

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Wayne Boggan **Appellant**

**AND** Town of Paradise **Respondent**

**RESPECTING** Refusal

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

**DATE OF HEARING** February 4, 2016

**IN ATTENDANCE**

Wayne Boggan – Appellant

Ann-Marie Cashin – Authority

Alton Glenn - 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**

In 2011, the Town of Paradise engaged Hatch Mott MacDonald to produce a Transportation Study. With respect to St. Thomas Line, the Executive Summary of the 2011 Paradise Transportation Study recommended that residential access should not be allowed as redevelopment occurs. In a Planning Committee Report dated May 2, 2012 (hereinafter referred to as the “2012 Planning Committee Report”), the Town reviewed the potential for infill development along St. Thomas Line after receiving four (4) development applications for St. Thomas Line in March 2012. In doing so, the Town consulted the 2011 Transportation Study and made a number of recommendations. Generally, the Town determined that St. Thomas Line could accommodate approximately 20 infill lots in designated areas. To aid decision making regarding future infill along St. Thomas Line, the Town created five (5) illustrations included in the 2012 Planning Committee Report. Illustration 4 encompasses the site of the appellant’s application where infill development is not recommended. The Town Council accepted the May 2, 2012 Planning Committee Report at the May 15, 2012 Regular Meeting of Council.

This appeal arises from the Town of Paradise refusing to issue a permit to Mr. Wayne Boggan for the purpose of developing seven (7) infill lots for single dwellings at 118-122 St. Thomas Line. The Town considered and refused Mr. Boggan’s application at the Regular Meeting of Council held on October 6, 2015. The Town issued a Notice of Refusal to Mr. Boggan on October 7, 2015.

Mr. Boggan indicated on the Appeal Summary Form that he received Council’s decision on October 15, 2015. Mr. Boggan filed an appeal with the Eastern Newfoundland Regional Appeal Board on October 27, 2015 against Council’s decision in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*. 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 27, 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 January 5, 2016.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Town of Paradise Municipal Plan and Development Regulations, 2004

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

#### **Are single dwellings allowed within the Residential Low Density zone?**

The Board reviewed Schedule "C" of the Town's Development Regulations which outlines what uses are permitted and discretionary within the Town's use zones. The subject site is located within a Residential Low Density (RLD) Use Zone and single dwellings are listed as permitted.

#### **Did the Town have the authority to refuse Mr. Boggan's application?**

The Town provided the Board with some background related to the Paradise Transportation Study that was completed in 2011 as well as the May 2, 2012 Planning and Committee Report on infill development along St. Thomas Line. The Board learned that the Town Council accepted the 2012 Planning and Committee Report recommendations at the May 15, 2012 Regular Meeting of Council and used that Report as a guideline when making development decisions regarding infill development along St. Thomas Line.

The Board accepts that in accordance with section 10(1) of the Town's Development Regulations, the Town has the discretionary authority to consider any material that it deems pertinent to a particular application despite the conformity of the application to the Town's Municipal Plan and Development Regulations. In this case, the Board acknowledges that the Town relied on the 2011 Transportation Study and 2012 Planning and Committee Report when it refused Mr. Boggan's application.

Therefore, the Board determined that the Town had the authority to refuse Mr. Boggan's application pursuant to section 10(1) of the Town's Development Regulations.

**Did the Town follow proper procedure when it refused Mr. Boggan's application?**

The Board reviewed section 24 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 October 7, 2015 and determined that the Town satisfied section 24 by including clear reasons for refusal. The refusal letter also indicated 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 Paradise had the authority to refuse Mr. Wayne Boggan'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. Boggan's application to develop seven (7) infill residential lots at 118-122 St. Thomas Line.

**Order**

Based on the information presented, the Board orders that the decision made by the Town of Paradise on October 6, 2015 to refuse Mr. Wayne Boggan's application to develop seven (7) infill lots for single dwellings at 118-122 St. Thomas Line, be confirmed.


The Town of Paradise 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 4<sup>th</sup> day of February, 2016.

  
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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**