

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Richard King **Appellant**

AND Town of Portugal Cove – St. Philip’s **Respondent**

RESPECTING Refusal

BOARD MEMBERS Michelle Downey – Chair
Harold Porter
Mary Thorne - Gosse

DATE OF HEARING April 20, 2016

IN ATTENDANCE

Richard King – Appellant
Marilyn Pendergast – Appellant’s Representation
Les Spurrell – Authority
Ashley Mackinnon - Authority
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Background

The Town of Portugal Cove – St. Philip’s approved in principle, subject to a number of conditions, Mr. Richard King’s application for a single dwelling at 59 Dawn Allen Road at the October 9, 2012 Regular Meeting of Council. The Town notified Mr. King of Council’s decision in a letter dated October 10, 2012. The approval in principle expired two (2) years from the date of the letter. Upon request, the Town renewed Mr. King’s approval in principle for one (1) additional year. The Town’s decision to extend Mr. King’s approval in principle is outlined in the October 1, 2014 letter to the Appellant.

Facts

The Appellant received letters dated November 12, 2015, January 11, 2016 and February 4, 2016 from the Town of Portugal Cove – St. Philip’s stating Mr. King’s Approval in Principle had expired. According to the Appeal Summary Form, Mr. King filed his appeal in response a refusal dated February 4, 2016 that he received on February 11, 2016. However, the February 4, 2016 letter does not state his application was refused: the letter notifies Mr. King that his Approval in Principle to construct a dwelling at 59 Dawn Allen Road has expired.

The Board must determine whether it has the jurisdiction to hear Mr. King’s appeal as per section 42 of the Act. Section 42(1) of the *Urban and Rural Planning Act, 2000* (the “Act”) outlines what may be appealed to the appropriate Board, which includes decisions with respect to:

- (a) *an application to undertake a development;*
- (b) *a revocation of an approval or a permit to undertake a development;*
- (c) *the issuance of a stop work order; and*
- (d) *a decision permitted under this or another Act to be appealed to the board.*

In accordance with the Act, a public notice of the appeal was published in *The Telegram* on March 23, 2016 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on March 23, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, NLR 3/01

Matters presented to and considered by the Board

Does the Board have the jurisdiction to hear the appeal?

The Board reviewed section 42(1) of the *Urban and Rural Planning Act, 2000* which outlines what matters may be appealed to the Board. Section 42(1) states:

A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

- (a) an application to undertake a development;*
- (b) a revocation of an approval or a permit to undertake a development;*
- (c) the issuance of a stop work order; and*
- (d) a decision permitted under this or another Act to be appealed to the board.*

Under section 42(1) of the *Act*, the Board found that there are no provisions for the right to appeal the notification of an expired conditional approval. Therefore, the Board determined that the appeal matter is outside its jurisdiction.

Conclusion

In arriving at its decision, the Board reviewed the submissions 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 the appeal matter is not subject to appeal under section 42(1) of the *Urban and Rural Planning Act, 2000*, and is therefore, dismissed.

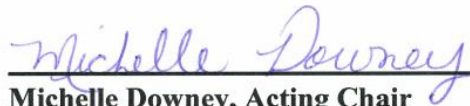
Order

Based on the information presented, the Board dismisses the appeal regarding the expiration of a conditional approval issued to Mr. Richard King for the purpose of constructing a single dwelling at 59 Dawn Allen Road by the Town of Portugal Cove – St. Philip’s.


The Authority 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.

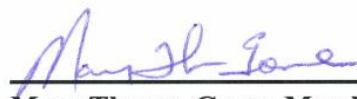
DATED at St. John’s, Newfoundland and Labrador, this 20th day of April, 2016.



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