



## **DECISION**

### **Facts/Background**

This appeal arises from Service NL refusing Ms. Adelaide Hatcher a permit for a cottage. Ms. Hatcher submitted a Preliminary Application to Develop Land on September 6, 2013 to Service NL for the purpose of a cottage. The cottage currently exists on the subject property near Lloyd's River Bridge along the Burgeo Highway. Service NL considered the subject application and initiated the intergovernmental consultation process on September 17, 2013. Service NL refused the subject application because the site is located within a Rural Conservation zone and cottage uses are not permitted. Service NL notified the appellant that her application was refused in a letter dated September 26, 2014 and noted her right and process to appeal.

Ms. Hatcher filed an appeal with the West Newfoundland Regional Appeal Board on October 8, 2014 against Service NL's refusal. The grounds for the appeal question whether or not the existing cottage should be grandfathered-in since the cottage has existed for twenty-six years. Additionally, the appellant notes that the land was leased from Abitibi-Price and AbitibiBowater from 1993 to 2008.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Western Star* on December 20, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on March 6, 2015.

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

Urban and Rural Planning Act, 2000

Protected Road Zoning Regulations (CNLR 996/96)

Burgeo Highway Protected Road Zoning Plan

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 Burgeo Highway Protected Road Zoning Plan and determined that the appellant's property is indeed located within the 400 metre building control line of that highway. According to the *Protected Road Zoning Regulations*, the Burgeo Highway is classified as a Class II Protected Road. Therefore, the Board determined that in accordance with section 6 of the *Protected Road Zoning Regulations*, Ms. Hatcher requires a permit from Service NL.

#### **Is Ms. Hatcher's existing cottage a legal non-conforming use?**

The appellant stated at the hearing that she has occupied the land since 1988 and was issued a permit from Abitibi-Price for a cabin in 1993. The Board reviewed the 1993 permit and found that a number of conditions were attached to the permit, including one that required Ms. Hatcher to comply with all regulations with respect to the existence of the subject cabin. The *Protected Road Zoning Regulations* were in legal effect at that time and a permit from Service NL was required. Ms. Hatcher stated at the hearing that she did not apply to Service NL for a permit prior to September 6, 2013.

The Board reviewed section 108 of the *Urban and Rural Planning Act, 2000* to determine whether Ms. Hatcher's existing cabin is a legal non-conforming use. Section 108(1) states:

*Notwithstanding a plan, scheme or regulations made under this Act, the minister, a council or regional authority shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the registration under section 24 of the plan, scheme or regulations made with respect to that kind of development or use.*

The Board concluded that since Ms. Hatcher did not acquire a permit from Service NL for her

cottage then the existing structure was not legally built. Therefore, the Board found that section 108 of the *Urban and Rural Planning Act, 2000* does not apply.

**Did Service NL have the authority to refuse Ms. Hatcher’s 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”. According to the Burgeo Highway Protected Road Zoning Plan, the subject property is zoned Rural Conservation, which does not permit cottage development. Therefore, the Board determined that Service NL had authority under section 13(1) of the *Protected Road Zoning Regulations* to refuse Ms. Hatcher’s application.

**Did Service NL follow proper procedure when it refused the appellant’s application?**

The Board determined that Service NL followed proper procedure when it notified Ms. Hatcher of its decision to refuse her application for a cottage near Lloyd’s River Bridge along the Burgeo Highway. As per section 5 of the Minister’s Development Regulations, the Authority is required to notify the applicant, in writing, of the right and process to appeal its decision. The Board reviewed the refusal letter issued to Ms. Hatcher dated September 26, 2014 and confirmed that the appellant’s right and process to appeal was included.

**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 Adelaide Hatcher for an existing cottage near Lloyd’s River Bridge along the Burgeo Highway.


**ORDER**


Based on the information presented, the Board orders that the decision made by Service NL on September 26, 2014 to refuse the application submitted by Adelaide Hatcher for an existing cottage near Lloyd's River Bridge along the Burgeo Highway, 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 10<sup>th</sup> 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**