

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Wayne Young **Appellants**

AND Town of Kippens **Respondent**

RESPECTING Refusal

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

DATE OF HEARING October 28, 2015

IN ATTENDANCE

Daniel Bennett – Solicitor for Appellant
Robert Regular – Solicitor for Appellant
Wayne Young – Appellant
Ross Ryan – Solicitor for Authority
Mark Mills – 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 Kippens refusing to issue a permit to Mr. Wayne Young for the purpose of constructing a residential subdivision on McCarthy's Lane. Mr. Young submitted his initial application on October 5, 2013. After much consideration and consultation with residents, an independent engineering company, and other government officials, the Town Council considered and refused Mr. Young's application at the June 11, 2015 Regular Meeting of Council. The Town notified Mr. Young by email on June 11, 2015 of Council's decision and also in a letter dated June 16, 2015. The letter noted Mr. Young's right and process to appeal Council's decision.

Mr. Young initiated the appeals process with the West Newfoundland Regional Appeal Board against Council's refusal to issue him a permit for the aforementioned development on June 19, 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 7, 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 Kippens Municipal Plan and Development Regulations, 2011

Matters presented to and considered by the Board

Did the Town provide adequate reasons for refusing Mr. Young's application?

According to section 23 of the Town's Development Regulations, when a Town refuses an application, it must provide reasons for that refusal in writing. The Board reviewed the initial correspondence from the Town to Mr. Young dated June 11, 2015 in the form of an email as well

as the decision letter dated June 16, 2015. The Board concluded that the reasons for refusal listed in the email were not consistent with the reasons provided in the letter. The Board learned from the Town during the hearing that the email was a courtesy as the Town Manager wanted to notify the appellant of Council's decision prior to going away. However, the discrepancy between the email and the letter created some confusion as to why the Town refused Mr. Young's application. This was evident at the hearing as much of the discussion intended to clarify why the Town refused the appellant's application. Therefore, the Board found that the Town did not provide adequate reasons for the refusal in accordance with section 23 of the Town's Development Regulations.

Did the Town have the authority to refuse the Mr. Young's application?

According to the Town, Council relied on section 10 of the Town's Development Regulations to refuse Mr. Young's application. Section 10 states:

Permit not to be Issued in Certain Cases

Neither a permit nor approval in principle shall be issued for development within the Planning Area when, in the opinion of the Town, it is premature by reason of the site lacking adequate road access, power, drainage, sanitary facilities, or domestic water supply, or being beyond the natural development of the area at the time of application unless the applicant contracts to pay the full cost of construction of the services deemed necessary by the Town and such cost shall attach to and upon the property in respect of which it is imposed.

The Board accepts that section 10 provides the Town with the discretionary authority to determine whether a site meets the necessary requirements for development.

The Board heard from the Town that it considered McCarthy's Lane to be substandard in terms of width in certain sections. Additionally, the Town indicated that the intersection of McCarthy's Lane and Route 460 was deemed unsafe due to the blind hills that exist on both McCarthy's Lane and Route 460 as well as information provided by the Department of Transportation and Works. Through the use of Google Earth Street View, the Board explored the areas identified by the Town to have blind hills and the narrow portion of McCarthy's Lane. The Town, however, did not produce any written correspondence from the Department of Transportation and Works regarding the safety concerns of the intersection as the information was obtained verbally.

Despite the Town not providing adequate reasons for its refusal in the decision letter dated June

16, 2015, based upon the information presented at the hearing, the Board is satisfied that the Town had the authority to refuse Mr. Young's application in accordance with section 10 of the Town's Development Regulations.

Did the Town act fairly when it reviewed Mr. Young's application?

The Board heard arguments pertaining to the duty of fairness. The Appellant's solicitors argued that the Town breached its duty of fairness as other similar subdivision applications were approved by the Town in the past. Several examples of similar subdivisions were provided to the Board during the hearing. The Authority's solicitor maintained that the Town provided the Appellant the same procedural fairness it affords all applicants.

The Board found that the Town is required to consider a development application in accordance with the particular set of standards and regulations that are applicable as set out in the Town's Municipal Plan and Development Regulations. The Board is satisfied that the Town reviewed the application in accordance with Part IV, Subdivision of Land, of the Town's Development Regulation. The Board referred to section 78, which outlines matters the Town shall consider when reviewing an application for a subdivision, and found that the concerns presented at the hearing with Mr. Young's proposed development were well within the confines of section 78. In particular, the Board found that section 78(e) requires Council to consider "the transportation network and traffic densities affecting the site". Therefore, the Board found that the Town acted fairly when it reviewed Mr. Young's application and the effect it may have on traffic. Section 78 states:

Issue of Permit Subject to Considerations

A permit shall not be issued when, in the opinion of the Town, the development of a subdivision does not contribute to the orderly growth of the municipality and does not demonstrate sound design principles. In considering an application, the Town shall, without limiting the generality of the foregoing, consider:

- a) the location of the land;*
- b) the availability of and the demand created for schools, services, and utilities;*
- c) the provisions of the Plan and Regulations affecting the site;*
- d) the land use, physical form and character of adjacent developments;*
- e) the transportation network and traffic densities affecting the site;*
- f) the relationship of the project to existing or potential sources of nuisance;*
- g) soil and subsoil characteristics;*
- h) the topography of the site and its drainage;*

- i) natural features such as lakes, streams, topsoil, trees and shrubs;*
- j) prevailing winds;*
- k) visual quality;*
- l) community facilities;*
- m) energy conservation;*
- n) such other matters as may affect the proposed development.*

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 Kippens had the authority to refuse the subject application but found that the Town erred by not clearly providing reasons for the refusal to the appellant as required under section 23 of the Town's Development Regulations. Therefore, the Board vacates the Town's decision to refuse the application for a residential subdivision on McCarthy's Lane made at the June 11, 2015 Regular Meeting of Council. That is to say, taking into consideration the contents of this Decision of the West Newfoundland Regional Appeal Board, the Town must reconsider the application at a Regular Meeting of Council, render a decision on the application, and then issue a new decision letter to Mr. Young. If the Town decides to refuse the application again, then the decision letter issued to Mr. Young must clearly articulate the reasons for Council's refusal in accordance with section 23 of the Town's Development Regulations and note the right and process to appeal Council's decision in accordance with section 5 of the *Minister's Development Regulations*.

ORDER

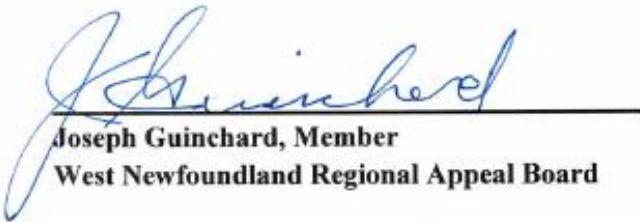
Based on the information presented, the Board orders that the decision made by the Town of Kippens on June 11, 2015 to refuse the application submitted by Mr. Wayne Young for the purpose of a residential subdivision on McCarthy's Lane, be vacated.

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

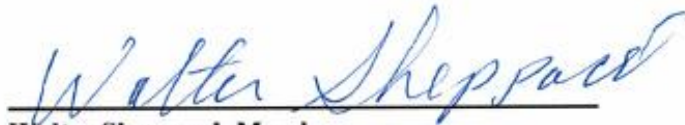
DATED at Stephenville, Newfoundland and Labrador, this 13th day of November, 2015.



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