

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Craig Norman **Appellant**

AND City of Mount Pearl **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Bruce Strong

DATE OF HEARING December 14, 2015

IN ATTENDANCE

Julia Schwarz – Authority
Christopher Hardy - 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 City of Mount Pearl refusing to issue a permit to Mr. Craig Norman. On June 3, 2015, Mr. Norman applied to the City of Mount Pearl for a permit to reinstall a fence at 71 Holden Street. The City conducted site visits on June 9, 2015 and June 10, 2015. The Mount Pearl City Council considered and refused Mr. Norman's application at the June 16, 2015 Regular Meeting of Council. On July 5, 2015, the City notified Mr. Norman, by e-mail, of Council's decision. A letter dated July 20, 2015 was also issued to Mr. Norman.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, Craig Norman filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application for a fence. 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 November 22, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on November 18, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

City of Mount Pearl Act, RSNL 1990

City of Mount Pearl Fence and Retaining Wall Regulations, 2013

Matters presented to and considered by the Board

Does the Board have the jurisdiction to hear the appeal?

The Board reviewed section 42(1) of the *Urban and Rural Planning Act, 2000* which outlines what matters may be appealed to the Board. Section 42(1) states:

A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

(a) an application to undertake a development;

- (b) *a revocation of an approval or a permit to undertake a development;*
- (c) *the issuance of a stop work order; and*
- (d) *a decision permitted under this or another Act to be appealed to the board.*

The City of Mount Pearl refused to issue a permit to Mr. Norman under the City of Mount Pearl Fence and Retaining Wall Regulations, 2013. The Board accepts that the City had the authority to create Fence and Retaining Wall Regulations under section 202(a) of the *City of Mount Pearl Act*, RSNL 1990. The Board found that there are no provisions for the right to appeal in the City of Mount Pearl Fence and Retaining Wall Regulations, 2013 or in the *City of Mount Pearl Act*, RSNL 1990. The Board also reviewed the decision letter issued to Mr. Norman and confirmed that the City did not state that Mr. Norman had the right to appeal the City's decision. Therefore, the Board determined that the appeal matter is outside its jurisdiction.

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 appeal matter is not subject to appeal under section 42(1) of the *Urban and Rural Planning Act, 2000* and is therefore outside the Board's jurisdiction.


Order

Based on the information presented, the Board dismisses the appeal regarding the decision made by the City of Mount Pearl on June 16, 2015 to refuse Mr. Craig Norman a permit to construct a fence at 71 Holden Street.

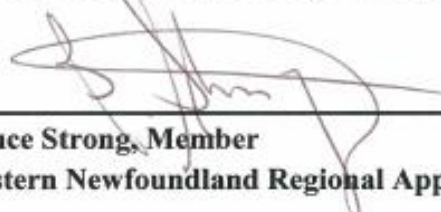
The City of Mount Pearl and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 appellant.

DATED at St. John's, Newfoundland and Labrador, this 14th day of December, 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