

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Dana Metcalfe **Appellant**

AND Town of Portugal Cove – St. Philip’s **Respondent**

RESPECTING Approval in Principle

BOARD MEMBERS Vicki Connolly – Chair
Michelle Downey – Member
Mary Thorne-Gosse – Member

DATE OF HEARING June 19, 2015

IN ATTENDANCE

Dana Metcalfe – Appellant
Doreen Squires – Interested Party
Stephen Sharpe – Church by the Sea
Winston Fiander – Church by the Sea
William Fagan – Interested Party
Cyril Morgan – Interested Party
Les Spurrell – Authority
John Taylor-Hood – Solicitor for the Town
Hilary Wicks – Solicitor for the Diocese of Eastern Newfoundland and Labrador
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 Portugal Cove – St. Philip’s issuing an Approval in Principle subject to conditions to The Diocesan Synod of Eastern Newfoundland and Labrador. On April 17, 2015, Roebothan, McKay, Marshall Lawyers, on behalf of The Diocesan Synod of Eastern Newfoundland and Labrador, applied to the Town of Portugal Cove-St. Philip’s for a permit to demolish the former St. Philip’s Anglican Church. Council approved in principle the application at the Regular Meeting of Council held on April 21, 2015. The Town notified the applicant in a letter dated April 29, 2015.

Dana Metcalfe, an interested third party, filed an appeal on April 23, 2015 with the Eastern Newfoundland Regional Appeal Board against the Town’s issuance of the above noted approval in principle. The appeal was filed within the required timeframe as per section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”) and included the necessary information as outlined in section 42(5) of the *Act*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on April 29, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on May 12, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Portugal Cove-St. Philip’s Municipal Plan and Development Regulations, 2014
Urban and Rural Planning Act, 2000
Municipalities Act, 1999

Matters presented to and considered by the Board

Does the Town have the authority to issue a demolition permit for a heritage structure?

Yes. The Board found that the Town derives its authority to issue a demolition permit for a structure with heritage designation from section 200(1), Heritage Areas, of the *Municipalities Act, 1999*, which states:

A building, structure or land designated by a council as a heritage building, structure or land shall not be demolished or built upon nor the exterior of the building or structure

altered, except under a written permit of the council specifically authorizing the alteration and in accordance with the terms and conditions of the permit.

The Board acknowledges that the Town's Municipal Plan has policies pertaining to heritage buildings. The fact that the *Municipalities Act, 1999* provides the Town with the authority to issue a demolition permit, does not negate the Town's responsibility to comply with its Municipal Plan and Development Regulations. As the Town's Municipal Plan does not outline when it is appropriate to issue a demolition permit, the Board must determine whether the Town satisfied the requirements of its Municipal Plan to encourage the preservation of its historic structures.

The Board considered the length of time Council used to review the subject application and the various alternatives explored by the Town. This demonstrated to the Board that the Town of Portugal Cove-St. Philip's encouraged the preservation of the structure and therefore, satisfied the Traditional Community policies in the Town's Municipal Plan.

Does the Town have the authority to issue an approval in principle?

Yes. The Board confirmed that section 20(1) of the Town's Development Regulations provides the Town with the authority to issue an approval in principle for the alteration of building.

Section 20(1) states:

Council may grant approval in principle for the erection, alteration or conversion of a building if, after considering an application for approval in principle made under these Regulations, it is satisfied that the proposed development is, subject to the approval of detailed plans, in compliance with these Regulations.

Does the Town have the authority to attach conditions to an approval in principle?

Yes. The Board found that section 21(2) of the Town's Development Regulations allows the Town to attach conditions to an approval in principle. Section 21(2) states:

(2) Council may attach to a permit or to approval in principle such terms, conditions and requirements as it deems fit in order to ensure that the proposed development will be in accordance with the purposes and intent of these Regulations.

Were the conditions attached to the Approval in Principle in accordance with the Town's Municipal Plan and Development Regulations?

The Board reviewed the conditions attached to the Approval in Principle. Those conditions, as stated in the April 29, 2015 letter to the applicant, are as follows:

- Submission of written acknowledgement of the proposed demolition from the Provincial Archaeology Office in accordance with Municipal Plan Policy 3.3.2 (Archaeological Sites);
- Submission and approval by the Town of a demolition plan for the site; and
- Submission and approval by the Town of a site development plan for the site once the demolition work has been completed.

The Board reviewed section 3.3.2, Archaeological Sites, of the Town's Municipal Plan. Policy GE-14 under section 3.3.2 requires Council to advise the Department of Archaeology of any major land development that involves ground disturbance. Policy GE-14 states:

Policy GE-14 Council shall advise the Provincial Archaeology Office, where feasible, of any proposed significant land development projects that involve major land use or ground disturbance.

