

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Wally Ferris and Ramona EastWind **Appellants**

AND Service NL **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guinchard – Member
Bill Madore– Member

DATE OF HEARING April 10, 2015

IN ATTENDANCE

Wally Ferris – Appellant
Ramona EastWind Ferris – Appellant
Ken Dean – Service NL
Carl Hann – Service NL
Carla Hayes – Service NL
Daniel Sweetapple – Service NL
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 Service NL refusing Wally Ferris and Ramona EastWind a permit. Mr. Ferris and Ms. EastWind applied to Service NL on July 23, 2013 for permission to gain access to property located off the Trans Canada Highway (Route 1) in Pynn's Brook. Service NL considered the subject application and initiated the consultation process with the Department of Municipal Affairs and the Department of Transportation and Works on August 7, 2013. As a result of this referral process, Service NL refused the subject application because the site has insufficient site distance to gain access to Route 1. Service NL notified the appellants that their application was refused in a letter dated July 10, 2014 and noted their right and process to appeal.

Mr. Ferris and Ms. EastWind filed an appeal with the West Newfoundland Regional Appeal Board on July 28, 2014 against Service NL's refusal. The grounds for the appeal are outlined in a letter to the Board dated July 24, 2014.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Western Star* on August 30, 2014 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

Protected Road Zoning Regulations (CNLR 996/96)

Minister's Development Regulations, 2000

Matters presented to and considered by the Board

Does the appellant require a permit from Service NL?

The Board accepts that in accordance with section 6 of the *Protected Road Zoning Regulations* all development located within the building control lines of a protected highway requires a permit from Service NL. Section 6, Development within building control lines, states:

6. (1) Subject to sections 7, 8 and 10, a permit for development within the building

control lines of a protected road shall not be issued outside a community except for signs which shall be erected and displayed in accordance with the Highway Sign Regulations, premises for the purpose of providing services to the travelling public, development related to public, institutional or commercial recreation, including attraction sites, public utilities, waste disposal sites, cemeteries, development associated with forestry, fishing, agriculture or mining, and purposes incidental to or in conjunction with the above.

The Board reviewed the site location and determined that the appellants' property is indeed located within the 150 metre building control line of the Trans Canada Highway.

According to the *Protected Road Zoning Regulations*, the Trans Canada Highway is classified as a Class I Protected Road. Therefore, the Board determined that in accordance with section 6 of the *Protected Road Zoning Regulations*, the appellants required a permit from Service NL.

Did Service NL have the authority to refuse the appellants' application?

Section 13(1) of the *Protected Road Zoning Regulations* states that Service NL may grant a permit if "the authority is satisfied that [the proposed development] conforms to the [Protected Road Zoning Regulations] and the protected road zoning plan where one exists". Additionally, section 13(1) requires Service NL to consult with other government departments to consider other pertinent conditions. The Board determined that in accordance with section 19(2) of the *Protected Road Zoning Regulations* that the Authority is required to consult with the Department of Transportation and Works when considering an application for an access to a protected road. Service NL stated at the hearing that it referred the appellants' application to the Department of Transportation and Works which recommended the application be refused due to insufficient site distance. The Board learned from the appellants at the hearing that the proposed access lacks insufficient site distance (approximately 8 metres) to the west of the property. Service NL was unable to confirm the site distance requirements and stated that it refused the appellants' application as a result of the Department of Transportation and Works' recommendation. Therefore, the Board found that the Authority acted in accordance with section 13(1) as well as 19 of the *Protected Road Zoning Regulations* and had the authority to refuse the appellants' application.

Did Service NL follow proper procedure when it refused the appellants' application?

The Board determined that Service NL followed proper procedure when it notified the appellants of its decision to refuse their application for access off the Trans Canada Highway in Pynn's Brook. As per section 5 of the Minister's Development Regulations, the Authority is required to notify the applicants, in writing, of the right and process to appeal its decision. The Board confirmed that the appellants were notified of the Authority's decision in a letter dated July 10, 2014.

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 Service NL had the authority and exercised it appropriately when it refused the application submitted by Wally Ferris and Ramona EastWind for an access to property located off the Trans Canada Highway in Pynn's Brook.

ORDER

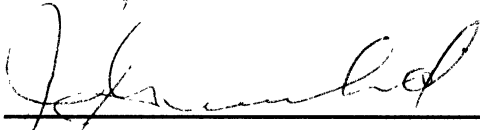
Based on the information presented, the Board orders that the decision made by Service NL on July 10, 2014 to refuse the application submitted by Wally Ferris and Ramona EastWind for an access to property off the Trans Canada Highway in Pynn's Brook, be confirmed.

Service NL is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

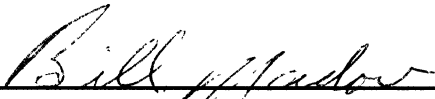
DATED at Deer Lake, Newfoundland and Labrador, this 10th day of April, 2015.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Joseph Guinchard, Member
West Newfoundland Regional Appeal Board



Bill Madore, Member
West Newfoundland Regional Appeal Board