

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Amy Dunn **Appellant**

AND Town of Witless Bay **Respondent**

RESPECTING Revocation

BOARD MEMBERS Michelle Downey, Acting Chair
 Bruce Strong
 Mary Thorne-Gosse

DATE OF HEARING February 5, 2016

IN ATTENDANCE

Geraldine Caul – Authority

Steve Penney – Solicitor for Authority

Kate O’Brien – Solicitor for Appellant

Amy Dunn – Appellant

Martina Aylward – 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

Background

In 2012, Ms. Amy Dunn applied to the Town of Witless Bay for a permit to develop a single dwelling on John C's Grove Road (also referred to as John Shea's Road, Cart Hill Road and Carey's Road). On November 13, 2012, the Town of Witless Bay refused Ms. Dunn's application. Ms. Dunn appealed that decision to the Eastern Newfoundland Regional Appeal Board on November 30, 2012. The Board heard the appeal on August 15, 2013 and vacated Council's decision.

Ms. Dunn submitted a new application to the Town of Witless Bay dated June 3, 2015 to develop a single dwelling on John C's Grove Road. The Town deferred consideration of Mr. Dunn's application at the June 9, 2015 Regular Meeting of Council. At the August 11, 2015 Regular Meeting of Council, the Town approved in principle Ms. Dunn's application without Town services to the existing road. Additionally, the Town used its discretionary authority to approve Ms. Dunn's application akin to the three (3) other development applications previously approved for John C's Grove Road.

Facts

This appeal arises from the Town of Witless Bay revoking the August 11, 2015 Approval in Principle that was issued to Ms. Dunn. At the Regular Meeting of Council held on September 8, 2015, Council rescinded its previous August 11, 2015 motion to Approve in Principle Ms. Dunn's application for a single dwelling on John C's Grove Road subject to conditions because the motion "contradicted itself." According to the Town's submission, it determined that the three (3) previously approved applications were approved subject to John C's Grove Road being upgraded. Ms. Dunn was notified of Council's September 8, 2015 decision in a letter dated September 15, 2015.

In accordance with section 42 of the *Urban and Rural Planning Act, 2000* (the "Act"), Ms. Dunn filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's

decision to revoke the August 11, 2015 approval. 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 *Act*, 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 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 Witless Bay Municipal Plan and Development Regulations, 2005

Matters presented to and considered by the Board

Are single dwellings allowed within the Residential Subdivision Area (RSA) 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 the RSA zone where single dwellings are neither listed as permitted nor discretionary. As outlined in section 91 of the Town's Development Regulations, if a use is not listed in a use zone table then it is considered prohibited in that zone. Therefore, the Board determined that single dwelling are prohibited in the RSA zone. This was acknowledged by both the Authority as well as the Appellant at the hearing.

While the Appellant noted at the hearing that the Town intends on rezoning the site to allow residential development, the Board maintains that until the site is rezoned accordingly, single dwellings are prohibited.

Did the Town have the authority to revoke the Approval in Principle?

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.

The Board reviewed section 20(1) of the Town's Development Regulations which provides the Town with the authority to Approve in Principle an application if Council is satisfied the development complies with the Town's Development Regulations. Where the zoning prohibits single dwellings, the Board determined that the Town did not have the authority to issue the Approval in Principle at the August 11, 2015 Regular Meeting of Council. Therefore, pursuant to section 21(6) of the Town's Development Regulations, the Board found that the Town had the authority to revoke the August 11, 2015 Approval in Principle since it was issued in error.

Section 21(6) states:

The Council may revoke a permit for failure by the holder of it to comply with these Regulations or any condition attached to the permit or where the permit was issued in error or was issued on the basis of incorrect information.

Did the Town provide adequate reasons for revoking the August 11, 2015 Approval in Principle?

The Appellant's solicitor argued at the hearing that the reasons provided by the Town in the decision letter dated September 15, 2015 were confusing. The Board reviewed the September 15, 2015 letter as well as the September 8, 2015 Council Meeting minutes. The Board determined that while it accepts that the Town had the authority to revoke the previously issued Approval in Principle, the reasons provided in the September 15, 2015 letter were insufficient. While the Board acknowledges that the subject road may need to be upgraded prior to development proceeding, the Town should have referred to the zoning as the reason for revoking the August 11, 2015 Approval in Principle.

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 Witless Bay had the authority to revoke the August 11, 2015 Approval in Principle issued to Ms. Amy Dunn. However, the Board found that the Town erred by not providing clear and accurate reasons for revoking the Approval in Principle. The Board concluded that the fact that Ms. Dunn's property is not zoned appropriately should have been the reason for revoking the Approval in Principle. Therefore, the Board will vary the Town's decision made at the September 8, 2015 Regular Meeting of Council. That is to say, the Town must issue a new decision letter to Ms. Dunn indicating the August 11, 2015 Approve in Principle is revoked due to her property being zoned Residential Subdivision Area (RSA) and single dwellings are prohibited in the RSA zone.

The Board derives its authority to vary 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 Witless Bay on September 8, 2015 to revoke the Approval in Principle issued to Ms. Dunn for a single dwelling on John C's Grove Road, be varied.

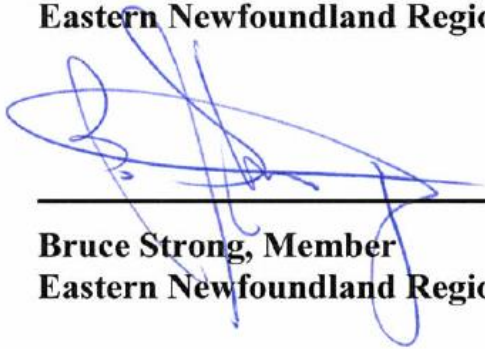
The Town of Witless Bay and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 5th day of February, 2016.



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



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



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