

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN James Brokenshire **Appellant**

AND Town of Logy Bay – Middle Cove – Outer Cove **Respondent**

RESPECTING Approval

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING February 3, 2016

IN ATTENDANCE

James Brokenshire – Appellant

Craig Dyer – Authority

Richard Roche – Authority

Reg Garland – Support for 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 Logy Bay – Middle Cove – Outer Cove issuing a permit to Mr. Don Roche for the purpose of constructing a single dwelling on Lot 3 at 57-59 Barnes Road. The subject property is partially located within the Agriculture and Urban Development designations according to the St. John's Urban Region Regional Plan (SJURRP). Because a portion of the proposed subdivision site is located within the Agriculture designation of the SJURRP, Mr. Roche required approval from the St. John's Urban Region Land Development Advisory Authority (LDAA). The LDAA refused Mr. Roche's subdivision application on October 27, 2014. Mr. Roche appealed that decision which was subsequently approved by the Minister of Forestry and Agrifoods Agency on August 10, 2015.

On August 11, 2015, The Town of Logy Bay – Middle Cove – Outer Cove received an application from Mr. Roche for permission to develop a single dwelling with an in-law apartment on Lot 3 at 57-59 Barnes Road. Council conditionally approved Mr. Roche's application at the August 17, 2015 Regular Meeting of Council. The Town notified Mr. Roche of the decision in a letter dated August 18, 2015. The letter listed thirteen (13) conditions attached to Mr. Roche's permit. The Town issued a subsequent Conditional Approval to Mr. Roche on September 18, 2015 for "the clearing of land, excavation and installation of footings" at 57-59 Barnes Road. A permit to develop was issued for the construction of a single family dwelling on October 21, 2015.

Mr. James Brokenshire, an interested party, filed an appeal with the Eastern Newfoundland Regional Appeal Board on November 13, 2015 in response to the October 21, 2015 Development Permit issued to Mr. Roche by the Town of Logy Bay – Middle Cove – Outer Cove. In accordance with section 42(5) of the Urban and Rural Planning Act, 2000, Mr. Brokenshire provided a summary of the decision being appealed, grounds for the appeal, and the appeal filing fee.

Section 42(4) of the *Urban and Rural Planning Act, 2000* requires an appeal be filed within fourteen (14) days of the applicant receiving the decision being appealed. However, since this is a third party appeal, the appeal period commences once the public is notified of the decision being appealed. Therefore, in order to determine if this appeal was filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, the Board must consider when the public was notified in order to determine when the fourteen (14) day appeal period begins.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on January 16, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on January 5, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board), 2012

NLTD(G) 59

Town of Logy Bay – Middle Cove – Outer Cove Municipal Plan and Development Regulations, 2005

Matters presented to and considered by the Board

When was the public notified of the October 21, 2015 Development Permit?

The Board confirmed at the hearing that the Council for the Town of Logy Bay - Middle Cove - Outer Cove made its decision to approve Mr. Don Roche's application at the August 17, 2015 Regular Meeting of Council. The Town stated at the hearing that Council adopted the August 17, 2015 minutes at the next Regular Meeting of Council which was held on September 8, 2015. The Town also indicated that Council's adopted meeting minutes are posted on the Town's website shortly after the minutes are adopted.

Was the appeal filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*?

The Board deferred to the *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board), 2012 NLTD(G) 59* Supreme Court Case ("*Gillespie Case*") for guidance on how to interpret section 42(4) of the *Urban and Rural Planning Act, 2000*. Section 42(4) states:

An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

According to the *Gillespie Case*, the time period for a third party appeal begins when the public is notified of the decision being appealed. In this case, the Board determined that the Town's decision was made at the August 17, 2015 Regular Meeting of Council. Those minutes were adopted on September 8, 2015. The Board accepts that the August 17, 2015 Council Meeting minutes were posted on the Town's website shortly after September 8, 2015. The Board found that when the August 17, 2015 Council Meeting minutes were posted on the Town's website, the public was appropriately notified of the Town's decision to approve Mr. Roche's application for a single dwelling with an in-law apartment on Lot 3 at 57-59 Barnes Road. Therefore, the fourteen (14) day appeal period began shortly after September 8, 2015.

Mr. Brokenshire didn't file his appeal until November 13, 2015, well outside the fourteen (14) day appeal period. Therefore, the Board deemed the appeal invalid as Mr. Brokenshire did not meet the appeal submission requirements under section 42(4) of the *Urban and Rural Planning Act, 2000*.

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 was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* and was, therefore, outside the Board's jurisdiction.

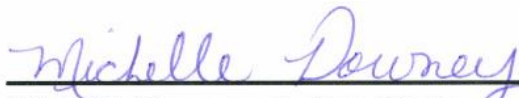
Order

Based on the information presented, the Board dismisses the appeal regarding the decision of the Town of Logy Bay – Middle Cove – Outer Cove made on August 17, 2015 concerning a single dwelling with an in-law apartment on Lot 3 at 57-59 Barnes Road.

The Town of Logy Bay – Middle Cove – Outer Cove 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 3rd day of February, 2016.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board