

The appeal was scheduled by the Board for November 16, 2017. Representatives of the parties appeared before the Board. In addition to the analysis of the Board presented below, in arriving at its decision the Board examined the submissions provided by the appellants, the authority, and the technical adviser.

The Board determined it did not have the jurisdiction to hear the appeal.

Facts/Background

An application to develop a 3 unit residential building was filed with Town Council of Flatrock on April 11, 2017. It was submitted by Brian Martin who proposed to construct the structure at No. 1 Admiral's Grove. On April 24, 2017, Town Council of Flatrock approved the building, with conditions. Subsequently, an issue was identified with the zoning of the site arising from a change in the new Town Plan.

The Concerned Citizens became aware of the application and that Town Council of Flatrock was intending to seek an amendment to the zoning to accommodate the structure. On July 31, 2017, the Town Council of Flatrock made a resolution to seek an amendment to the zoning to accommodate the development, and advertised its intentions to do so. The Concerned Citizens made their objections known, e.g., submitted a petition. At a meeting of the Town Council of Flatrock held on September 11, 2017, it adopted the amendment to change the zoning. On September 22, 2017, Concerned Citizens filed a appeal with the Board.

Both parties confirmed at the hearing that their understanding of the subject matter of the appeal was the decision made on September 11, 2017 by the Flatrock Council.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

The Board's authorities are derived from the *Urban and Rural Planning Act, 2000*. The statute makes provision for a regime governing developments in municipalities within the province. Section 42 provides for an appeal mechanism enabling appeals of decisions made by municipal authorities.

As was stated by Mr. Justice Adams in *Clareville (Town) v. Newfoundland and Labrador Regional Appeal Board*, 2004 NLSCTD 101; 238, Nfld & P.E.I.R 1

19. "...As a statutory body the Board has only that jurisdiction granted to it by the legislature, together with such ancillary powers as are by necessary implication required for it to fulfill its mandate".

These powers have limits as specified in the legislation. According to Section 42 of the *Urban and Rural Planning Act, 2000*,

- (2) *A decision of a council, regional authority or authorized administrator to adopt, approve or proceed with a plan, scheme, development regulations and amendments and revisions of them is final and not subject to an appeal.*

The Board has powers conferred by the appeal provisions of *Urban and Rural Planning Act, 2000*. As s. 42 (2) explicitly states that a decision of a council to amend its plan is not subject to an appeal, the Board lacks jurisdiction to hear this appeal of the decision of the Town Council of Flatrock to amend its plan.

The session was adjourned.

CONCLUSION

The Board examined the submissions provided by the appellants, the authority, and the technical adviser. It concluded that Board lacks jurisdiction over the subject matter of this appeal.

ORDER

Based on the information presented, the Board orders that it has no jurisdiction to consider the subject matter of the appeal, namely the amendment to the plan of the Town of Flatrock.

The Appellants and the Town of Flatrock 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 Concerned Citizens, the technical advisor, and the Officers of the Town of Flatrock for their presentations.

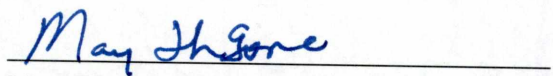
DATED at the City of St. John's, Newfoundland and Labrador, this 27th day of November, 2017.



Michelle Downey, Chair
Eastern Newfoundland Regional Appeal Board



Colleen Hanrahan, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board