

DECISION

Background

On October 5, 2013, the Town of Kippens received an application for a residential subdivision on McCarthy's Lane from Mr. Wayne Young. Council considered and refused Mr. Young's application at the June 11, 2015 Regular Meeting of Council. Mr. Young appealed that decision to the West Newfoundland Regional Appeal Board on June 19, 2015. The Board heard that appeal on October 28, 2015. In the decision dated November 13, 2015, the Board vacated Council's decision as the Board found the Town did not satisfy section 23 of the Town's Development Regulations. The Board ordered the Town to reconsider Mr. Young's application.

Facts

This appeal arises from the Town of Kippens refusing to issue a permit to 58663 Newfoundland and Labrador Ltd for the purpose of a residential subdivision on McCarthy's Lane. The Town notified 58663 Newfoundland and Labrador Ltd. c/o Mr. Young of Council's decision in a letter dated December 11, 2015.

58663 Newfoundland and Labrador Ltd., represented by Robert R. Regular PLC Inc., filed an appeal on December 21, 2015 with the West Newfoundland Regional Appeal Board against Council's December 10, 2015 decision. 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*.

In accordance with the *Act*, a public notice of the appeal was published in *The Western Star* on February 10, 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 Kippens Municipal Plan and Development Regulations, 2011

Matters presented to and considered by the Board

Did the Appellant submit a new development application for Council to consider?

The Board clarified at the hearing that the application Council considered at the December 10, 2015 Regular Meeting of Council had not changed from the initial submission to Council on October 5, 2013. The Board noted that only new information regarding the application would be heard due to the fact this matter was before the Board on October 28, 2015.

Did Council consider the subject application sufficiently?

The Board heard from the Town at the hearing that Council discussed the application during the pre-meeting, made a decision on the application, and then formalized that decision during the Regular Meeting of Council held on December 10, 2015. The Board also learned that Council felt it had discussed the application sufficiently considering this was the second time it was before Council. The Board is satisfied that Council considered the subject application appropriately.

Did the Town adequately apply its discretionary authority?

The Board accepts that the Town has the discretionary authority to refuse a permitted use pursuant to section 11 of the Town's Development Regulations, which states:

In considering an application for a permit or for approval in principle to carry out development, the Town shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Town may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application. However, the exercise of this discretionary power does not enable the Town to allow a permitted use or discretionary use which is not permitted under Schedule C or other Regulation.

The Town refused the Appellant's application under the authority of section 10 of the Town's Development Regulations as the proposed development lacks adequate road access. Section 10 states:

Neither a permit nor approval in principle shall be issued for development within the Planning Area when, in the opinion of the Town, it is premature by reason of the site lacking adequate road access, power, drainage, sanitary facilities, or domestic water

supply, or being beyond the natural development of the area at the time of application unless the applicant contracts to pay the full cost of construction of the services deemed necessary by the Town and such cost shall attach to and upon the property in respect of which it is imposed.

The Solicitor for the Appellant, as well as Mr. DiCesare, provided arguments suggesting the width of McCarthy's Road and the intersection of McCarthy's Road and Route 460 was adequate, but not ideal. Additional arguments from the Solicitor for the Appellant suggested Council acted in a procedural unfair manner. The Solicitor provided the Board with several examples of other subdivisions with road widths of 7.5 metres or less which all accessed Route 460.

However, the Authority indicated that the latest development on McCarthy's Lane of 8 lots maximized capacity of McCarthy's Lane, in the opinion of Council. The Board is satisfied that the Town came to its decision based upon recommendations from the Department of Transportation and Works as well as a professional engineer. The Authority indicated that Council based its decision on safety concerns and the Town is willing to work with the developer to alleviate the concerns expressed by Council.

Therefore, the Board confirms that Council used its discretionary authority appropriately when it refused the subject application.

Did the Town provide adequate reasons for refusing Mr. Young's application?

The Board reviewed the December 11, 2015 decision letter to 58663 Newfoundland and Labrador Limited c/o Wayne Young and found that the Town clearly expressed its reasons for refusing the application to develop McCarthy's Lane.

The Board confirmed that the Town also notified the Appellant of his right and process to appeal Council's decision in the December 11, 2015 letter as required under section 5 of the *Minister's Development Regulations*, NLR 3/01.

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 Kippens had the authority to refuse the subject application and did so in accordance with the Town's Municipal Plan and Development Regulations.

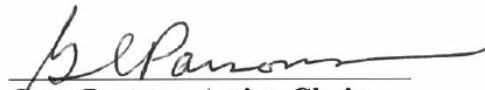
ORDER

Based on the information presented, the Board orders that the decision made by the Town of Kippens on December 10, 2015 to refuse the application submitted by Mr. Wayne Young for the purpose of a residential subdivision on McCarthy's Lane, be confirmed.

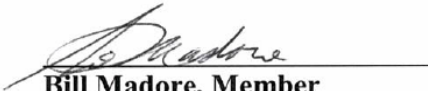
The Town of Kippens is bound by this decision of the West Newfoundland Regional Appeal Board which is binding on all parties.

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.

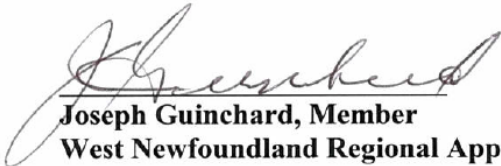
DATED at Steady Brook, Newfoundland and Labrador, this 26th day of May, 2016.



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