

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Randy Murphy **Appellant**

AND Town of Bonavista **Respondent**

RESPECTING Servicing 7-9 Meades Hill Road

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

DATE OF HEARING May 15, 2015

IN ATTENDANCE

Randy Murphy - 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 Bonavista notifying Randy Murphy that he would be required to pay for water and sewer serviced at 7-9 Meades Hill Road. On September 10, 2014, Mr. Murphy requested permission from the Town of Bonavista to erect a 4-unit residence for seniors at 7-9 Meades Hill Road. The request indicated that water and sewer services are required. Council considered Mr. Murphy's request at the September 22, 2014 Regular Meeting of Council. According to the September 22, 2014 Council Meeting minutes, it was agreed that water and sewer services are required at the applicant's expense. However, no motion or resolution was made by Council. In a letter to Mr. Murphy dated September 23, 2014, he was informed that he would be required to pay for water and sewer services at the subject property. The letter also indicated that a permit would not be issued until a detailed plot plan is submitted.

On October 20, 2014, Council considered Mr. Murphy's email correspondence dated October 1, 2014 regarding servicing his property at 7-9 Meades Hill Road. It was agreed at that meeting that Mr. Murphy is required to service his property. Again, no motion or resolution was made by Council. Subsequently, another letter was sent to Mr. Murphy dated October 27, 2014. Neither the September 22, 2014 nor the October 20, 2014 letter informed Mr. Murphy that he had a right to appeal.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Packet* on December 15, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on April 16, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Matters presented to and considered by the Board

Does the Board have the jurisdiction to hear the appeal?

The Board reviewed Part VI, section 42(1), of the *Urban and Rural Planning Act, 2000* which allows one to file an appeal where the *decision* is with respect to:

- (a) an application to undertake a development;
- (b) a revocation of an approval or a permit to undertake a development;

- (c) the issuance of a stop work order; and
- (d) a decision permitted under this or another Act to be appealed to the board.

The Board considered the Council meeting minutes from September 22, 2014, October 20, 2014 and November 5, 2014. According to those Council meeting minutes, the Board found that Council did not make a motion or resolution pertaining to the appellant's application and therefore, no decision was made.

The Board reviewed section 212, Voting, of the *Municipalities Act, 1999*, which states that a motion or resolution of Council must be decided by a majority vote. Section 212(4) also requires the Council meeting minutes state the names of councillors who vote for and against. Section 212 states:

- (1) A motion or resolution before a council shall be decided by a majority vote of the councillors in attendance at the meeting except where a 2/3 vote of the councillors in office is required.*
- (2) A councillor shall not abstain from voting on a motion or resolution before the council unless he or she is required to abstain from voting because of a conflict of interest under section 207 or he or she has been permitted to abstain by a majority vote of the other councillors in attendance at the meeting.*
- (3) Where a councillor abstains from voting on a motion or resolution, a decision shall not be made on that motion or resolution unless the number of councillors in favour of the motion or resolution is equivalent to or more than a majority of the councillors in attendance at the meeting.*
- (4) The minutes of a council meeting shall indicate the names of the councillors who vote for and against and who abstain from voting on a motion or resolution.*
- (5) Where there is a tie vote on a motion or resolution, that motion or resolution shall be considered to be defeated.*

The Board concludes that if there is no decision, then there is no decision to appeal.

Who has the authority to deem an appeal invalid?

As determined by The Honourable Madam Justice Valerie L. Marshall in the Supreme Court Case between *Universal Environmental Service Inc. v. West Newfoundland Regional Appeal Board, 2010 NLTD(G) 179* it is only the Board that can deem an appeal invalid; the Secretary to the Appeal Board does not have the authority to deem an appeal invalid.

Should the Board defer the appeal hearing?

The Town requested the Board defer the hearing so a representative of the Town could attend. The Town notified the Secretary to the Board prior to the hearing and indicated that due to staff being away on vacation and family medical reasons, the Town could not attend the scheduled hearing. The Board

considered the Town's request and conferred with the appellant at the hearing. However, due to the fact the Board deemed the appeal invalid, the Board decided to not grant the Town's request to defer the hearing.

Conclusion

In arriving at its decision, the Board reviewed the submissions and evidence presented by all parties 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 a decision was not made by Council and as such, an appeal could not be filed in accordance with section 42(1) of the *Urban and Rural Planning Act, 2000*. That is to say, the Town of Bonavista must make a decision by motion or resolution of Council in accordance with section 212 of the *Municipalities Act, 1999* regarding Mr. Murphy's requests submitted to the Town on September 10, 2014 and October 1, 2014.

Order

Based on the information presented, the Board dismisses the appeal filed by Randy Murphy to the Eastern Newfoundland Regional Appeal Board on November 12, 2014.

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

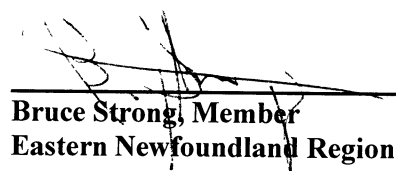
DATED at St. John's, Newfoundland and Labrador, this 15th day of May, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board