

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** David Norris **Appellant**

**AND** Town of Conception Bay South **Authority**

**RESPECTING** Conditions of approval for subdivision of property at 17-23 and 25-45 Metcalfes Lane, Conception Bay South  
[MAE File: 15-006-054-044]

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Paul Boundridge  
Member – Robert Warren

**DATE OF HEARING** March 4, 2019  
**LOCATION:** City of Mount Pearl Council Chamber

**IN ATTENDANCE**

**Appellant:** David Norris  
**Respondent:** Corrie Davis, Town of Conception Bay South  
Sean McGrath, Town of Conception Bay South  
**Interested Party:** Damian Morrissey

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board  
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

## DECISION

### Facts/Background

This appeal arises from the March 6, 2018 decision of the Town of Conception Bay South to grant approval with conditions for an application to consolidate, subdivide, and develop properties at 17-23 and 25-45 Metcalfes Lane.

The Town of Conception Bay South (the Authority) granted approval with conditions for an application to consolidate, subdivide, and develop properties at 17-23 and 25-45 Metcalfes Lane. The Town sent correspondence to that effect to the Appellant on March 9, 2018 outlining the following:

- That Application 2017-276 had been approved with conditions,
- That building permits would not be issued unless the conditions were complied with, and
- Twenty-four conditions for development – one condition was the requirement for the extension of the municipal water main from its present point of termination (43 metres from the subject property) to along the full frontage of the subject property, at the developer's/applicant's expense.

The correspondence also outlined that the approval could be appealed and how to file an appeal.

The Appellant appealed the Council Decision on the following grounds:

“We feel that the town's requirement to force the installation of town water is unfair seeing that the land meets the requirements of drilling wells and hereby wish to appeal the town's refusal to allow the installation of artesian wells at a projected cost savings of \$83,337.50.”

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

Urban and Rural Planning Act, 2000

Town of Conception Bay South Municipal Plan 2011

Town of Conception Bay South Development Regulations 2011

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

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Conception Bay South acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town's Municipal Plan and Development Regulations when it approved the subdivision application with conditions for the Appellant on March 6, 2018 related to 17-23 and 25-45 Metcalfes Lane.

**Q: What is the zoning of the subject property and does it allow the proposed use (residential buildings/lots)?**

**A:** The subject property is zoned Residential Low Density (R-1), which allows for single dwellings serviced with either municipal water and sewer services or on-site well and septic systems; the latter being subject to the approval of Service NL.

**Q: Do the Town's municipal planning policies allow for residential development using on-site water and sewer services for the subject property?**

**A:** Section 4.3.19(1) of the CBS Municipal Plan states:

"In areas designated for residential development where there are no municipal services, only infill development on existing public street frontage will be permitted. With the exception of areas specifically zoned Residential Estate Lot, in unserviced areas, street extensions and backland development shall not be permitted, unless full municipal services are installed to standards set by the Town, at the developer's expense." (emphasis added)

Section 5.25.2 of the CBS Development Regulations states:

"Servicing with on-site well and septic systems may be permitted as infill development along existing public streets." (emphasis added)

**Q: Does the Town have the authority to attach conditions/requirements to a development approval?**

**A:** Section 4.11(2) of the CBS Development Regulations states:

"The Authority may attach to a development approval such conditions as it seems fit in order to ensure that the proposed development will be in accordance with the purposes and intent of these Regulations." (emphasis added)

**Q: Is the requirement for a developer to be responsible for the cost of extending municipal services to a development site standard practice for the Town of Conception Bay South?**

**A: Section 4.3.5(2) of the CBS Municipal Plan states:**

“It shall be the intention of the Town to require that the provision of all new public infrastructure associated with new developments will be the responsibility of the developer.”

## Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

*“(10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.”*

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Conception Bay South acted in accordance with the *Urban and Rural Planning Act 2000* and the 2011 Town of Conception Bay South Municipal Plan and Development Regulations when it issued the subdivision development approval at the subject property, with conditions, to David Norris. It is the opinion of the Board, upon reviewing the Town’s Municipal Plan and Development Regulations, that the Town has the authority to attach the conditions of approval – specifically the requirement to extend municipal water services at the developer’s expense.

**ORDER**

Based on the information presented, the Board orders that the decision dated March 6, 2018 from the Town of Conception Bay South to the Appellant approving the subdivision application at 17-23 and 25-45 Metcalfes Lane, with conditions, be confirmed.

The Respondent and the Appellant(s) 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 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(s).

**DATED** at Mount Pearl, Newfoundland and Labrador, this 7<sup>th</sup> day of March, 2019.



\_\_\_\_\_  
**Cliff Johnston, Chair**  
**Eastern Newfoundland Regional Appeal Board**



\_\_\_\_\_  
**Paul Boudridge, Member**  
**Eastern Newfoundland Regional Appeal Board**



\_\_\_\_\_  
**Robert Warren, Member**  
**Eastern Newfoundland Regional Appeal Board**