

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Eddie Doody **Appellants**

**AND** Town of South River **Respondent**

**RESPECTING** Refusal

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

**DATE OF HEARING** September 30, 2015

**IN ATTENDANCE**

Jonathan Moore – Authority (former Clerke)

Marjarie Dawson – Authority

Eddie Doody - Appellant

Darrell Percy – 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 South River refusing to issue a permit to Eddie and Kristen Doody. On February 19, 2015, Eddie and Kristen Doody applied to the Town of South River for permission to build a single dwelling on Old Cart Road. Council reviewed and refused the subject application at the March 4, 2015 Regular Meeting of Council. The Town notified the applicants of its decision in a letter dated March 10, 2015. The letter indicated Council refused the subject application and stated an appeal may be filed within fourteen (14) days.

In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (the “Act”), Mr. and Mrs. Doody initiated the appeals process with the Eastern Newfoundland Regional Appeal Board on March 20, 2015. 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.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Compass* on September 15, 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 2, 2015.

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

Town of South River Municipal Plan and Development Regulations, 1995

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Minister’s Development Regulations, NLR 3/01

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

#### **How is the subject property zoned?**

The Board accepts that the subject property is designated and zoned Residential. The Board

reviewed the Residential Use Zone Table in Schedule “C” of the Town’s Development Regulations and found that single dwellings are considered permitted uses in the Residential zone.

**Did the Town have the authority to refuse Mr. Doody’s application?**

The Board accepts that the Town has the authority to refuse an application in the event it is contrary to the Town’s Regulations. However, since reasons were not provided by the Town in the decision letter and the Town could not provide an explanation of the refusal at the hearing, the Board finds the Authority’s refusal questionable.

**Did the Town communicate its decision appropriately?**

No. The Board reviewed section 21 of the Town’s Development Regulations which requires the Authority to state the reasons for refusing a permit. The decision letter dated March 10, 2015 does not include reasons for refusal. The Town conceded at the hearing that Council did not provide reasons at the March 4, 2015 Regular Meeting of Council. Therefore, the Board found that the Town did not satisfy section 21 as reasons for the refusal were not provided in writing to the appellant.

**Were Councillors in a conflict of interest at the March 4, 2015 Regular Meeting of Council?**

The Board heard arguments pertaining to conflict of interest and indicated to the appellant that the Board does not have the jurisdiction to make a ruling on the matter within the confines of the *Municipalities Act, 1999*. However, the Board determined that while the appellant was using the term conflict of interest, the arguments were related to bias. According to the *Faulkner v. City of Mount Pearl*, 2015 NLTD(G) 118 Supreme Court case, the Board may consider a ground of appeal based upon bias and overrule a decision of council if it acted with improper bias. The Board learned at the hearing that two councillors, Joyce Petten and Arthur Petten, own land adjacent to the appellant and voted against the appellant’s proposed development for reasons unknown. The Board found that this created an apprehension of bias against the appellant’s proposed development. Additionally, the lack of interest demonstrated by Councillor Joyce Petten and Councillor Joyce Petten to reconvene after the March 4, 2015 Council Meeting to discuss reasons for refusal further support the perception of bias. Therefore, the Board determined that Councillor Joyce Petten and Councillor Arthur Petten should abstain from voting

on the appellant's subject application due to the apprehension of bias. The Appellant also argued that Councillor David McLean was in conflict of interest at the March 4, 2015 since he is apparently good friends with Councillor Joyce Petten and Councillor Arthur Petten. Again, the Board considered this argument related to bias, not conflict of interest. The Board determined that the Petten's supposed friendship with Councillor McLean did not suggest a reasonable apprehension of bias on the part of Councillor McLean when he voted on the Appellant's application at the March 4, 2015 Regular Meeting of Council.

### **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 it was not evident the Town of South River had the authority to refuse Mr. Eddie Doody's application since reasons for refusal were not provided. That is to say, the Town of South River must reconsider Mr. Doody's application and make a decision in accordance with the Town's Municipal Plan and Development Regulations. If the Town refuses Mr. Doody's application again, the Board directs the Town to comply with section 21 of the Town's Development Regulations when communicating its decision to Mr. Doody by including reasons for the refusal.


**Order**

Based on the information presented, the Board orders that the decision made by the Town of South River on March 4, 2015 to refuse Mr. Eddie Doody's application to develop a single dwelling near Old Cart Road, be vacated.

The Board further orders that the Town of South River pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

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

**DATED** at St. John's, Newfoundland and Labrador, this 30<sup>th</sup> day of September, 2015.

  
Michelle Downey, Acting Chair  
Eastern Newfoundland Regional Appeal Board

  
Harold Porter, Member  
Eastern Newfoundland Regional Appeal Board

  
Mary Thorne-Gosse, Member  
Eastern Newfoundland Regional Appeal Board

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