

**WEST NEWFOUNDLAND REGIONAL APPEAL BOARD**  
**URBAN AND RURAL PLANNING ACT**

**APPEAL**

**BETWEEN**                      Julie Gould and Patrick White                      **Appellants**

**AND**                                Service NL    **Respondent**

**RESPECTING**                      Refusal

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

**DATE OF HEARING**              October 30, 2015

**IN ATTENDANCE**

Ken Dean – Authority  
Kimberly Halfyard – Authority  
Reg Finn – Interested Party / Representative for Appellant  
Julie Gould – Appellant  
W. F. Kennedy – Interested Party  
Brian Hudson – Town of Pasadena  
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 Service NL refusing Mr. Patrick White's application for a single dwelling at 84 Tipping Drive. Mr. White submitted a Preliminary Application to Develop Land on April 21, 2015 to Service NL. Service NL referred Mr. White's application to other government agencies for comment. As a result of this referral process, Service NL refused the subject application because the land is located within a Rural Conservation (RC) Zone, which does not permit residential dwellings except in accordance with rural uses, such as agriculture. Service NL notified Mr. White that his application was refused in a letter dated July 31, 2015 and noted his right and process to appeal.

On August 19, 2015, in accordance with section 42(4) of the Urban and Rural Planning Act, 2000, Julie Gould and Patrick White filed an appeal with the West Newfoundland Regional Appeal Board against the decision of Service NL. 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 the Urban and Rural Planning Act, 2000.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Western Star* on October 15, 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

Protected Road Zoning Regulations (CNLR 996/96)

Town of Pasadena Municipal Plan and Development Regulations, 2008

Minister's Development Regulations, NLR 3/01

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

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

The Board learned that 84 Tipping Drive is located within the Town of Pasadena and the 100 metre building control line along the Trans Canada Highway (TCH). According to the Town of Pasadena Municipal Plan and Development Regulations, the Board acknowledges that the site is located within a Commercial designation and Commercial Tourism zone. The Board reviewed the Protected Road Zoning Plan for the Trans Canada Highway – Corner Brook to Baie Verte Junction. According to the Protected Road Zoning Plan, 84 Tipping Drive is also zoned Rural Conservation.

The appellant and the interested third parties noted their confusion over why the subject property is zoned for rural conservation and commercial tourism purposes. These parties indicated that the site is inherently residential and not suitable for the uses allowed by the current zoning. While the Board sympathizes with these arguments, the Board does not have the authority to alter the existing zoning. The Town stated at the hearing that an amendment to the Town's Development Regulations could allow for residential development and suggested the appellant visit the Town for further discussions.

### **Which zoning applies to the appellants' property?**

The Board considered the information presented to the Board from the Technical Advisor, Service NL as well as the Town of Pasadena and determined that the proposed land use must comply with the zoning as prescribed by the Town of Pasadena. This is outlined in section 10 of the Protected Road Zoning Regulations which explains that when a protected road runs through a Town with a municipal plan in legal effect, land use must comply with the Town's zoning rather than the zoning of the Protected Road Zoning Plan. Therefore, the Board determined that land use at the subject site must comply with the Commercial Tourism zoning as outlined in the Town of Pasadena Development Regulations.

### **Did Service NL follow proper procedure when it refused the appellant's application?**

Service NL indicated at the hearing that it requested input from other government agencies prior to making its decision as required under section 13(1) of the Protected Road Zoning Regulations. Service NL consulted with the following government agencies: Department of Transportation

and Works; Service NL, Environmental Protection Officer and Environmental Health Officer; Department of Environment and Conservation, Water Resources; Department of Municipal and Intergovernmental Affairs, Land Use Planning; and the Town of Pasadena. Service NL stated at the hearing that the decision to refuse the appellants' application was derived from the recommendation received from the Department of Municipal and Intergovernmental Affairs. The Board reviewed the latter recommendation which stated: "Area zoned Rural Conservation as per the Protected Road Regulations. Residential uses are not permitted. Application refused." The Town's representative noted during the hearing that the Town's recommendation to Service NL erred as it recommended approval since the site was believed to be located in another zone that allowed residential development. Furthermore, it was acknowledged during the hearing that the Department of Municipal and Intergovernmental Affairs also erred in its recommendation to Service NL when it based its recommendation on the zoning of the Protected Road Highway Plan rather than the Town's zoning. Despite the errors in recommendations made to Service NL, the Board accepts that Service NL followed the prescribed procedure in reviewing the application as outlined in section 13(1) of the Protected Road Zoning Regulations.

**Did Service NL have the authority to refuse the appellants' application?**

The Board referred to the Town of Pasadena Development Regulations to determine whether single dwellings are allowed within the Commercial Tourism (CT) zone. According to the CT Use Zone Table in the Town's Development Regulations, single dwellings are neither listed as permitted nor discretionary and therefore are considered prohibited in the CT zone. Therefore, the Board acknowledges that Service NL had the authority to refuse the appellants' application as single dwellings are not allowed within the CT zone.

**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, 2000* and therefore must make a decision that complies with the applicable legislation, policy and regulations.

Based on its findings, the Board determined that Service NL had the authority to refuse the subject application. The Board acknowledges the following: Service NL did its due diligence in reviewing the application in accordance with section 13(1) of the Protected Road Zoning Regulations; understands why Service NL refused the application based on information presented during the hearing; and believes Service NL acted in good faith when deciding to refuse the application. However, the Board found that Service NL erred by not stating the correct reasons for refusal. Therefore, in accordance with section 42(10) of the *Urban and Rural Planning Act, 2000* the Board varies the decision issued by Service NL on July 31, 2015 whereby replacing the reason for refusal stated in the July 31, 2015 letter referred to as (a) with the following:

*This particular site (84 Tipping Drive) is located within the Commercial Tourism zone of the Town of Pasadena. Single dwellings are prohibited in the Commercial Tourism zone.*

That is to say, Service NL must issue another decision letter to Mr. Patrick White as varied by the West Newfoundland Regional Appeal Board and note the right and process to appeal in accordance with section 5 of the *Minister's Development Regulations, 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.*

**ORDER**

Based on the information presented, the Board orders that the decision made by Service NL on July 31, 2015 to refuse the application submitted by Julie Gould and Patrick White for a single dwelling at 84 Tipping Drive within the Town of Pasadena, be varied.

Service NL is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

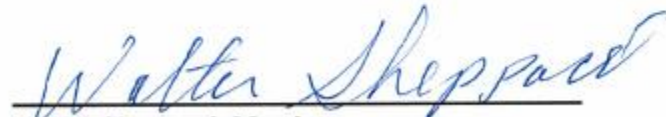
**DATED** at Deer Lake, Newfoundland Labrador, this 30<sup>th</sup> day of October, 2015.



**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**