

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT

APPEAL

BETWEEN Joanne and Thomas Rose **Appellants**

AND Town of Stephenville **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Joseph Guinchard – Member
Walter Sheppard – Member

DATE OF HEARING October 28, 2015

IN ATTENDANCE

Joanne Rose – Appellant
Jennifer Rose – Support for Appellant
Mike Campbell – Authority
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 refusing to issue a permit to Joanne and Thomas Rose for the purpose of constructing a single dwelling at 21 Hillier Avenue. On July 17, 2015, Mr. and Mrs. Rose applied to the Town of Stephenville for a permit to construct a dwelling at 21 Hillier Avenue. The Town considered and refused the subject application at the July 30, 2015 Regular Meeting of Council. The Town notified the appellants of its decision in a letter dated August 11, 2015. The letter indicated that the permit was denied in accordance with section 2.3.7 of the Town's Municipal Plan which states that all development within the Urban group must be connected to municipal water and sewer. The letter also noted the appellants' right and process to appeal Council's decision.

Joanne and Thomas Rose initiated the appeals process with the West Newfoundland Regional Appeal Board on August 21, 2015. In accordance with section 42(4) of the Urban and Rural Planning Act, 2000 (the "Act"), the appeal was filed within the fourteen (14) day requirement. Additionally, the appellants included the required information as per section 42(5) of the Act.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Western Star* on September 21, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority 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 Municipal Plan and Development Regulations, 2000

Matters presented to and considered by the Board

Where is the property located?

The Board reviewed the Town of Stephenville Municipal Plan and Development Regulations, 2000 and confirmed that the property located at 21 Hillier Avenue is designated Residential and zoned Comprehensive Development Area – Residential (CDA-R). The site is also located within

an Urban Group, as per section 2.3.2.2 of the Town's Municipal Plan, which states:

The land use designations or districts are set out below:

- a) Urban and Rural Groups - all designations fall into one or both of these groups;*
- b) Residential, which includes various commercial and public uses along with recreational open space and conservation - Urban Group;*
- c) Community Services, includes Commercial, Institutional, and certain types of recreational facilities - Urban Group;*
- d) Major Industrial (Port, the Paper Mill, Industrial subdivisions, and Airport) - Urban Group;*
- e) Conservation - Urban and Rural Groups;*
- f) Rural - Rural Group;*
- g) Well Head Protection Area and Protected Water Supply - Rural Group, and part, Urban Group (south of Hansen Highway).*

Are single dwellings permitted within the CDA-R zone?

Yes. The Board acknowledges that the Town amended its Development Regulations in 2005 (Development Regulations Amendment 4, 2005) to allow single dwellings in the CDA-R zone subject to condition 2. Condition 2 states:

One single dwelling in addition to what is present can be allowed without recourse to the adoption of a comprehensive plan, provided that the dwelling fronts on a public road, meets the standards for the Residential Rural Zone, and provided that Council is satisfied that the dwelling will not impede the future development of the area.

Does the site require municipal services?

The Board accepts that the site is located within a Residential designation as depicted on the Town of Stephenville Future Land Use map. Section 2.3.2 of the Town's Municipal Plan states that all residential designations are included in the Urban Group. Furthermore, the Board acknowledges that all development within the Urban Group must be connected to municipal water and sewer services except in the Cold Brook and Noel's Pond areas in accordance with section 2.3.7 of the Town's Municipal Plan. The appellant conceded at the hearing that 21 Hillier Avenue is neither located in Cold Brook nor Noel's Pond. Therefore, the Board found that 21 Hillier Avenue must be connected to municipal water and sewer services in order to comply with section 2.3.7 of the Town's Municipal Plan. Section 2.3.7 states:

2.3.7 Municipal Services

Except for the Cold Brook and Noel's Pond communities, all development within the Urban Area shall be connected to municipal sewer and water services.

According to condition 2 of Development Regulations Amendment 4, 2005, single dwellings must comply with the standards of the Residential Rural zone. The Board reviewed the standards for the Residential Rural zone, in particular condition 20 which states that “unserved development shall be subject to the approval of [the] Government Service Centre.” The Board confirmed with the Authority at the hearing that municipal plan policies override regulations in the event regulations contradict plan policies. The Board reviewed the *Urban and Rural Planning Act, 2000* and found that section 35(1) requires development regulations be made only in accordance with the appropriate plan. Section 35(1) states: “A council or regional authority shall, to ensure that land is controlled and used only in accordance with the appropriate plan or scheme, make development regulations [...]” While the standards of the Residential Rural zone suggest unserved development may proceed, this contradicts section 2.3.7 of the Town’s Municipal Plan. Therefore, the Board determined that the subject site must be connected to municipal services in order to comply with the Town’s Municipal Plan policy 2.3.7.

Did the Town have the authority to refuse the subject application?

The Board determined that the appellants’ development proposal does not conform to section 2.3.7 of the Town’s Municipal Plan as the appellants’ requested permission to have on-site water and sewer. Therefore, the Board found that the Town had the authority to refuse the subject application.

Did the Town follow proper procedure when it refused the subject application?

Yes. The Board found that the Town of Stephenville notified the appellants of Council’s decision in accordance with section 21, Reasons for Refusing Permit, and section 5 of the Minister’s Development Regulations, NLR 3/01. Section 5 states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) person’s right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*

(d) manner of making an appeal and the address for the filing of the appeal.

Was there evidence of municipal discrimination?

The Board heard arguments from the appellant that the Town used its statutory powers in an unequal or discriminatory manner. The appellant indicated that the Town has favoured other citizens since the Town granted development approvals within the CDA-R zone. The Board accepts that the Town made its decision to refuse the appellants' application in accordance with the Town's Municipal Plan policies.

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by Section 42 of the *Urban and Rural Planning Act* 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 Stephenville had the authority, and exercised it appropriately, when it refused to issue a permit to Joanne and Thomas Rose for the purpose of constructing a single dwelling at 21 Hillier Avenue.

ORDER

Based on the information presented, the Board orders that the decision made by the Town of Stephenville on July 30, 2015 to refuse the application submitted by Joanne and Thomas Rose for the purpose of constructing a single dwelling at 21 Hillier Avenue, be confirmed.

The Town of St. Stephenville 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 Guinchar, Member
West Newfoundland Regional Appeal Board



Walter Sheppard, Member
West Newfoundland Regional Appeal Board