

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Heber Hobbs **Appellants**

AND Town of Stephenville Crossing **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Walter Sheppard
Joseph Guinchard

DATE OF HEARING October 28, 2015

IN ATTENDANCE

Kelly Stacey – Representative for Appellant

Heber Hobbs – Appellant

Yvonne Young – Authority

Scott Reid – Concerned Citizen

Lindsay Church - Technical Advisor to the West Newfoundland Regional Appeal Board

Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Stephenville Crossing refusing to issue a permit to Mr. Heber Hobbs for residential development on Farm Road, Black Duck Siding. The Town Council discussed Mr. Hobbs' application at a Meeting of Council and issued a decision letter to Mr. Hobbs dated May 25, 2015. The letter indicated that Council refused his application since residential development is not permitted within the Designated Floodway zone. The letter stated Mr. Hobbs' right to appeal Council's decision.

Mr. Hobbs initiated the appeals process with the West Newfoundland Regional Appeal Board against the Town's decision to refuse his application on June 5, 2015. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the "URPA"), the appeal was filed within the fourteen (14) day requirement. Additionally, the appellant included the required information as per section 42(5) of the *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Western Star* on October 13, 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 October 5, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Stephenville Crossing Municipal Plan and Development Regulations, 2010

Matters presented to and considered by the Board

How is Mr. Hobb's property zoned?

The Board reviewed the Town of Stephenville Crossing Municipal Plan and Development Regulations and found that Mr. Hobb's property is located within the Designated Floodway (DF) zone. This was confirmed by the Authority and the Appellant's representative at the hearing.

Is residential development allowed within the Designated Floodway zone?

According to the Designated Floodway Use Zone Table in the Town’s Development Regulations, residential development is not listed as a permitted or discretionary use. The Board referred to section 97 of the Town’s Development Regulations which states that when a use is not listed as permitted or discretionary, then it is considered prohibited in that zone. Section 97 specifically states:

97. Uses Not Permitted – prohibited Uses

Uses that do not fall within the Permitted Use Classes or Discretionary Use Classes set out in the appropriate Use Zone Tables in Schedule C, shall not be permitted in the Use Zone and are deemed to be prohibited uses.

During the hearing, the Appellant’s representative acknowledged this fact and indicated that Mr Hobbs was unaware of this regulation when he sold parcels of land in the past.

Did the Town of Stephenville Crossing have the authority to refuse Mr. Hobbs’ application?

Yes. The Board accepts that Mr. Hobbs’ application site is located within the Designated Floodway zone and residential development is not permitted. According to section 7 of the Town’s Development Regulations, all development must comply with the Town’s Development Regulations. Therefore, the Board found that the Town had the authority to refuse Mr. Hobbs’ application as it was non-compliance with the Designated Floodway zone. Section 7 states:

7. Compliance With Regulations

No development shall be carried out within the Planning Area except in accordance with these Regulations.

Did Council follow proper procedure when it refused Mr. Hobbs’ application?

The Board accepts that Council notified Mr. Hobbs of its decision, in writing, and provided reasons for refusal as required under section 22 of the Town’s Development Regulations. Furthermore, the Council notified Mr. Hobbs of his right and process to appeal in accordance with section 5 of the *Minister’s Development Regulations*.

Conclusion

In arriving at their 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.

Due to the fact the appellant's property is zoned Designated Floodway (DF) and residential development is prohibited in the DF zone, the Board determined that the Town of Stephenville Crossing had the authority, and exercised its authority appropriately, when it refused an application for residential development on Farm Road, Black Duck Siding.

ORDER

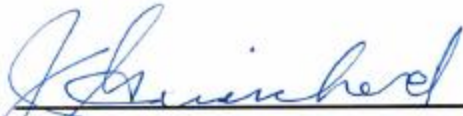
Based on its findings, the Board orders that the refusal issued by the Town of Stephenville Crossing on May 25, 2015 to Heber Hobbs regarding residential development on Farm Road, Black Duck Siding, be confirmed.

The Town of Stephenville Crossing is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

DATED at Stephenville, Newfoundland Labrador, this 28th day of October, 2015.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Joseph Guinchard, Member
West Newfoundland Regional Appeal Board



Walter Sheppard, Member
West Newfoundland Regional Appeal Board