

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Paul Dober **Appellants**

AND Town of Marystown **Respondent**

RESPECTING Refsaul

BOARD MEMBERS Michelle Downey – Chair
Bruce Strong
Mary Thorne-Gosse

DATE OF HEARING September 16, 2015

IN ATTENDANCE

Michelle and Paul Dober - Appellants

Alje Mitchel - Authority

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 Mr. Paul Dober. Mr. Dober applied to the Town of Marystown to store construction equipment on property located at 122-126 Ville Marie Drive. The Town considered and refused the subject application at the December 2, 2014 Regular Meeting of Council. The Town notified Mr. Dober of Council's decision in a letter dated December 4, 2014. The letter noted that Council refused Mr. Dober's application as per section 11 of the Town's Development Regulations and stated the applicant's right and process to appeal.

Mr. Dober filed an appeal against the refusal with the Eastern Newfoundland Regional Appeal Board on December 16, 2014. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *Urban and Rural Planning Act, 2000* and included the required information as per section 42(5) of the *Urban and Rural Planning Act, 2000*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in the *Southern Gazette* on February 3, 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 August 17, 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

Minister's Development Regulations, NLR 3/01

Matters presented to and considered by the Board

How is the subject property zoned?

The Authority confirmed at the hearing that the proposed development site is located within the Commercial and Community Services (CCS).

How did the Town classify the storage of construction equipment?

The Board heard from the Authority at the hearing that the Town considered the storage of construction equipment as general industry. The Board reviewed the Commercial and Community Services Use Zone Table in Schedule C of the Town's Development Regulations and determined that the only general industrial use listed as discretionary included general garages. The Authority indicated at the hearing that while the storage of construction equipment is classified as general industry, it is not considered a general garage. The Board reviewed section 98 of the Town's Development Regulations, and found that if a use is not listed as a permitted or discretionary use then the use is considered prohibited in that zone. Therefore, according to the Commercial and Community Service Use Zone Table, general industry uses (storage of construction equipment) are prohibited.

The Authority explained at the hearing that there are several general industry uses that exist within the Commercial Community Service zone as legal non-conforming. This included the Town's depot which is located across the street from the appellant's property.

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

In accordance with section 7 of the Town of Marystown Development Regulations, all development located within the Planning Area boundary must comply with the Town's Development Regulations. The Board accepts that the Town has the authority to refuse an application in the event it is contrary to the Town's Regulations. The Board found that since the proposed use is prohibited within the Commercial and Community Services zone, the Town had the authority to refuse Mr. Dober's application.

Did the Town communicate its decision appropriately?

The Board reviewed section 22 of the Town's Development Regulations which requires the Authority to state the reasons for refusing a permit. The refusal letter dated December 4, 2014 states that the Town refused Mr. Dober's application in accordance with section 11 of the Town's Development Regulations. Section 11 provides the Town with discretionary authority to refuse an application, notwithstanding its conformity. The appellants stated during the hearing that they failed to understand why the Town refused their application. While the Town demonstrated to the Board during the hearing how Mr. Dober's application contradicts the Town's Development Regulations, the Board is unsatisfied that the Town clearly conveyed this

in the December 4, 2014 refusal letter. It was only through the process of this hearing that the Board learned that Mr. Dober's application contradicts the Town's Development Regulations. Therefore, the Board found that the reference to section 11 of the Town's Development Regulations as a reason for refusal did not fully satisfy section 22 when the Town communicated its decision to Mr. Dober.

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.

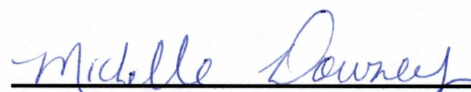
Based on its findings, the Board determined that while the Town of Marystown had the authority to refuse Mr. Dober's application to store construction equipment at 122-126 Ville Marie Drive, it did not do so in accordance with section 22 of the Town of Marystown Development Regulations. That is to say, the Town of Marystown must re-issue a decision letter with the reasons clearly articulated, as discussed during the hearing.

Order

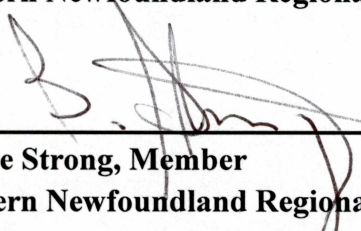
Based on the information presented, the Board orders that the decision issued by the Town of Marystown on December 2, 2014 to Mr. Paul Dober's application to store construction equipment at 122-126 Ville Marie Drive, be vacated.

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 16th day of September, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board