

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Trak Developers Inc. **Appellant**

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

RESPECTING Conditions of Approval in Principle

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

DATE OF HEARING October 1, 2015

IN ATTENDANCE

Robert Stapleton – Appellant
Ashley MacKinnon – Authority
Les Spurrell – Authority
Karen Dawe – Interested Party
Doug Neary – Interested Party
Dick Whitaker – Interested Party
William Montevecchi – 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 Portugal Cove – St. Philip’s issuing an Approval in Principle, subject to conditions, to Trak Developers Inc. for a 26 lot serviced subdivision at 12-16B Mercer’s Road. Town approved the application at the December 16, 2014 Regular Meeting of Council as per the Appendix A: Tabled Report. The application was approved in principle under the Town of Portugal Cove – St. Philip’s Municipal Plan and Development Regulations, 2014-2024 (hereinafter referred to as the 2014 Town Plan). The 2014 Town Plan came into legal effect on October 17, 2014 when a notice of the Plan was published in the Newfoundland and Labrador Gazette. The Town notified the applicant of Council’s decision in a letter dated January 5, 2015. The Town issued an additional letter to Trak Developers Inc. on January 7, 2015 to correct an error contained in the January 5, 2015 letter. The letter noted Council’s decision and right and process to appeal.

Trak Developers Inc. filed an appeal with the Eastern Newfoundland Regional Appeal Board in and around January 22, 2015. According to the information submitted to the Board, the appeal may have been filed outside the fourteen (14) day submission requirement under section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*. The Board must determine if it has the jurisdiction to consider the appeal and hear arguments from the appellant and the Town on that matter.

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 on September 23, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister’s Development Regulations, N.L.R 3/01

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

Town of Portugal Cove – St. Philip’s Municipal Plan and Development Regulations, 2004

Matters presented to and considered by the Board

Was the appeal filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*?

The Board explored the question of jurisdiction in relation to section 42(4) of the *Urban and Rural Planning Act, 2000* as it was unclear the exact time the appeal was registered. Section 42(4) states, “[a]n appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.” The appellant provided a copy of the courier receipt dated January 21, 2015. Since the appellant received notification of Council’s decision on January 7, 2015, the Board determined the appeal was filed within the required time frame and decided to proceed with the hearing.

Should the Town have considered the subject application under the 2004 Town Plan?

The Board acknowledges that the 2014 Town Plan came into legal effect on October 17, 2014 when a notice was published in the Newfoundland and Labrador Gazette. The Board accepts that the development application was submitted to the Town of Portugal Cove-St. Philip’s on January 15, 2014 for the development of a 26-lot serviced residential subdivision at 12-16B Mercer’s Road, under the Town of Portugal Cove – St. Philip’s Municipal Plan, 2004-2014 (hereinafter referred to as the “2004 Town Plan”). The appellant maintained that the process began under the 2004 Town Plan and should therefore be reviewed under the 2004 Town Plan. While the appellant conceded to being aware of a new Town Plan coming into effect at some point in the future, the appellant indicated that at no time did the Town suggest to the appellant that the subject application would be considered under the 2014 Town Plan.

The Town’s position was that it had a legal obligation under section 12 and 24(3) of the *Urban and Rural Planning Act, 2000* to administer the 2014 Town Plan to all development applications once the 2014 Town Plan came into legal effect on October 17, 2014. Section 12, Application of plan, states:

A plan and development regulations are binding upon

(a) municipalities and councils within the planning area governed by that plan or those regulations; and

(b) a person undertaking a development in the area governed by that plan or those regulations.

Section 24(3) states:

The date upon which a notice in the Gazette is published under subsection (2) shall be considered to be the date of coming into force of the registered plan and development regulations that are the subject of that notice.

The Board considered the amount of money and time the appellant spend on the subject development as well as the continuous collaboration with the Town to ensure the project proceeded in a positive direction. Therefore, the Board concluded that it would be reasonable for the Town to review the subject application under the 2004 Town Plan as it was the Plan in legal effect when Trak Developers Inc. initiated the development application process with the Town of Portugal Cove – St. Philip’s.

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 accepts that the Town of Portugal Cove – St. Philip’s has the authority to approve development applications in principle, subject to conditions in accordance with the Town’s Municipal Plan and Development Regulations. However, the Board found that the Town of Portugal Cove – St. Philip’s should have reviewed the application submitted by Trak Developers Inc. under the 2004 Town Plan as it was the Municipal Plan in legal effect at the time the development application process was initiated.

In accordance with section 42(10) of the *Urban and Rural Planning Act, 2000* the Board vacates the Town’s decision regarding the subject application submitted by Trak Developers Inc. on January 15, 2014 and directs the Town of Portugal Cove-St. Philip’s to reconsider the application under the 2004 Town Plan.

Order

Based on the information presented, the Board orders that the decision made by the Town of Portugal Cove – St. Philip’s on December 16, 2014 to approve in principle, subject to conditions, an application to develop a 26-lot serviced subdivision at 12-16B Mercer’s Road submitted by Trak Developers Inc., be vacated.

The Board further orders that the Town of Portugal Cove – St. Philip’s pay an amount of money equal to the appeal filing fee of \$113.00 paid by the appellant to the appellant.

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 1st day of October, 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