

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Sean Codner **Appellants**

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

**RESPECTING** Refusals (two)

**BOARD MEMBERS** Michelle Downey – Chair  
Harold Porter  
Mary Thorne-Gosse

**DATE OF HEARING** September 29, 2015

**IN ATTENDANCE**

Sean Codner - Appellant

Les Spurrell - Authority

Ashley MacKinnon - 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 Portugal Cove – St. Philip’s refusing to issue Mr. Sean Codner permits to develop a single dwellings on property located on Portugal Cove Road.

On January 26, 2015, Mr. Codner applied to the Town of Portugal Cove-St. Philip’s for building and development approval for a single dwelling located at 1777 Portugal Cove Road as well as 1779-1781 Portugal Cove Road. The Town considered and refused the applications at the February 24, 2015 Regular Meeting of Council. The Town notified Mr. Codner of its decision in a two separate letters, both dated February 26, 2015. The letters provided reasons for the Town’s refusal and noted Mr. Codner’s right and process to appeal Council’s decisions.

In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (URPA), Mr. Codner initiated the appeals process on March 11, 2015 with the Eastern Newfoundland Regional Appeal Board. 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. While Mr. Codner submitted two individual appeals, one regarding 1777 Portugal Cove Road and the other regarding 1779-1781 Portugal Cove Road, the Board heard Mr. Codner’s appeals together during one hearing.

In accordance with the *URPA* 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 September 1, 2015.

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

Town of Portugal Cove – St. Philip’s Municipal Plan and Development Regulations, 2000

Town of Portugal Cove – St. Philip’s Municipal Plan and Development Regulations, 2014

Minister’s Development Regulations, NLR 3/01

Urban and Rural Planning Act, 2000

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

### **Should the Town consider Mr. Codner's applications under the 2000 Town Plan?**

The Town issued the initial conditional approvals in 2011. These permits were extended in 2013 and expired on July 12, 2014. The Town's 2014 Municipal Plan came into legal effect on October 17, 2014.

The Board considered the fact that Council sent a letter to Mr. Codner dated January 9, 2015 which suggest development could proceed as the Town requested a timeline for work completion. There was continuous correspondence between the Town and the appellant dating back to 2010 without any indication that the Town's Municipal Plan would change to directly impact the appellant's proposed development. Therefore, the Board finds it unreasonable for the Town to consider the appellant's applications under the 2014 Town Plan since the Town guided the appellant through the development approval process since 2010 under the 2000 Town Plan.

Therefore, the Board concludes that the Town should review Mr. Codner's application under the Town of Portugal Cove – St. Philip's Municipal Plan and Development Regulations that were in legal effect when Mr. Codner initiated his application process in 2010.

### **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 the Town of Portugal Cove – St. Philip's should have considered Mr. Codner's applications under the 2000 Town Plan and Development Regulations. That is to say, the decision to refuse Mr. Codner's application made by the Town of Portugal Cove – St. Philip's at the February 24, 2015 Regular Meeting of Council is vacated. The Town must reconsider Mr. Codner's application under the 2000 Town Plan and Development Regulations.

**Order**

Based on the information presented, the Board orders that the refusals issued by the Town of Portugal Cove – St. Philip’s on February 24, 2015 to Mr. Sean Codner concerning Civic 1777 and 1779-1781 Portugal Cove Road, be vacated.

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 29<sup>th</sup> day of September, 2015.

  
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Michelle Downey, Acting Chair  
Eastern Newfoundland Regional Appeal Board

  
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Harold Porter, Member  
Eastern Newfoundland Regional Appeal Board

  
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Mary Thorne-Gosse, Member  
Eastern Newfoundland Regional Appeal Board