

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** David Aylward **Appellant**

**AND** Town of Witless Bay **Respondent**

**RESPECTING** Approval

**FILE NUMBER** 15-006-044-48

**BOARD MEMBERS** Michelle Downey – Chair  
Mary Thorne-Gosse – Member  
Kay Young – Member

**DATE OF HEARING** August 24, 2017

**IN ATTENDANCE**

Authority: Geraldine Cull, Town of Witless Bay, Clerk-Manager

Appellant: absent

Applicant: Kevin Lundrigan

Secretary to the Eastern Newfoundland Regional Appeal Board: Robert Cotter

Technical Advisor to the Eastern Newfoundland Regional Appeal Board: Kim Blanchard

## **DECISION**

### **Facts/Background**

This third party appeal, filed by Mr. David Aylward, arises from a decision made by the Town of Witless Bay to provide approval-in-principle to Mr. Kevin Lundrigan to develop a single family residence at 58-66 Bears Cove Road. On September 8, 2015, at the Regular Meeting of Council, the Town of Witless Bay provided approval-in-principle for the house, subject to conditions. The conditions of the approval-in-principle were subject to approval from Service NL and any other applicable government agency. On September 9, 2015, the Town issued the decision letter to the applicant, which specified the conditions of approval, but did not include the required notification of the right and process to appeal development decisions of Council.

On November 25, 2016, Mr. Aylward initiated the process to appeal the decision by Council to provide conditional approval-in-principle; however, the complete filing requirements of the appeal submission to the Eastern Newfoundland Regional Appeal Board were not received until January 4, 2017. Mr. Aylward's arguments against the development were based on ecological sensitivity and environmental protection.

The appeal package was sent to all parties, and receipt of the package was confirmed by Canada Post. The appellant was advised about the date of the appeal hearing, but provided no response to the Board prior to the hearing, and was absent on the day of the hearing. Out of courtesy, the Board attempted to contact the appellant by phone when the hearing was scheduled to commence, to no avail. With a representative from the municipal authority in attendance at the meeting, and parties present on behalf of the applicant, the Board proceeded with the hearing in the absence of the appellant.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000;

Town of Witless Bay Municipal Plan and Development Regulations, 1995

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

### **Is the appeal valid?**

The provision for appeal is enabled under the Section 42 of the *Urban and Rural Planning Act, 2000* (URPA). URPA S. 42(1) enables a person aggrieved of a decision to appeal that decision.

This includes third party appeals. The legislation states:

*(1) 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.*

The Board reviewed Part VI, section 42(4), of the *Urban and Rural Planning Act, 2000* (the “Act”) which requires an appeal be filed within 14 days. Section 42(4) states:

*An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.*

The Board considered case law, *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*, 2012 NLTD(G) 59, in which the Honourable Madam Justice Deborah J. Paquette stated that an appropriate interpretation of section 42(4) of the *Act* with respect to the commencement of a third party appeal period is when the public is notified of the decision being appealed. Judge Paquette’s rulings provided direction which the Board considered: there is no obligation from the Town to notify a particular third party in order to satisfy the public notification requirement, and the key to the appeal timeframes is the date that Council’s decision was made available to the public.

In considering its jurisdiction to hear the appeal, the Board asked for evidence to ascertain the date on which the applicant received the development decision, and the earliest date on which an interested party could have become aware, in order to determine whether the appeal was filed within the time limitations required by URPA S. 42(4).

The Board heard from Geraldine Cull, Clerk-Manager for the Town of Witless Bay. Ms. Cull explained that the decision was made at a regular public meeting of the Town Council on September 8, 2015, and indicated her recollection that the appellant was present at the public meeting at which the decision was rendered. She indicated that Mr. Aylward was in regular communications with the Town regarding the matter under appeal. Ms. Cull further noted that Council minutes, once ratified at the next regular public meeting, are published online on the Town's website.

In considering what date Council's decision regarding the conditional approval-in-principle of Mr. Lundrigan's application for the residence was made available to the public, the Board determined that the appeal submission did not satisfy section 42(4) of the *Act*; therefore, the Board deemed the appeal invalid.

### **Conclusion**

In arriving at its decision, the Board reviewed the submissions and evidence 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 was not filed in accordance with section 42(4) of the *Urban and Rural Planning Act, 2000* and is, therefore, invalid.

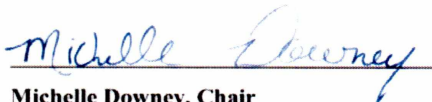
## Order

Based on the information presented, the Board found that it was outside its jurisdiction to hear an appeal beyond the legislative timeframe stated in the *Urban and Rural Planning Act, 2000*. The Board therefore dismisses the appeal, thus confirming the decision by the Town of Witless Bay to approve the residential development at 58-66 Bear Cove Road.

The Town of Witless Bay and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

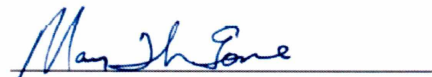
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed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

**DATED** at Mount Pearl, Newfoundland and Labrador, this 24<sup>th</sup> day of August, 2017.



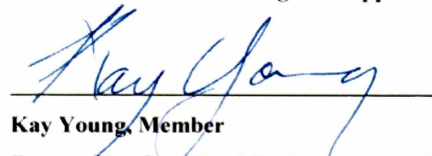
Michelle Downey, Chair

Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member

Eastern Newfoundland Regional Appeal Board



Kay Young, Member

Eastern Newfoundland Regional Appeal Board