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT**

**APPEAL**

**BETWEEN** Roger Brockway **Appellants**

**AND** City of Corner Brook **Respondent**

**RESPECTING** Conditional Approval

**BOARD MEMBERS** Gary Parsons – Acting Chair  
Joseph Guincharde – Member  
Bill Madore – Member

**DATE OF HEARING** April 9, 2015

**IN ATTENDANCE**

Roger Brockway – Appellant  
Sandra Brockway – Support for Appellant  
Justin Preece – Authority  
Mark Kennedy – Authority  
Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board  
Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

## **DECISION**

### **Facts/Background**

This appeal arises from the City of Corner Brook to issue a permit to Roger Brockway to construct a single dwelling on 1B St. Aiden's Road. In September, 2014, the City of Corner Brook approved Mr. Roger Brockway's application to subdivide property located at 1 St. Aiden's Road. The newly created lot is referred to as Parcel "B" on drawing #08305-1.

On January 12, 2015, Mr. Roger Brockway applied to the City of Corner Brook for a permit to construct a single dwelling on Parcel "B". The City considered and refused the subject application for the following two reasons:

- the subject parcel of land does not front directly onto a street as required by Regulation 80 in the City of Corner Brook Development Regulations; and
- the lack of servicing for the subject lot.

The City notified Mr. Brockway of its decision in a letter dated January 15, 2015.

Mr. Brockway filed an appeal with the West Newfoundland Regional Appeal Board against the City's decision to refuse his application to construct a dwelling off St. Aiden's Road. In accordance with section 42(4) of the Urban and Rural Planning Act, 2000, the appeal was filed within the fourteen (14) day requirement. Additionally, Mr. Brockway included the required information as per 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 *Western Star* on March 28, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on March 10, 2015.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

City of Corner Brook Municipal Plan and Development Regulations, 2012

City of Corner Brook Act, 1990

City of Corner Brook Long Laterals Acceptance Policy Statement, 2012

**Matters presented to and considered by the Board**

**Does the right-of-way constitute a City of Corner Brook street?**

No. The Board learned from the Authority at the hearing that the right-of-way is not considered a City of Corner Brook street. The Authority stated that that the right-of-way does not meet the definition of a street as defined in Schedule A of the City's Development Regulations nor does it meet the characteristics of a street as outlined in section 7.1 and 7.2 of the Subdivision Design Procedures and Municipal Engineering Standards for the City of Corner Brook. Notably, the Authority indicated the right-of-way does not have any curb and gutters, the width of the road is insufficient with respect to emergency vehicle use, and the grade exceeds the maximum allowable amount. Mrs. Brockway conceded at the hearing that they were well aware that the right-of-way is not a street. Based on this information presented by the Authority, the Board accepts that the right-of-way does not constitute a City of Corner Brook street.

The Board also learned from the Authority that the City does not own the right-of-way, it is privately owned. The Authority stated that it provides snow clearing in the winter on the right-of-way because of the storm sewers that exist as well as the flood risk.

**Does residential development require frontage on a street?**

Yes. The Board reviewed the City of Corner Brook Development Regulations, section 80, which states:

*Except where specifically provided for in the Use Zone Tables in Schedule C of these Regulations, no residential or commercial building shall be erected unless the lot on which it is situated fronts directly onto a street, including a condominium owned or other private street, or forms part of a Comprehensive Development Scheme.*

Mr. Brockway applied to the City to construct a single dwelling. The Board acknowledges a single dwelling is a residential building and therefore is required to have frontage directly onto a street.

**Does the subject parcel of land have frontage?**

No. The Board learned that since the right-of-way does not constitute a City of Corner Brook street, then the appellant's property does not front directly onto a street.

**Can the subject property be serviced in accordance with the City of Corner Brook's policies?**

The Board learned from the Authority that the existing houses located at the end of the right-of-way do not conform to City standards regarding water and sewer services. The City noted that those properties have existed for a long time and are considered legal non-conforming uses. The Authority referred the Board to Item 1 in the Long Laterals Acceptance Policy Statement adopted by Council on March 19, 2012, which states:

*A long lateral is defined as a water, storm, or sanitary sewer lateral in excess of 11 meters total length as measured from the main to the property boundary.*

The Board confirmed at the hearing that the subject property is located further than 11 metres from the main hook-up located at the corner of Water Street and St. Aiden's Road. The Authority estimated the subject property measures approximately 30 metres from the main hook-up. Therefore, the Board accepts that the subject property could not be serviced as it is located too far from the City's main hook-up in that area.

In addition to the property's distance to the City's main hook-up, the Authority stated that an additional long lateral in that area is not permitted. The Board accepts that approving an additional long later in that area would contradict Item 6 in the Long Laterals Acceptance Policy Statement since two long laterals already exist. Item 6 states:

*Only one long lateral will be permitted at the end of existing infrastructure. Where additional development in the area is foreseeable the main infrastructure must be extended so as not to impede development in the area.*

The Authority also suggested that additional lateral hook-ups would exacerbate the existing non-conforming situation. Therefore, the Board accepts that the subject property cannot be serviced in accordance with the City's policies.

**Does the City have the authority to refuse Mr. Brockway's application?**

In accordance with section 7, the Board accepts that all development must comply with the City's Regulations. If the proposed development conforms to the regulations, standards and codes outlined in section 9 of the City's Development Regulations, then the City may issue a permit. The Board determined that the City demonstrated to the Board that Mr. Brockway's proposal does not conform to the necessary regulations, standards and codes, and therefore, had

the authority to refuse Mr. Brockway's application.

**Conclusion**

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by Section 42 of the *Urban and Rural Planning Act* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

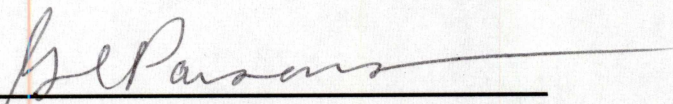
Based on its findings, the Board determined that the City of Corner Brook has the authority to refuse a development application if it does not comply with the City's Municipal Plan, Development Regulations or any other municipal policy, by-law or code, and did so accordingly.

**ORDER**

Based on its findings, the Board orders that the refusal issued by the City of Corner Brook on January 12, 2015 to Mr. Roger Brockway, be confirmed.

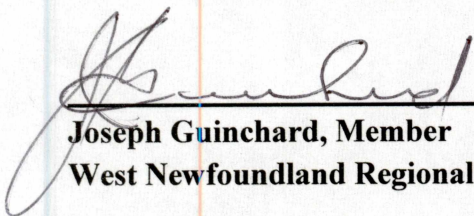
The City of Corner Brook is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

**DATED** at Deer Lake, Newfoundland and Labrador, this 9<sup>th</sup> day of April, 2015.



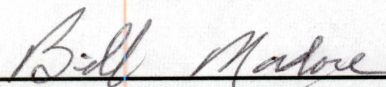
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**Gary Parsons, Acting Chair**  
**West Newfoundland Regional Appeal Board**



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**Joseph Guinchard, Member**  
**West Newfoundland Regional Appeal Board**



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**Bill Madore, Member**  
**West Newfoundland Regional Appeal Board**