

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Kelvin Marshall **Appellant**

**AND** Town of Holyrood **Respondent**

**RESPECTING** Approval

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

**DATE OF HEARING** April 21, 2016

**IN ATTENDANCE**

Kelvin Marshall – Appellant

Michael Crosbie – Appellant’s Solicitor

Gary Corbett – Authority

Paul Stokes – Authority’s Solicitor

Colm Seviour – Solicitor for Eagleridge International Limited

Albert Chislett – Eagleridge International Limited

Mike Tubrett – Interested Party

Reg Garland – Interested Party

Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board

Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

## **DECISION**

### **Background**

On November 15, 2013, the Town of Holyrood received an application from Eagleridge International Limited (Eagleridge) for mineral exploration as well as developing an 11 kilometer Class C resource access road. Council refused the subject application at the February 17, 2015 Regular Meeting of Council. That decision was appealed to the Eastern Newfoundland Regional Appeal Board (the “Board”) on March 2, 2015. A hearing was held on July 22, 2015 and a decision to vacate the Town of Holyrood’s decision was rendered by the Board on July 23, 2015. The Board ordered the Town to re-consider Eagleridge’s application, make a new decision, and notify Eagleridge of Council’s decision.

### **Facts**

In accordance with the Board’s July 23, 2015 decision, the Town re-considered the application submitted by Eagleridge at the November 4, 2015 Regular Meeting of Council. At this meeting, the Town approved in principle, subject to conditions, the application. The Town notified Eagleridge of its decision in a letter dated December 18, 2015.

This appeal arises from the Town of Holyrood approving Eagleridge’s application. Mr. Michael J. Crosbie, on behalf of Kelvin Marshall, filed an appeal with the Board on November 18, 2015 against Council’s November 4, 2015 decision to approve in principle Eagleridge’s application. In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* (the “Act”), the appeal was filed within the fourteen (14) day requirement. Additionally, 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 28, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellants and authority by registered mail sent on March 22, 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 Holyrood Municipal Plan and Development Regulations, 2001

Town of Holyrood Municipal Plan and Development Regulations, 2014

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

### **Did the Town review Eagleridge's application under the appropriate Municipal Plan and Development Regulations?**

The Board understands that Council applied the 2001 Municipal Plan and Development Regulations when it reconsidered Eagleridge's application at the November 4, 2015 Regular Meeting of Council. It was made clear to the Board at the hearing that Eagleridge did not submit a new application to Council; Council reconsidered Eagleridge's 2013 application as per the Board's decision dated July 23, 2015.

While the 2014 Municipal Plan and Development Regulations came into legal effect on February 27, 2015, before Council made its November 4, 2015 decision, the Board found it reasonable and acceptable for the Authority to reconsider Eagleridge's application under the 2001 Municipal Plan and Development Regulations since that was the Plan in legal effect at the time Eagleridge submitted its application in 2013. Therefore, the Board reviewed Council's decision in accordance with the 2001 Municipal Plan and Development Regulations, not the 2014 Municipal Plan and Development Regulations.

### **How is the site zoned and what is permitted in that zone?**

According to the 2001 Municipal Plan and Development Regulations, the Board confirmed that the site is designated and zoned Watershed.

The Board reviewed the Watershed Use Zone Table in Schedule "C" of the Town's Development Regulations, which lists permitted and discretionary uses. The Board confirmed that mineral working uses are listed as a discretionary use in the Watershed Use Zone Table, subject to the conditions listed therein.

### **Did the Town satisfy section 32 of the Town's Development Regulations?**

The Board considered the discretionary use process Council applied since it received Eagleridge's application on November 15, 2013. In accordance with section 32 of the Town's Development Regulations, Council must advertise a discretionary use application "in a newspaper circulating in the area or by any other means deemed necessary". The Board acknowledges that Council completed public consultation in December, 2014, January 2015, and most recently, September 3, 2015. The Town informed the Board at the hearing that in addition to publishing a notice in the Shoreline Newspaper on September 3, 2015, a meeting took place on September 30, 2015 with a citizens' committee, members of Council as well as Eagleridge for the purpose clarifying the application and providing further information. The Board learned from the Town at the hearing that it considered holding another public briefing session depending on the result of the September 3, 2015 public notification. As a result of the September 3, 2015 notice, Council received 486 submissions supporting the project and 3 submissions opposing the application. Therefore, the Board determined that Council exceeded the requirements for public consultation prescribed under section 32 of the Town's Development Regulations.

### **Did the Town exercise its discretionary authority appropriately when it approved Eagleridge's application?**

The Board reviewed section 90 of the Town's Development Regulations which provides Council with the discretionary authority to approve a discretionary use if section 32 requirements are satisfied, and the Municipal Plan and Development Regulation as well as any comments received in response to public notification are taken into consideration. Section 90 states:

*Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the Authority is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if the Authority has given notice of the application in accordance with Regulation 32 and has considered any objections or representations which may have been received on the matter.*

In addition to the public consultation material, the Board determined that the Town considered the policies outlined in the 2001 Municipal Plan as well as the Conestoga-Rovers & Associates (CRA) Water and Arsenic Reports (CRA Reports). The Board understands that at the request of Council, BAE New Plan Group reviewed the CRA Reports and provided Council with a

synopsis. The Board acknowledges that Council also considered the Environmental Preview Report (EPR), and information received from the Department of Environment and Conservation as well as the Town's Planner. The fact that Council considered the aforementioned information demonstrates to the Board that it used due diligence in exercising its discretionary authority.

The Board reviewed the list of circumstances where a review board may overturn a discretionary decision of council outlined in the Supreme Court case, *Yates v. Central Newfoundland Regional Appeal Board*, 2013 NLTD(G) 173, and determined that it does not have the authority to overrule Council's discretionary decision to approve in principle Eagleridge's application.

### **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 Holyrood had the authority to approve in principle the application submitted by Eagleridge and did so in accordance with the Town's Municipal Plan and Development Regulations, 2001.

**Order**

Based on the information presented, the Board orders that the decision made by the Town of Holyrood on November 4, 2015 to approve in principle, subject to conditions, the application submitted by Eagleridge International Limited for an 11 kilometre Class C resource access road in the Big Triangle Pond area of the Town of Holyrood, be confirmed.

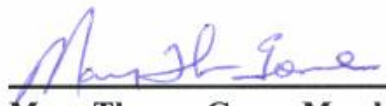
The Town of Holyrood and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 2<sup>nd</sup> day of May, 2016.

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

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

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