

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Clarence Ghaney **Appellant**

AND Town of Conception Harbour **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey, Acting Chair
Bruce Strong
Harold Porter

DATE OF HEARING February 4, 2016

IN ATTENDANCE

Reg Garland – Authority’s Representative

Lillian Connors – Authority

Clarence Ghaney – Appellant

Randy Wellon – Solicitor 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

On October 13, 2013, Mr. Clarence Ghaney applied to the Town of Conception Harbour for a permit to construct an RV Park on Kelly's Road in Bacon Cove. At the November 12, 2013 Regular Meeting of Council, Mr. Ghaney's application was approved in principle subject to conditions.

At the September 7, 2014 Regular Meeting of Council, the Town resolved to rescind its earlier decision to approve in principle Mr. Ghaney's application to construct an RV Park. At the same meeting, the Town Council resolved to refuse Mr. Ghaney's application as per regulation 10, Discretionary Powers of Authority, of the Town's Development Regulations. That decision was appealed to the Eastern Newfoundland Regional Appeal Board and heard on December 9, 2014. The Board determined that the Town did not communicate its reasons for refusal in accordance with section 21 of the Town's Development Regulations and thus, ordered the Town's decision be vacated. The Town was directed to reconsider Mr. Ghaney's application.

This appeal arises from the Town of Conception Harbour refusing to issue a permit to Mr. Ghaney. At the Regular Meeting of Council held on January 20, 2015, Council reconsidered and refused Mr. Ghaney's application for a 50-lot RV Park located on Kelly's Road in Bacon Cove. Mr. Ghaney was notified of Council's decision in a letter dated January 28, 2015. That letter indicated that Council exercised its discretionary powers of authority by refusing his application under section 10(1) of the Town's Development Regulations for the reasons outlined in the refusal letter. Those reasons mirror the reasons outlined in the January 20, 2015 Council Meeting minutes.

In accordance with section 42 of the Urban and Rural Planning Act, 2000 (the "Act"), Clarence Ghaney filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application. Mr. Ghaney initiated the appeals process on February 11, 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 August 17, 2015, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on August 18, 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 Conception Harbour Municipal Plan and Development Regulations, 2014

Matters presented to and considered by the Board

Are RV Parks allowed within the Rural zone?

The Board reviewed Schedule "C" of the Town's Development Regulations which outlines what uses are permitted and discretionary within the Town's zones. The subject site is located within a Rural zone. The Board acknowledges that the Town considered Mr. Ghaney's application for an RV Park as a type of Recreational Open Space which is listed as permitted within the Rural zone.

Did the Town of Conception Harbour have the authority to refuse Mr. Ghaney's development application?

The Board found that all development located within the Town's Planning Area boundary must conform to the Town's Municipal Plan and Development Regulations as per section 6 of the Town's Development Regulations.

While the proposed use of an RV Park was considered by Council as a permitted use, the Town noted in its refusal that the subject property does not front onto a publicly maintained road. The Board confirmed that in accordance with section 48 of the Town's Development Regulations, all residential development must front a public road. The Town clarified during the hearing that a "public road" is considered to be owned and maintained by a public sector, such as the Town or Province. In this case, Kelly's Road is not maintained and is therefore not a public road.

The Town stated that it refused Mr. Ghaney's application pursuant to section 10(1) of the Town's Development Regulations, which allows Council to refuse an application despite its conformity to the Town's Municipal Plan or Development Regulations. While the Town considered the proposed use of an RV Park as permitted, the Board acknowledges the fact that Council exercised its discretionary authority to refuse Mr. Ghaney's application for the reasons stated in the January 20, 2015 Regular Meeting of Council as well as in the January 28, 2015 decision letter.

The Appellant's solicitor referred to a Supreme Court Case before The Honourable Justice Dunn that outlined the Board's authority to overturn a discretionary decision of Council. While the exact title of the Supreme Court Case was not specified, the Board assumed the solicitor was referring to the *Paradise (Town Council) v. Newfoundland and Labrador (Eastern Regional Appeal Board)*, 2010 NLTD(G) 116. The Board is familiar with this case and found that there was not sufficient evidence to overturn the Town's decision.

Therefore, due to the non-compliance with section 48 of the Town's Development Regulations and the other reasons for refusal (public opposition, the adverse land claim, and access requirements), the Board found that the Town had the authority to refuse Mr. Ghaney's application.

Did the Town follow proper procedure when it notified Mr. Ghaney's application?

The Board reviewed section 22 of the Town's Development Regulations which requires the Town to state the reason for refusing a permit. The Board reviewed the Town's refusal letter dated January 28, 2015 and determined that the Town satisfied section 22.

The refusal letter also outlined the Appellant's right and process to appeal Council's decision as per section 5 of the *Minister's Development Regulations, 2000*.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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 Conception Harbour had the authority to refuse Mr. Clarence Ghaney's application and did so in accordance with the Town's Municipal Plan and Development Regulations. Therefore, the Board confirms the Town's decision to refuse Mr. Ghaney's application to develop a 50-lot RV Park located on Kelly's Road in Bacon Cove.

Order

Based on the information presented, the Board orders that the decision made by the Town of Conception Harbour on January 20, 2015 to refuse Mr. Clarence Ghaney's application to develop a 50-lot RV Park located on Kelly's Road in Bacon Cove, be confirmed.

The Town of Conception Harbour 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 4th day of February, 2016.



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