

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Joanne Rose **Appellant(s)**

AND Town of Stephenville **Respondent**

RESPECTING Refusal

BOARD MEMBERS Gary Parsons – Acting Chair
Bill Madore - Member
Joseph Guinchard – Member

DATE OF HEARING May 25, 2016

IN ATTENDANCE

Joanne Rose – Appellant

Tom Rose – Support for Appellant

Mike Campbell – Authority (teleconference)

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

Robert Cotter - Secretary to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Stephenville refusing to issue a permit to Joanne Rose (the “Appellant”) for the purpose of developing a single dwelling at 29 Hillier Avenue. On December 16, 2015, Mrs. Rose applied to the Town of Stephenville for a permit on December 16, 2015. Council considered and refused the subject application at the January 14, 2016 Regular Meeting of Council pursuant to section 2.3.7 of the Town’s Municipal Plan. The Town notified Tom and Joanne Rose of Council’s decision in a letter dated January 25, 2016. The Appellant notes in her submission that this letter was received on January 29, 2016. In response to the February 1, 2016 letter from Tom and Joanne Rose, the Town clarified its January 14, 2016 decision and reasons for refusing the application in a letter dated February 1, 2016.

Mrs. Rose filed an appeal with the West Newfoundland Regional Appeal Board on February 10, 2016 in response to Council’s January 14, 2016 decision to refuse her 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, the Appellant included the required information as per section 42(5) of the *Act*, including: a summary of the decision appealed from; grounds for the appeal; and the appeal fee.

In accordance with the *Act* a public notice of the appeal was published in *The Western Star* on February 27, 2016 and a notice of the time, date, and place of the Hearing was provided to the Appellant and Authority on February 9, 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 Stephenville Municipal Plan and Development Regulations, 2000

Matters presented to and considered by the Board

How is 29 Hillier Avenue zoned?

The Board reviewed the Town of Stephenville Municipal Plan and Development Regulations, 2000 and confirmed that the property located at 29 Hillier Avenue is designated Residential and zoned Comprehensive Development Area – Residential (CDA-R).

The Board found that the site is also located within an Urban Group (also referred to as Urban Area in Town's Municipal Plan), as per section 2.3.2.2 (b) of the Town's Municipal Plan, which states:

The land use designations or districts are set out below:

- a) Urban and Rural Groups - all designations fall into one or both of these groups;*
- b) Residential, which includes various commercial and public uses along with recreational open space and conservation - Urban Group;*
- c) Community Services, includes Commercial, Institutional, and certain types of recreational facilities - Urban Group;*
- d) Major Industrial (Port, the Paper Mill, Industrial subdivisions, and Airport) - Urban Group;*
- e) Conservation - Urban and Rural Groups;*
- f) Rural - Rural Group;*
- g) Well Head Protection Area and Protected Water Supply - Rural Group, and part, Urban Group (south of Hansen Highway).*

Are single dwellings permitted within the CDA-R zone?

Yes. The Board reviewed the CDA-R Use Zone Table in Schedule C of the Town's Development Regulations and determined that single dwellings are listed as permitted, subject to Condition 2, which states:

One single dwelling in addition to what is present can be allowed without recourse to the adoption of a comprehensive plan, provided that the dwelling fronts on a public road, meets the standards for the Residential Rural Zone, and provided that Council is satisfied that the dwelling will not impede the future development of the area.

The Board learned from the Appellant at the hearing that it was the Rose family that paid for Municipal Plan Amendment 2, 2005 (MPA 2, 2005) and Development Regulations Amendment 4, 2005 (DRA 4, 2005), which amended a section of 2.4 of the Municipal Plan and the CDA-R zone by adding single dwellings to the list of permitted uses, subject to conditions.

Must single dwellings in the CDA-R zone be connected to municipal services?

The Board accepts that all development within the Urban Area must be connected to municipal water and sewer services except in the Cold Brook and Noel's Pond areas in accordance with section 2.3.7 of the Town's Municipal Plan.

According to Condition 2 of the CDA-R zone, single dwellings must comply with the standards of the Residential Rural zone. The Board reviewed the standards for the Residential Rural zone, in particular condition 20 which states that "unserved development shall be subject to the approval of [the]

Government Service Centre.” Upon reviewing the Municipal Plan, the Board understands that this regulation is enabled by section 2.3.7 and 2.4, paragraph 6, of the Town’s Municipal Plan. Section 2.3.7 states:

Except for the Cold Brook and Noel’s Pond communities, all development within the Urban Area shall be connected to municipal sewer and water services.

Section 2.4, paragraph 6, states:

This residential designation also permits zoning for unserved residential development in Cold Brook and Noel’s Pond under a residential rural type of zoning, which along with residential, can also accommodate certain rural types of uses, including mineral exploration subject to the conditions set out in the Rural Land Use Designation.

While the Board empathizes with the Appellant, the fact remains that MPA 2, 2005 and DRA 4, 2005 did not change the requirement to connect to municipal services as prescribed in section 2.3.7 and 2.4, paragraph 6.

Therefore, the Board determined that 29 Hillier Avenue must be connected to municipal services in order to comply with the Town’s Municipal Plan policy 2.3.7 and 2.4, paragraph 6.

Did the Town have the authority to refuse the subject application?

The Board determined that the Town had the authority to refuse the subject application as it contravenes section 2.3.7 and section 2.4 of the Town’s Municipal Plan.

Did the Town follow proper procedure when it notified the application of its decision?

Yes. The Board found that the Town of Stephenville notified Mr. and Mrs. Rose of Council’s decision in accordance with section 21, Reasons for Refusing Permit, which states:

The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.

Additionally, the Town notified Mr. and Mrs. Rose of their right and process to appeal in accordance with section 5 of the *Minister’s Development Regulations, NLR 3/01*, which states:

Where an authority makes a decision that may be appealed under section 42 of the Act, that authority shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the

- (a) person’s right to appeal the decision to the board;*
- (b) time by which an appeal is to be made;*
- (c) right of other interested persons to appeal the decision; and*
- (d) manner of making an appeal and the address for the filing of the appeal.*

Conclusion

In arriving at its decision, the Board reviewed the submissions provided by the appellant and the authority, along with the technical information and planning advice.

The Board is bound by section 42 of the *Urban and Rural Planning Act* 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 Stephenville had the authority, and exercised it appropriately, when it refused to issue a permit for the purpose of constructing an unserviced single dwelling at 29 Hillier Avenue.

ORDER

Based on the information presented, the Board orders that the decision made by the Town of Stephenville on January 14, 2016 to refuse to issue a permit for the purpose of constructing an unserviced single dwelling at 29 Hillier Avenue, be confirmed.

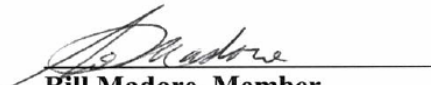
The Town of Stephenville is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West 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.

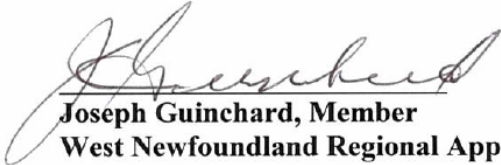
DATED at Steady Brook, Newfoundland and Labrador, this 25th day of May, 2016.



Gary Parsons, Acting Chair
West Newfoundland Regional Appeal Board



Bill Madore, Member
West Newfoundland Regional Appeal Board



Joseph Guinchard, Member
West Newfoundland Regional Appeal Board