

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD  
URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN	Weir's Construction Ltd.	Appellant						
AND	Town of South River	Respondent						
RESPECTING	Refusal (dated 19-08-16) Stop Work Order (dated 23-08-16) Stop Work and Removal Order (dated 25-08-16)  148-152 Hodgewater Line, South River							
FILE NUMBERS	15-006-044-028 15-006-044-029							
BOARD MEMBERS	<table border="0"> <tr> <td style="padding-right: 20px;">Michelle Downey</td> <td>Chair</td> </tr> <tr> <td>Colleen Hanrahan</td> <td>Member</td> </tr> <tr> <td>Mary Thorne-Gosse</td> <td>Member</td> </tr> </table>		Michelle Downey	Chair	Colleen Hanrahan	Member	Mary Thorne-Gosse	Member
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Colleen Hanrahan	Member							
Mary Thorne-Gosse	Member							
DATE OF HEARING	November 16, 2017							
IN ATTENDANCE								
Appellant:	Wayne White, Solicitor for the Appellant Jim Weir, Weir's Construction Ltd.							
Authority:	Marjorie Dawson, Town Clerk, Town of South River Scott Rose, Mayor, Town of South River							
Resident:	Shana Jerrett, representing herself and area residents							
Secretary to the Eastern Newfoundland Regional Appeal Board:	Robert Cotter							
Technical Advisor to the Eastern Newfoundland Regional Appeal Board:	Kim Blanchard							

DECISION

Introduction

In a letter to Weir's Construction dated August 19, 2016, the Town of South River advised that the Town Council refused an application to develop an access road at 148-152 Hodgewater Line, South River. Further, on August 23, 2016 it issued a Stop Work Order, and on August 25, 2016 a Stop Work and Removal Order was issued. An appeal was filed with the Eastern Regional Appeal Board (the Board) by Wayne White, Solicitor, on behalf of Weir's Construction Ltd.

The appeals were heard by the Board on November 16, 2017. The Board assessed the Town of South River's orders to determine if it acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Minister's Development Regulations, NLR 3/01*, and the *Town of South River Development Regulations, 1995*.

For the reasons stated below, with reference to the decision dated August 19, 2016 respecting the refusal of the development, the Board reverses the decision and refers the matter back to the Town of South River to seek a plan to clarify the application for development. The stop work order and stop work and removal orders related to the construction of the road are confirmed.

#### Facts/Background

Weir's Construction Ltd. is the owner of 69 acres of land located at 148-152 Hodgwater Line, South River. On August 6, 2017, the Town of South River was alerted that work was occurring on the site and of the presence of heavy equipment. Mayor Rose visited the site, spoke with Jim Weir and requested that work stop as there had been no permit issued by the Town of South River. On August 8, 2016, Jim Weir applied for, and the Town of South River granted, a landscaping permit allowing for "the clearing of tree up to 25% of the property". Further, on the same day, Jim Weir submitted an application for development of a road on the property.

A meeting of the Town Council was held on August 10, 2016 with representatives of Weir's Construction Ltd and area residents in attendance. Representatives of Weir's Construction Ltd. said they would be clearing the site to gain access to the site, remove sand for ongoing construction projects, sorting and screening materials but there would not be not a processing plant. It was suggested that there could be a subdivision. Residents expressed their opposition to the development questioning the impact it could have on their property values, creating noise and dust, and could lead to the creation of a quarry. During a further meeting on August 17, 2016 involving representatives of the Town, developer, and residents, objections were again raised on the grounds that the developer was creating a quarry. A letter was presented by residents opposing the development. Council decided not to grant a development permit to construct the road. The Town Clerk communicated the Town Council's decision to Weir's Construction Ltd. by letter dated August 19, 2016.

On August 23, 2016, the Town Clerk issued a *Stop Work Order* on the grounds that Weir Construction Ltd. was building a road without a permit. At a special meeting of the Town Council on August 24, 2016, it passed motions to stop activities on the site and to engage legal counsel. A *Stop Work and Removal Order* was issued by the Town Council on August 25, 2016.

On September 1, 2016 an appeal was filed with the Board by Wayne White, solicitor for Weir's Construction, Ltd. Three residents of South River attended the meeting of the Town Council of South River on September 7, 2016 to express support for the development application of Weir's Construction, Ltd.

