

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Murray's Pond Development Limited **Appellant**

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

**RESPECTING** Refusal

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

**DATE OF HEARING** February 3, 2016

**IN ATTENDANCE**

Les Spurrell – Authority

Ashley Mackinnon – Authority

Derrick Walsh – Appellant

Paul McDonald – Support for Appellant

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 refusing to issue a permit to Murray’s Pond Development Limited for a single dwelling at 1047-1049 Indian Meal Line. Mr. Derrick Walsh, on behalf of Murray’s Pond Development Limited, submitted a Building and Development Application to the Town of Portugal Cove – St. Philip’s (the “Town”) on September 24, 2015. Through consultation and communication with the Town, Murray’s Pond Development Limited submitted a revised application on October 16, 2015 for a single dwelling at 1047-1049 Indian Meal Line. The Town of Portugal Cove – St. Philip’s considered and refused the subject application at the November 3, 2015 Regular Meeting of Council. The Town notified Murray’s Pond Development Limited that Council refused the subject application in a letter dated November 5, 2015. The letter stated the reason for refusal and noted the right and process to appeal Council’s decision.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000 (URPA)*, on November 12, 2015, Mr. Derrick Walsh, on behalf of Murray’s Pond Development Limited, filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council’s above noted November 3, 2015 decision. Additionally, 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 *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on November 17, 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 January 22, 2016.

### **Legislation, Policies 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**

### **Does development have to comply with the Environmental Protection Overlay Map?**

Yes. The Board determined that Schedule E, Environmental Protection Overlay, forms part of the Town's Development Regulations which is binding on all persons. The binding nature of the Town's Municipal Plan and Development Regulations is outlined in section 12 of the *Urban and Rural Planning Act, 2000*, section 1.1.5 of the Town's Municipal Plan as well as section 6 of the Town's Development Regulations.

### **Can the Environmental Protection Overlay Map be amended?**

The Board reviewed Schedule E and found that when there is an uncertainty regarding the existence of an environmentally sensitive area, such as the presence of steep slopes, a process exists allowing the map be adjusted. The Board learned at the hearing that the Town notified the Appellant of this process in correspondence dated October 7, 2015.

### **Did the Appellant submit new mapping to the Town prior to the application being refused?**

No. The Board learned that the Appellant's engineering consultant reviewed the Town's Environmental Overlay Map and produced a new map that illustrated the area does not have steep slopes. The Appellant received the new map in January 2016, after the Town refused the Application. The Town noted at the hearing that any new information pertaining to mapping could be considered.

### **Did the Town have the authority to refuse the Appellant's application?**

Yes. The Board reviewed section 6 of the Town's Development Regulations which requires all development comply with the Town's Development Regulations. The Board is satisfied that the Town had the authority to refuse the Appellant's application since the application contravened Schedule E of the Town's Development Regulations.

**Did the Town notify the Appellant of Council's decision accordingly?**

Yes. The Board found that the Town provided the Appellant with a written decision in the form of a letter dated November 5, 2015. The Board determined that Council satisfied section 23, Reasons for Refusing Permit, when it issued the November 5, 2015 decision letter. Additionally, the Board concluded that the Appellant was notified of the right and process to appeal Council's decision as required under section 5 of the *Minister's Development Regulations*, NLR 3/01.

**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 had the authority to reject the application submitted by Murray's Pond Development Limited and did so in accordance with the Town of Portugal Cove – St. Philip's Municipal Plan and Development Regulations, 2014.

That is to say, that the decision made at the November 3, 2015 Regular Meeting of Council is confirmed. The Board derives its authority to confirm the decision being appealed from section 42(10) of the *Urban and Rural Planning Act, 2000*, which states:

*In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.*

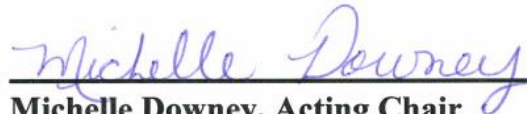
**Order**


Based on the information presented, the Board orders that the decision made by the Town of Portugal Cove – St. Philip’s on November 3, 2015 to reject a permit for a single dwelling at 1047-1049 Indian Meal Line, be confirmed.

The Town of Portugal Cove – St. Philip’s 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 3<sup>rd</sup> day of February, 2016.

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

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

  
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**Mary Thorne-Gosse, Member**  
**Eastern Newfoundland Regional Appeal Board**