

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Cyril Hodder **Appellant**

**AND** Town of Marystown **Respondent**

**RESPECTING** Refusal

**BOARD MEMBERS** Vicki Connolly – Chair  
Michelle Downey – Member  
Bruce Strong – Member

**DATE OF HEARING** May 13, 2015

**IN ATTENDANCE**

Alje Mitchell – Authority  
Cyril Hodder – Appellant  
Donna Hodder – Support for 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 Marystown refusing to issue a permit to Cyril Hodder for the purpose of constructing a single dwelling at 239-241 Creston Boulevard. The Town considered and refused the subject application at the October 7, 2014 Regular Meeting of Council. The Town refused Mr. Hodder's application because the area does not meet the Town's Subdivision Regulations. The Town notified Mr. Hodder of its decision in a letter dated October 9, 2014. The letter stated that prior to the Town approving any future development in the area the infrastructure must be upgraded in order to satisfy municipal standards. The letter noted the Mr. Hodder's right and process to appeal.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, Mr. Hodder filed an appeal with the Eastern Newfoundland Regional Appeal Board on October 20, 2014. Additionally, 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 *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Southern Gazette* on December 15, 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 April 23, 2015.

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

Town of Marystown Municipal Plan and Development Regulations, 2002  
Urban and Rural Planning Act, 2000

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

#### **Does the Town of Marystown have the authority to refuse a development application?**

The Board accepts that all development located within the Town's Planning Area boundary must conform to the Town's Municipal Plan and Development Regulations as per section 7 of the

Town's Development Regulations. Section 7, Compliance with Regulations, states: "No development shall be carried out within the Planning Area except in accordance with these Regulations."

**Did the Town have the authority to refuse Mr. Hodder's application?**

The Board learned at the hearing that there are four existing homes in the subject area that were approved as part of a comprehensive development plan in the past. According to the Town, the last development agreement that was signed stated that no future development would be permitted in that area unless the infrastructure was upgraded in accordance with the Town's Development Regulations. The Town stated that it neither owns nor maintains the road. However, the Town indicated that it is willing to consider future development if all infrastructure is brought up to Town standards.

The Board reviewed section 10, Permit Not to be Issued in Certain Cases, of the Town's Development Regulations, which states:

*Neither a permit nor approval in principle shall be issued for development within the Planning Area when, in the opinion of the Authority, it is premature by reason of the site lacking adequate road access, power, drainage, sanitary facilities, or domestic water supply, or being beyond the natural development of the area at the time of application unless the applicant contracts to pay the full cost of construction of the services deemed necessary by the Authority and such cost shall attach to and upon the property in respect of which it is imposed.*

The Town stated at the hearing that the proposed development was premature since the site lacks adequate road access, water supply and sanitary facilities. Therefore, the Board accepts that the Town had the authority to refuse Mr. Hodder's application in accordance with section 10 of the Town's Development Regulations.

**Did the Town follow proper procedure when it refused Mr. Hodder's application?**

The Board reviewed section 22 of the Town's Development Regulations which requires the Town to state the reason for refusing a permit. The Board reviewed the Town's refusal letter dated October 9, 2014 and determined that the Town satisfied section 22 by including its reasons for refusal. The refusal letter also indicated the appellant's right and process to appeal Council's decision as per section 5 of the *Minister's Development Regulations, 2000*.

## **Conclusion**

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

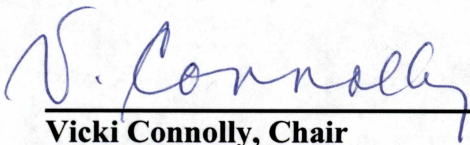
Based on its findings, the Board determined that the Town of Marystown had the authority to refuse the subject application and did so in accordance with the Town's Development Regulations. Therefore, the Board confirms the Town's decision to refuse Mr. Cyril Hodder's application to develop a single dwelling at 239-241 Creston Boulevard.

**Order**

Based on the information presented, the Board orders that the decision made by the Town of Marystown on October 7, 2014 to refuse Mr. Hodder's application to construct a single dwelling at 239-241 Creston Boulevard, be confirmed.

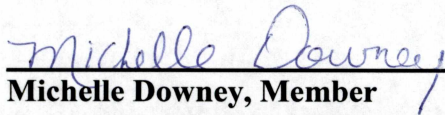
The Town of Marystown and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

**DATED** at St. John's, Newfoundland and Labrador, this 15<sup>th</sup> day of May, 2015.



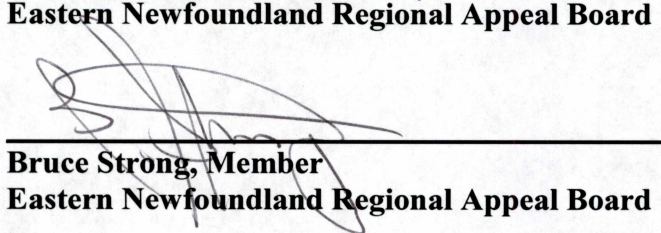
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**Vicki Connolly, Chair**  
**Eastern Newfoundland Regional Appeal Board**



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**Michelle Downey, Member**  
**Eastern Newfoundland Regional Appeal Board**



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**Bruce Strong, Member**  
**Eastern Newfoundland Regional Appeal Board**