Legislation, Municipal Plans and Regulations considered by the Board.

*Urban and Rural Planning Act, 2000*

*Minister's Development Regulations, NLR 3101*

*Town of South River Development Regulations, 1995*

#### Issue Raised re Jurisdiction of the Board

The Town Clerk of the Town of South River raised an issue of the validity of the appeal on the grounds that the Appellant did not submit the correct fees with the application for the appeals. Although the applications were submitted within the timeframe to file an appeal, the fee amounts had increased. The application form and fees had changed, however, that information had not been updated on the website at the time Mr. White filed the appeals.

As issuing notice of the changes was the responsibility of the Department of Municipal Affairs and the appellant's solicitor relied on the public information on the website when filing the appeal, the Board decided that the appeal was valid and the hearing should proceed.

#### Evidence Considered by the Board

The Board received a Technical Information and Planning Advice report prepared by Ms. Kim Blanchard, MCIP, who presented evidence during the hearing. Ms. Blanchard reviewed the zoning of the property, indicating that it was situated in four zones; Rural Residential, Mineral Workings, Open Space Buffer, and Mixed Development. Within three of the four zones, the portion of the site lying within the Mineral Workings zone could accommodate the construction of a road, and a permitted use is quarry development.

Mr. Weir presented evidence guided by his solicitor. He stated that he pursued the application to develop a road to give him access to the site. Gaining access to the land was for purposes of conducting a survey and to investigate the possible uses for the land. His business interests include the construction of road, paving, concrete works, and developing subdivisions. He said that he did not have specific intentions for the property. He noted that on the adjacent properties are quarries, one of which has been operating for about 50 years. Mr. Weir stated that he attended a public meeting with residents which was not helpful. He reiterated that he did not have specific plans for the property.

Representatives of the Town of South River said that Mr. Weir appeared before Town Council and volunteered that there would be quarrying on the site. Of concern to the members of the Council was the potential impact on area residents such as dust and noise arising from a quarry. Further, a quarry was not a permitted use for the site. Residential development is welcomed by the Town Council.

The Board reviewed the application for a development permit which was to clear land for an access road. Attached to the application was a survey by E.K. Jerrett and Associates, Ltd. NLS, dated November 1978 with hand-drawn lines depicting a road that was bi-furcated leading to two areas on the property.

The Board asked the representatives of the Town of South River if a further development plan had been submitted by the appellant for the site. There was no other development plan for the site.

Ms. Shana Jerrett, a resident of South River, made a submission to the Board during the hearing, and said that she was speaking on behalf of area residents. Her house is in proximity of the site. She expressed concerns that a quarry will be developed. Among her concerns were the potential for negative impacts on property values, and on the environment such as, on the ground water which is used as drinking water from wells. Further, there are safety issues given the use of heavy equipment and creating traffic in a child-friendly neighbourhood. Ms. Jerrett expressed skepticism about the intent of the appellant based on comments made during the public meetings.

Mr. White submitted that the Town based its decision on the basis that the application was for a quarry, not for the road. In his view, the Town had not dealt with the application before it, but rather based its decision on speculation that it was for the development of a quarry.

#### Analysis

The role of the Eastern Newfoundland Regional Appeal Board is to assess the processes undertaken by authorities in reaching their decisions to determine if the authority acted in accordance with the applicable legislation, regulation and policy. Section 42(3) of the Urban and Rural Planning Act, 2000, requires that "An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed."

- Authority of the Town of South River to refuse of the application of Weir's Construction Ltd and issue orders against it

The Board reviewed provisions of the *Urban and Regional Planning Act 2000* the Town of South River Development Regulations, 1995.

The *Urban and Regional Planning Act 2000* provides a definition of "development"

2 (g) *Development means the carrying out of building, engineering, mining, or other operations in, or under land, or the making of a material change in use, or the intensity if use if land, buildings or premises*

This definition is contained in the Town of South River Development regulations in Schedule A.

Further, the Board finds the Town of South River has the authority to issue permits for development as stated in Section 5 of the Town of South River Development regulations:

*5. In these Regulations, the Authority means the Council of the Town of South River.*

*7. No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.*

Development on a site without a permit is not permitted and such activities cannot proceed without approval of the Town of South River.