The Board determined that the demolition of a building would involve ground disturbance and therefore found that the Town acted in accordance with Policy GE-14 when it required The Diocesan Synod of Eastern Newfoundland and Labrador obtain written acknowledgement from the Provincial Archaeology Office.

The Board also reviewed section 17, Form of Application, of the Town's Development Regulations, which outlines what Council may require from an applicant. Section 17(1) states:

(1) An application for a development permit or for approval in principle shall be made to Council only by the owner or by a person authorized by the owner on such form as may be prescribed by Council, and every application shall include such plans, specifications and drawings as Council may require, and be accompanied by the permit fee required by Council.

The Town required that the Applicant submit a demolition plan for the site as well a site development plan prior to issuing a development permit. The Board found that "Council may

require plans, specifications and drawings as Council may require” as expressed in section 17(1). The Board determined that the conditions attached to the Approval in Principle are in accordance with section 17(1) of the Town’s Development Regulations.

The Board heard arguments at the hearing regarding who is responsible for fulfilling the conditions attached to the Approval in Principle. The Diocesan Synod confirmed at the hearing that it is aware of these conditions. Additionally, it is the understanding of The Diocesan Synod that it is responsible for obtaining written acknowledgment from the Provincial Archaeology Department, submitting a demolition plan and a site development plan.

Are Moses Tucker and David Bartlett officers or agents of the Church?

The appellant argued that Moses Tucker and David Bartlett were in a conflict of interest when they voted on The Diocesan Synod’s demolition application at the April 21, 2015 Regular Meeting of Council because they are officers or agents of the Anglican Church. The appellant argued that this is contrary to section 207(1)(d) of the *Municipalities Act, 1999*.

The Board reviewed section 207 of the *Municipalities Act, 1999* which is the guiding legislation for Councils pertaining to conflict of interest. Section 207(1), Conflict of Interest, states:

A councillor shall not vote on or speak to a matter before the council or a committee of the council where

- (a) the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;*
- (b) the councillor has a monetary interest directly or indirectly in the matter;*
- (c) a relative of the councillor has a monetary interest in the matter; or*
- (d) the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.*

The appellant stated that both Mr. Tucker and Mr. Bartlett have held positions within the Anglican Church. Multiple definitions of *agent* and *officer* were presented to the Board. Parties arguing for the appellant referred to the Merriam Dictionary for a definition, while the authority referenced the Dictionary of Canadian Law.

The Board found the explanation provided by the Lawyer for The Diocesan Synod of Eastern Newfoundland and Labrador, Ms. Hilary Wicks, regarding the organization of the Anglican Church as well as ownership of the former St. Philip's Anglican Church to be paramount. Ms. Wicks clarified for the Board that the Anglican Diocese of Eastern Newfoundland and Labrador is governed by the Diocesan Synod of Eastern Newfoundland and Labrador. The former St. Philip's Anglican Church is owned by the Diocesan Synod of Eastern Newfoundland and Labrador, not the Parish of St. Philip's Church (the "Parish"). The Board also referred to paragraph 4 of the Authority's June 17, 2015 Brief for further clarification on the roles within the Anglican Church and the Parish.

The Board found that while Mr. Tucker and Mr. Bartlett are members of the Parish of St. Philip's and have been appointed positions within the Vestry, they cannot have a monetary interest in the former St. Philip's Anglican Church due to the organizational structure of the Anglican Church. Therefore, the Board determined that there was no apparent conflict of interest at the April 21, 2015 Regular Meeting of Council.

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.

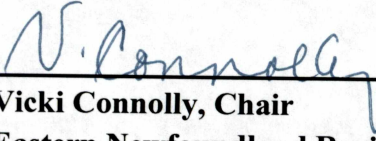
Based on its findings, the Board determined that the Town of Portugal Cove-St. Philip's had the authority to issue an Approval in Principle to demolish the former St. Philip's Anglican Church and did so in accordance with the *Municipalities Act, 1999* and the Town's Municipal Plan and Development Regulations.

Order

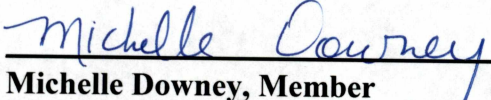
Based on the information presented, the Board orders that the decision made by the Town of Portugal Cove – St. Philip's on April 21, 2015 to Approve in Principle, subject to conditions, the demolition of the former St. Philip's Anglican Church located at 20-30 Coadys Road, be confirmed.

The Town of Portugal Cove – St. Philip's and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

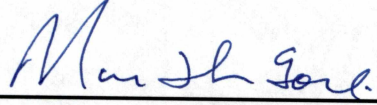
DATED at St. John's, Newfoundland and Labrador, this 30th day of June, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Michelle Downey, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board