

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN George Keeping **Appellant**

AND Service NL **Respondent**

RESPECTING Refusal

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

DATE OF HEARING February 5, 2016

IN ATTENDANCE

Robert Groves – Authority

George Keeping – 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

Mr. George Keeping applied to Service NL for a permit under the *Protected Road Zoning Regulations*, CNLR 996/96 (hereinafter referred to as “the *Regulations*”) for access onto Route 210 near Grouse and Famine within the Town of Grand Bank. This appeal arises from Service NL refusing to issue a permit to Mr. Keeping. Service NL notified Mr. Keeping that his application was refused in a letter dated October 14, 2015. The letter stated that the application was refused due to “[i]nsufficient sight distance in both directions of access.” The letter also noted Mr. Keeping’s right and process to appeal the decision.

On October 26, 2015, Mr. Keeping filed an appeal with Eastern Newfoundland Regional Appeal Board satisfying section 42(4) of the *Urban and Rural Planning Act, 2000* (the “*URPA*”). 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 the *URPA*.

In accordance with the *URPA* 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 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

Protected Road Zoning Regulations, CNLR 996/96

Policy for Highway Access Management

Matters presented to and considered by the Board

Does Mr. Keeping need a permit for an access onto Route 210?

Yes. In accordance with section 4(1) of the *Regulations*, the Board accepts that all development located within the building control lines of a protected highway requires a permit from Service NL prior to any development commencing. The Board acknowledges that the proposed access is located within the Town of Grand Bank as well as within the 150 metre building control lines of the Burin Peninsula Protected Highway. Therefore, the Board acknowledges that Mr. Keeping requires a permit from Service NL for the proposed access.

Did Service NL have the authority to refuse Mr. Keeping's application?

Yes. The Board reviewed the *Regulations* and determined that Service NL has the authority under section 13(1) to refuse an application for development when it does not conform to the *Regulations*. Service NL stated at the hearing that its decision was made in accordance with the recommendation to refuse the application received from the Department of Transportation and Works.

The Board found that the Department of Transportation and Works determined that the proposed access site lacked adequate sight distance to the left and right. According to the Department of Transportation and Work's Policy for Highway Access Management, in areas with speed limits of 90 km/h the minimum sight distance for turning movements is 300 metres in both directions. The Board learned that the speed limit along this section of Route 210 is 90 km/h. The Board reviewed the Highway Access Inspection Report dated September 25, 2015 completed by the Department of Transportation and Works. According to that Report, the proposed access has a sight distance to the left of 170 metres and to the right of 250 metres. Therefore, the Board concluded that the proposed access does not meet the sight distance requirement of 300 metres in either direction as required by the Department of Transportation and Works.

The Board heard arguments from the Appellant regarding sight distances from his existence access and the proposed access. While the Appellant provided the Board with information contrary to the Department of Transportation and Works, the Board is required to make a decision in accordance with all applicable regulations. According to section 19(1) of the *Regulations*, all access must be constructed and located to the specifications of the Department

of Transportation and Works. Therefore, the Board found that Service NL complied with section 19(1) of the *Regulations* when it refused Mr. Keeping's application as it contravened the Department of Transportation and Work's highway access policy.

Did Service NL follow proper procedure when it notified Mr. Keeping of its decision?

As per section 13(1) of the *Regulations*, Service NL is required to consult with other government agencies prior to making a decision on an application for development. The Board accepts that Service NL followed proper procedure when requesting comments from government agencies and as a result of those comments, refused Mr. Keeping's application.

Service NL notified Mr. Keeping in a letter dated October 14, 2015 that his application was refused and indicated the right and process to appeal the decision in accordance with 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 Service NL had the authority, and exercised it appropriately, when it refused Mr. Keeping's application for access onto Route 210 near Grouse and Famine in the Town of Grand Bank.

Order

Based on the information presented, the Board orders that the decision made by Service NL to refuse Mr. Keeping's application to access Route 210, be confirmed.

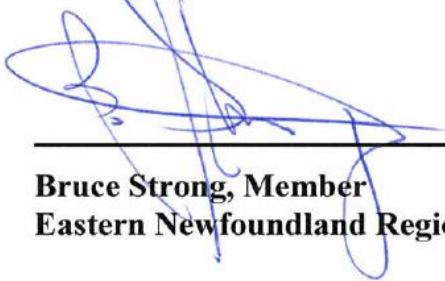
Service NL and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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**