Enforcement powers of municipal governments are provided under Section 102 (1) of the *Urban and Regional Planning Act 2000* including issuing stop work and removal orders.

Where, contrary to a plan or development regulations, a person has undertaken or commenced a building or other development, the council, regional authority or authorized administrator responsible for that plan or those regulations or the minister where he or she considers it necessary, may order that the person pull down, remove, stop construction fill in or destroy that building or development and may order that the person restore the site or area to its original state. (emphasis added)

The Board finds the Town of South River had the authority to issue development permits, and enforcement orders, such as Stop Work and Removal Orders to enforce its Municipal Plan.

- Refusal

The Town Council of South River refused the application giving the reasons after it reviewed the application during public meetings held on August 10 and August 17, 2017. According to the letter of the Town Clerk dated August 19, 2017 the Council reached its decision based on "concerns raised by area residents including noise pollution, environmental destruction, health issues due to excessive dust, safety, decrease on property value, etc. The purpose of the road included the screening and removal of sand which would be a nuisance to the surrounding residents." It cited Section 46 of the Town of South River's *Land Use Zoning, Subdivision and Advertisement Regulations*:

*46. Offensive and Dangerous Uses. No building or land shall be used for any purpose which may be dangerous by causing or promoting fires or other hazards or which may emit noxious, offensive or dangerous fumes, smoke, gases, radiation, smells, ash, dust, or grit, excessive noise or vibration, or create a nuisance that has an unpleasant effect on the senses unless its use is authorized by the Authority and any other authority having jurisdiction.*

Section 10 of the Town's Development Regulations provides authority for the Town Council to use its discretion to refuse a proposed development where in its opinion there are "material, and notwithstanding the conformity of the application".

Mr. White argued that the discretion of town councils is not without limitations. He referred to comment of Mr. Justice LeBlanc in *Stroud v. Newfoundland and Labrador (Central Regional Appeal Board)* 2010. CarswellNfld 42 who, when considering the discretion of Town Councils, stated at Paragraph 12:

" Any decision made by a town council or other regional authority that involves an exercise of discretion must be made on the basis of a proper understanding of the request. ..If the authority makes its decision based on an erroneous view of the material circumstances, the discretion

exercised is not immune from being overruled."

Based on the evidence before the Board, it finds there is uncertainty surrounding the subject matter of the application; the appellant states his application was to construct a road, whereas the Town Council has another understanding of the development, a quarry.

Given this uncertainty in understanding the subject matter of the application, the Board suggests that Town Council seek additional information from the appellant, such as a development plan, to determine what is intended, before the Town makes a decision on the application.

### **Conclusion**

For the reasons outlined above the Board orders that refusal be reversed and the matter be sent back to the Town Council of South River to determine what is intended by the appellant so it a decision on the application.

The Stop Work Order dated August 23, 2017 and the Stop Work and Removal Order related to the development of the road are confirmed.

## Order

Based on the information presented, the Board orders that the decision made by the Town of South River to reject the application to deny a development application from the appellant be reversed and remitted back to the Town Council so it can request further information to gain an understanding of the development from the appellant.

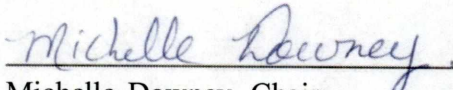
The Stop Work Order dated August 23, 2017 and the Stop Work and Removal Order related to the construction of the road are confirmed.


The appellant the Town of South River are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

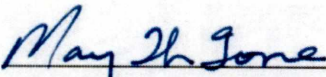
According to section 46 of the Urban and Rural Planning Act, 2000, this decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated the appeal must be filed no later than ten (10) days after the Board's decision has been received by the Appellant.

The Board of Appeal thanks the Appellant and his solicitor, Ms. Jerrett who represented herself and area residents, the technical advisor and the Officers of the Town of South River for their presentation.

**DATED** at the City of St. John's, Newfoundland and Labrador, this 6th day of December, 2017.

  
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Michelle Downey, Chair  
Eastern Newfoundland Regional Appeal Board

  
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Colleen Hanrahan, Member  
Eastern Newfoundland Regional Appeal Board

  
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Mary Thorne-Gosse, Member  
Eastern Newfoundland Regional Appeal Board