

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN**                      Kim Thorne Somerton                      **Appellant**

**AND**                              Town of Torbay                              **Respondent**

**RESPECTING**                      Refusal

**BOARD MEMBERS**                      Michelle Downey – Acting Chair  
Harold Porter  
Bruce Strong

**DATE OF HEARING**                      December 14, 2015

**IN ATTENDANCE**

Kim Thorne Somerton – Appellant  
Brian Wentzell – Appellant’s Solicitor  
Reg Garland – Authority’s Representative  
Brian Winter - 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 Torbay refusing to issue a permit to Mr. Kim Thorne Somerton. On June 23, 2015, Ms. Thorne-Somerton applied to the Town of Torbay for a permit to construct a single dwelling at 19-25 The Battery. The Town tabled Ms. Thorne Somerton's application at the July 6, 2015 Regular Meeting of Council. However, the Planning and Land Use Development Committee (PLUD) deferred the application for further review. The Town considered and rejected the application at the August 3, 2015 Regular Meeting of Council. The Town notified the appellant in a letter dated August 7, 2015. The letter stated why Council refused the application and noted the appellant's right and process to appeal.

In accordance with section 42 of the *Urban and Rural Planning Act, 2000* (the "Act"), Ms. Thorne Somerton filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse her application for a single dwelling. Ms. Thorne Somerton initiated the appeals process on August 20, 2015. As required under section 42(5) of the *Act*, the appellant included: 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

Town of Torbay Municipal Plan and Development Regulations, 2007

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

#### **How is the subject application site zoned?**

The Board confirmed that the appellant's property, located at 19-25 The Battery, is largely zoned Conservation and partially zoned Residential Large Lot. The Board learned from the Authority that the portion of land zoned Conservation is also designated as Restricted Development

pursuant to the St. John's Urban Region Regional Plan.

**Are single dwellings allowed within the Conservation zone?**

The Board reviewed the map submitted by the Town of Torbay at the hearing and determined that the site proposed for the single dwelling is zoned Conservation. According to the Conservation Use Zone Table in Schedule C of the Town's Development Regulations, single dwellings are neither listed as permitted nor discretionary. The Board confirmed that when a use is not included in a Use Zone Table, that use is considered prohibited as outlined in section 91 of the Town's Development Regulations. Section 91 states:

***Uses Not Permitted***

*Uses that do not fall within the Permitted Use Classes or Discretionary Use Classes set out in the appropriate Use Zone Tables in Schedule C, shall not be permitted in that Use Zone.*

**Did the Town have the authority to refuse Ms. Thorne Somerton's application?**

Yes. The Board reviewed section 6 of the Town of Torbay Development Regulations, which requires all development comply with the Town's Municipal Plan and Development Regulations. Since the proposed use of a single dwelling is not permitted within the Conservation zone, the Board found that the Town had the authority to refuse Ms. Thorne Somerton's application.

**Did the Town of Torbay notify the appellant of its decision appropriately?**

Yes. The Board found that the Town provided Ms. Thorne Somerton a written decision in the form of a letter dated August 7, 2015. In accordance with section 22, Reasons for Refusing Permit, of the Town's Development Regulations, the Board determined that Council provided clear and accurate reasons for its refusal in the August 7, 2015 letter. Additionally, the Board concluded that the appellant was notified of her right and process to appeal Council's decision as required under section 5 of the *Minister's Development Regulations*, NLR 3/01.

**Can the Board hear argument pertaining to the Town's zoning?**

The Board heard questions and arguments at the hearing from the Appellant's solicitor regarding the Conservation zone. The Board notes that in accordance with section 42(2) of the *Urban and Rural Planning Act, 2000*, amendments to a Town's Municipal Plan and Development

Regulations are not subject to appeal. The Board must review the Town's decision in accordance with the zoning that is currently in legal effect. The history of the property related to zoning is not within the Board's purview. Therefore, the Board suggested that a discussion regarding possible rezoning of the land take place after the hearing.

### **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 Torbay had the authority to reject Ms. Thorne Somerton's application and did so in accordance with the Town of Torbay Municipal Plan and Development Regulations, 2007.

**Order**

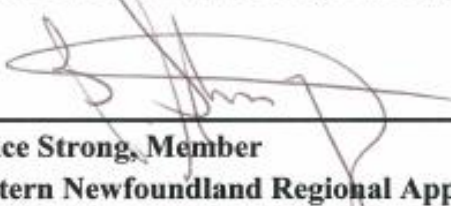
Based on the information presented, the Board orders that the decision made on August 3, 2015 to refuse Ms. Kim Thorne Somerton a permit to construct a single dwelling at 19-25 The Battery, be confirmed.

The Town of Torbay 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 14<sup>th</sup> day of December, 2015.

  
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**Michelle Downey, Acting Chair**  
**Eastern Newfoundland Regional Appeal Board**

  
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**Bruce Strong, Member**  
**Eastern Newfoundland Regional Appeal Board**

  
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**Harold Porter, Member**  
**Eastern Newfoundland Regional Appeal Board**