

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Edward Neary **Appellants**
Douglas Neary

AND Town of Portugal Cove-St. Philip's **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Bruce Strong

DATE OF HEARING November 27, 2015

IN ATTENDANCE

Les Spurrell – Authority

Ashley MacKinnon - Authority

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 rejecting an application for a serviced subdivision at 137 Beachy Cove Road. On April 18, 2012, Mr. Edward Neary submitted a Building and Development Application to the Town of Portugal Cove – St. Philip's for the subject development. The Planning and Development Committee reviewed the application at its May 26, 2015 meeting. The Planning and Development Committee tabled a report recommending Council reject the subject application. At the Regular Meeting of Council held on June 2, 2015, Council accepted the recommendation from the Planning and Development Committee to reject Mr. Neary's application. Mr. Neary was notified of Council's decision in a letter dated June 3, 2015. The letter included twenty (20) reasons for the refusal and noted Mr. Neary's right and process to appeal Council's decision.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, Edward and Doug Neary filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse the April 18, 2012 application. As required under section 42(5) of the *Urban and Rural Planning Act, 2000*, 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.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on September 16, 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 21, 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 Portugal Cove-St. Philip's Municipal Plan and Development Regulations, 2014

Matters presented to and considered by the Board

The Secretary to the Board informed the Eastern Newfoundland Regional Appeal Board at the hearing that Mr. Doug Neary would not be present at the hearing and requested the Board proceed with his appeal in his absence. The Board accepted Mr. Neary's request and proceeded.

Did the Town appropriately assess Mr. Neary’s application under the 2014 Municipal Plan and Development Regulations?

The Board understands that Mr. Neary submitted his application in 2012, under the authority of the 2000 Municipal Plan and Development Regulations. However, Council’s decision to reject Mr. Neary’s application was made pursuant to the 2014 Municipal Plan and Development Regulations as that Plan was the governing document according section 12 of the *Urban and Rural Planning Act, 2000*.

The Board reviewed the submissions from the authority and the appellants and found that there was continuous communications between both parties. The Board accepts that there was compelling documentation illustrating the appellants’ and authority’s willingness to precede with the 2012 application before and after the 2014 Plan and Regulations came into legal effect. The Board found that the Town proceeded in response to the appellants’ wishes as outlined in correspondence. In fact, the Board determined that Council considered Mr. Neary’s application at a Regular Meeting of Council only after instructed to do so by Edward and Doug Neary in a letter dated April 23, 2015. That is to say, there is no indication that the Town delayed the processing of the 2012 application in order to make a decision under the 2014 Plan and Regulations, rather than the 2000 Plan and Regulations.

The Board learned at the hearing that some of the reasons for refusal included in the decision letter dated June 3, 2015 would also be included if the decision was based on the 2000 Plan and Regulations. Therefore, the application could not have been approved either under the 2000 Plan and Regulations or the 2014 Plan and Regulations.

Therefore, the Board found that the Town appropriately assessed Mr. Neary’s application dated April 18, 2012 in accordance with the 2014 Municipal Plan and Development Regulations.

Did the Town have the authority to refuse Mr. Neary’s application?

The Board reviewed section 6 of the 2014 Town’s Development Regulations, which states, “No development shall be carried out within the Planning Area except in accordance with the Portugal Cove-St. Philip’s Municipal Plan (2014-2024) and these Regulations.” Since Mr. Neary’s application does not comply with several plan policies and development regulations, the Board determined that the Town had the authority to refuse the subject application.

Did the Town of Portugal Cove-St. Philip’s follow proper procedure when it notified Mr. Neary?

The Board found that the Town notified Mr. Neary of its decision in writing and noted the reasons for refusing the subject application in accordance with section 23 of the 2014 Development Regulations. Additionally, the Board accepts that the Town notified Mr. Neary of his right and process to appeal Council’s decision as per section 24 of the 2014 Development Regulations.

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 determined that the Town of Portugal Cove – St. Philip’s acted in good faith when it considered Mr. Neary’s application pursuant to the 2014 Municipal Plan and Development Regulations. Therefore, the Board determined that the Town of Portugal Cove – St. Philip’s had the authority to refuse Mr. Neary’s application for a fully-serviced residential subdivision at 137 Beachy Cove Road in accordance with its 2014 Municipal Plan and Development Regulations and did so appropriately.

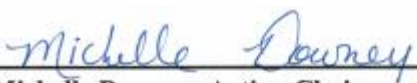
Order

Based on the information presented, the Board orders that the decision made by the Town of Portugal Cove – St. Philip’s on June 2, 2015 to refuse Ms. Edward Neary’s application to develop a fully-serviced subdivision at 137 Beachy Cove Road, be confirmed.

The Town of Portugal Cove – St. Philip’s and the appellants are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Board’s decision has been received by the appellants.

DATED at St. John’s, Newfoundland Labrador, this 27th day of November, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Bruce Strong, Member
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board