

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Brian Walsh **Appellant**

AND Town of Paradise **Respondent**

RESPECTING Refusal

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

DATE OF HEARING May 13, 2015

IN ATTENDANCE

Ann-Marie Cashin – Authority

Lorelei Dean – Authority

Brian Walsh – Appellant

Koren Young – Support for Appellant

Paul Alexander – Interested Party

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 Paradise refusing to issue a permit to Brian Walsh for the purpose of keeping chickens and goats at 125 Buckingham Drive. On July 18, 2014, Mr. Brian Walsh submitted a General Application to the Town of Paradise. On July 22, 2014, Mr. Walsh submitted a Discretionary Use Application for the same use. The Town Council considered and refused Mr. Walsh's application at the September 16, 2014 Regular Meeting of Council. Council refused Mr. Walsh's application for the following reasons:

- The keeping of animals on the subject property is not in keeping with the amenity of the area;
- The keeping of goats and fowl may cause an increase in rodents which would affect public safety;
- The rooster's natural crowing is considered a nuisance; and
- The keeping of animals would increase the unsightliness of the subject property.

The Town notified the appellant of Council's decision in a letter dated September 17, 2014. The letter stated Council's reasons for refusal and noted the appellant's right to appeal.

In accordance with section 42 of the *Urban and Rural Planning Act, 2000*, Mr. Walsh filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application to keep chickens and goats. Mr. Walsh filed his appeal on October 3, 2014 and as required, 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 December 13, 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 21, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Paradise Municipal Plan and Development Regulations, 2004

Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Are animal uses allowed within the Rural Residential zone?

The Board reviewed Schedule “C” of the Town’s Development Regulations which outlines what uses are permitted and discretionary within the Town’s use zones. The subject site is located within a Rural Residential Use Zone. Animal uses are listed a discretionary in the Rural Residential Use Zone Table.

Did the Town follow proper procedure when it considered Mr. Walsh’s application?

Uses that fall within the discretionary use class, such as animal uses, are subject to section 91 of the Town’s Development Regulations. Section 91 states:

Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the Council is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if the Council has given notice of the application in accordance with Regulation 34 and has considered any objections or representations which may have been received on the matter.

The Town confirmed at the hearing that in accordance with section 34(1)(c) and 91, it advertised the subject application in a local newspaper and notified residents located within 200 metres of the property. Section 34(1) of the Town’s Development Regulations states:

- (1) Notice of an application must be given when;*
 - (a) a variance is to be considered under Section 11,*
 - (b) a change in a non-conforming use is to be considered under Section 51(4),*
 - (c) the proposed development is listed as a discretionary use in Schedule C,*
 - (d) the Council determines that the public should be notified of an application.*

In addition to notifying the public, staff completed a site visit to ensure compliance with the Town’s Development Regulations and standards. The Board learned that two Councillors also visited the site, which is not required under the Town’s Municipal Plan and Development Regulations. Therefore, the Board determined that the Town complied with the discretionary use application procedure as prescribed by the Town’s Development Regulations.

Did the Town use its discretion appropriately?

The Board reviewed section 10, Discretionary Powers of Council, of the Town's Development Regulations, which states:

(1) In considering an application for a permit or for approval in principle to carry out development, the Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

The Town stated four reasons for refusal in its letter dated September 17, 2014:

- The keeping of animals on the subject property is not in keeping with the amenity of the area;
- The keeping of goats and fowl may cause an increase in rodents which would affect public safety;
- The rooster's natural crowing is considered a nuisance; and
- The keeping of animals would increase the unsightliness of the subject property.

The Town indicated at the hearing that the first three reasons for refusal were made in accordance with section 10 of the Town's Development Regulations. The latter reason was based on the Councillors' site visit. The Town also stated at the hearing that Council considered all submissions received from the public as required under section 91 of the Town's Development Regulations.

The appellant argued at the hearing that the complaints submitted to Council are not valid and were never verified by the Town. Therefore, the appellant maintained that Council went beyond its discretionary authority when it refused his application. However, the Board found that the Town made its decision in accordance with section 10(1), 34(1)(c) and 91 of the Town's Development Regulations and therefore used its discretionary authority appropriately.

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.

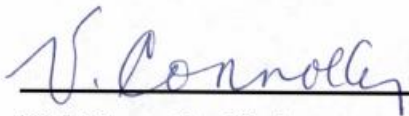
Based on its findings, the Board determined that the Town of Paradise had the discretionary authority to refuse the subject application and did so in accordance with the Town's Development Regulations. Therefore, the Board confirms the Town's decision to refuse Brian Walsh's application to keep chickens and goats at 125 Buckingham Drive.

Order

Based on the information presented, the Board orders that the decision made by the Town of Paradise on September 16, 2014 to refuse Mr. Brian Walsh's application to keep chickens and goats at 125 Buckingham Drive, be confirmed.

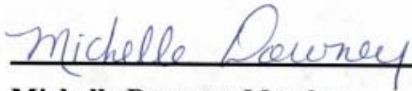
The Town of Paradise and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 15th day of May, 2015.



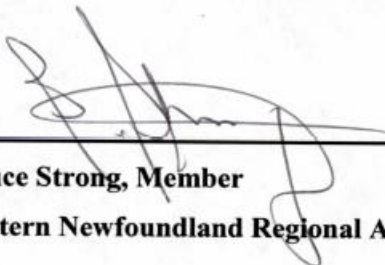
Vicki Connolly, Chair

Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member

Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member

Eastern Newfoundland Regional Appeal Board