

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN**                      Kenneth Bruce and Marilyn Power-Bruce                      **Appellants**

**AND**                              Town of Conception Bay South                              **Respondent**

**RESPECTING**                      Refusal

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

**DATE OF HEARING**                      March 29, 2016

**IN ATTENDANCE**

Elaine Mitchell – Respondent

Kenneth Bruce and Marilyn Power-Bruce - Appellants

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 Conception Bay South refusing to issue a permit to subdivide land located at 18 Stage Head Road for the purpose of developing an unserviced single dwelling.

In a letter dated October 26, 2015, Kenneth Bruce and Marilyn Power-Bruce (the “Appellants”) requested approval from the Town of Conception Bay South. An application was subsequently submitted and registered with the Town.

The Planning and Development Committee (the “Committee”) considered the Appellants’ proposal at the December 7, 2015 meeting. The Committee recommended to Council that it exercise its discretion under section 4.6 of the Town’s Development Regulations to refuse the Appellants’ application for the following two (2) reasons: the proposal is not in an orderly development pattern; and the proposal is contrary to section 5.14(2) of the Town’s Development Regulations. Council accepted the Committee’s recommendation at the Regular Meeting of Council held on December 15, 2015. The Town notified the Appellants of Council’s decision in a letter dated December 18, 2015, which was received by the Appellants on December 24, 2015.

Kenneth Bruce and Marilyn Power-Bruce filed their appeal on December 24, 2015 with the Eastern Newfoundland Regional Appeal Board in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”). As required under section 42(5) of the Act, the Appellants provided: 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 February 10, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellants and authority by registered mail sent on February 19, 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 Conception Bay South Municipal Plan and Development Regulations, 2004

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

### **Are single dwellings allowed within the Residential Low Density (R-1) zone?**

The subject property is located within an R-1 zone. The Board accepts that single dwellings are permitted in the R-1 zone as outlined in Schedule "C" of the Town's Development Regulations.

### **What is the intent of section 5.14.2 of the Town's Development Regulations?**

The Respondent explained to the Board that the purpose of section 5.14.2 of the Town's Development Regulations is to maintain all yards in the event a property is subdivided. In this case, the proposed subdivision removed the front yard of the existing property, 18 Stage Head Road, which is contrary to section 5.14.2 of the Town's Development Regulations.

### **What does an orderly development pattern look like in the Town of Conception Bay South?**

The Respondent referred to Lance Cove Road, illustrated on Map 4 of the Town's submission to the Board, to aid in the description of an orderly development pattern within the Town of Conception Bay South. The Town explained that an orderly development pattern consists of each property having direct frontage onto a road with similar building line setbacks which places homes in line with neighbouring homes rather than in front of another home.

The Town refused, in part, the Appellants' application because it did not display orderly development as described above. The subdivision application proposed the new property and house location directly between the existing house and Stage Head Road. The Town found this to be contrary to policies outlined in the Town's Municipal Plan and Development Regulations. The Board accepts that the Respondent considered sections 4.3.1, 4.3.7.1, 4.3.7.2, and 4.3.18 of the Town's Municipal Plan when it considered the Appellants' application and found the proposal contradicted those policies. Furthermore, the Respondent indicated that it considered section 7.4 of the Town's Development Regulations and determined the application contravened

that section as well. The Board reviewed section 7.4 of the Town's Development Regulations and found that Council shall not issue a permit for a subdivision if it does not contribute to the orderly growth of the Town.

The Appellants presented a number of properties with a similar development pattern as they proposed to the Town. However, the Town responded to each example by submitting a series of maps explaining the history of the various developments. The Board learned that the most similar examples provided by the Appellants, such as 42 Hands Road and 138-140 Cherry Lane, were not created by a subdivision. The majority of the properties are older and were created prior to the Town's incorporation and predated the Town's Development Regulations.

**Did the Town have the authority to refuse the Appellants' application?**

The Board accepts that in accordance with section 4.6 of the Town's Development Regulations, the Town has the discretionary authority to refuse an application despite the use being permitted. The Board learned that the Town considered the Appellants' application not only from a technical perspective but assessed the application in relation to the Town's municipal policies.

Since the application contravened section 5.14.2 of the Town's Development Regulations as well as the municipal policies that guide development patterns within the Town and in accordance with section 7.4 of the Town's Development Regulations, the Board determined that the Town had the discretionary authority to refuse the Appellants' application.

**Did the Town follow proper procedure when it refused the Appellants' application?**

The Board reviewed section 4.3 of the Town's Development Regulations which requires the Town to state the reasons for refusing a permit. The Board reviewed the Town's refusal letter dated December 18, 2015 and determined that the Town satisfied section 4.3 by including reasons for its refusal. The refusal letter also indicated the Appellants' right and process to appeal Council's decision as per section 5 of the *Minister's Development Regulations, 2000*. Therefore, the Board found that the Town appropriately notified the Appellants of Council's decision.

## **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 Bay South had the authority to refuse the application submitted by Kenneth Bruce and Marilyn Power-Bruce and did so in accordance with the Town's Municipal Plan and Development Regulations. Therefore, the Board confirms the Town's decision to refuse the Appellants' application to subdivide their property at 18 Stage Head Road to accommodate an unserviced single dwelling.

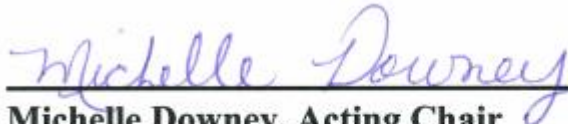
**Order**

Based on the information presented, the Board orders that the decision made by the Town of Conception Bay South on December 15, 2015 to refuse Kenneth Bruce and Marilyn Power-Bruce's application to subdivide their property at 18 Stage Head Road to accommodate an unserviced single dwelling, be confirmed.

The Town of Conception Bay South and the Appellants 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 Appellants.

**DATED** at St. John's, Newfoundland and Labrador, this 29<sup>th</sup> day of March, 2016.



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



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



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