

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Jack Foley (**Appellant**)

**AND** Town of Witless Bay (**Authority**)

**RESPECTING** "Conditions of an Approval", namely "Motion 2018-222" made at a public Council meeting on September 11, 2018  
[MAE Appeal File #: 15-006-057-010]

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Damian Ryan  
Member – Carol Ann Smith

**DATE OF HEARING** March 27, 2019

**LOCATION OF HEARING** Mount Pearl Council Chamber

**IN ATTENDANCE**

**Appellant: Jack Foley, absent**

**Representing the Appellant: Noel O'Dea**

**Representing the Respondent: Matthew Craig, Solicitor for the Town of Witless Bay**  
Lucy Carew, Councillor, Town of Witless Bay

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board

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

## DECISION

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Witless Bay acted in accordance with the applicable legislation, policy and regulations when, on September 11, 2018, Council resolved to amend the Town of Witless Bay Engineering Subdivision Design Standards, to enable Council to consider road standards and right-of-ways as discretionary decisions (and, in particular, to approve an access for the development of a single dwelling on residential backlands at 241a Gallows Cove Road behind the appellant's house) made at a public Council meeting on September 11, 2018 .

### Facts/Background

On June 12, 2018 the Town of Witless Bay Council, the following motions were carried:

- Motion 2018-142 to make a notice of motion to make amendments to the town plan
- Motion 2018-143 to make a notice of motion to make amendments to the Witless Bay Engineering Design Standards

On July 10, 2018 at a public meeting of Council, it was resolved:

- Motion to make amendments to the Witless Bay Town Plan 2013-2023
- Motion 2018-147 "Move to defer until the Town Planner submits a draft of the proposed Town Plan amendments to the office"
- Motion to make amendments to the Witless Bay Road Design Standards
- Motion 2018-148 "Move to defer until Council meet to finalize the proposed amendments to the Witless Bay Road Design Standards"

On September 11, 2018 at a public meeting of Council, it was resolved that Council adopt a revision to a notice of motion made at the June 12, 2018 Public Meeting. The amended motion reads: "Town of Witless Bay Engineering Subdivision Design Standards. All other road standards within the Witless Bay, including all public right of ways, shall be at the discretion of Council". September 2018 as the amendment date.

- Motion 2018-222 "Town of Witless Bay Engineering Subdivision Design Standards. All other road standards within the Town of Witless Bay, including all public right of ways, shall be at the discretion of Council. Dated September 2018".

On October 18, 2018, Jack Foley completed an appeal summary form supported by a letter articulating his grounds for appeal. His appeal summary form indicates that the decision being appealed is "Conditions of an Approval;", namely "Motion 2018-222" made at a public Council meeting on September 11, 2018.

### **Grounds for Appeal**

The appellant challenged Council's decision-making on the grounds that "the Town Council has exceeded the legislative authority granted under the *Municipalities Act* and under the *Urban and Rural Planning Act, 2000*" in order to make development decisions that are not compliant with the Town's Municipal Plan and Development Regulations. He is appealing a decision that he argues is to "empower Town Council to approve or disallow developments without consideration of Development Regulations" and, effectively, subvert the Regulations.

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

*The Urban and Rural Planning Act 2000*

The Town of Witless Bay Municipal Plan 2013-2023

The Town of Witless Bay Development Regulations 2013-2023

The Town of Witless Bay Engineering Sub-division Design Standards August 2013

## **Matters Considered by the Board**

This hearing was originally scheduled to be held February 13, 2019. At Mr. Foley's request, the hearing was postponed due to the late distribution of information and rescheduled to March 27, 2019.

**Q: Does the Board have the authority to consider this Appeal?**

**A:** After hearing oral submissions from the Appellant's representative, the Town Solicitor and a Councillor who attended the Appeal hearing, and after reviewing the materials provided, the Board has determined that the Appeal lies outside its jurisdiction.

Section 42(1) of the Urban and Rural Planning Act 2000 stipulates which matters may be appealed to a Regional Appeal Board. The following matters may be appealed:

- (a) An application to undertake a development;
- (b) A revocation of an approval or permit to undertake a development;
- (c) Issuance of a Stop Work Order; and
- (d) A decision permitted under this or another Act to be appealed to the Board.

Section 42(2) of the Urban and Rural Planning Act 2000 stipulates that 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 subject to an appeal.

During the hearing, the Board questioned the Town's Solicitor with respect to the Town of Witless Bay Engineering Subdivision Design Standards as to whether or not this document is currently a development scheme under the Town's Municipal Plan, or if it is intended to become a development scheme. In response, the Solicitor verbally advised that the Town's Engineering Subdivision Design Standards are intended to become a development scheme.

## **Conclusion**

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Witless Bay acted in accordance with the applicable legislation, policy and regulations when, on September 18, 2018, Council adopted a revision to Notice of Motion made at the June 12, 2018 meeting.

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. The Board has determined that the appeal does not meet the requirements for consideration under Section 42 of *URPA, 2000*.

Therefore, the Board does not have jurisdiction to confirm, reverse or vary the decision of the Town of Witless Bay under appeal Section 42(10) *URPA, 2000* and the Board cannot make a decision regarding the appeal.

The Board notes that in order for the proposed "Town of Witless Bay Engineering Subdivision Design Standards" to become a Development Scheme under the Town's Municipal Plan, the requirements of Section 30 of the Urban and Rural Planning Act, 2000 would apply and there would be a necessity for a public review/public input process, review of the proposed Scheme by the provincial government for review against provincial interests and policies, the appointment of an independent Commissioner to conduct a public hearing and to prepare a report with recommendations for the Town Council of Witless Bay on the Scheme and a favourable decision by the Minister of Municipal Affairs and Environment (MAE) to register the Scheme before it can come into effect.

**ORDER**

Based on the information presented, the Board found that it is outside its jurisdiction to hear an appeal beyond the legislated requirement stated in Section 42 of the *Urban and Rural Planning Act 2000*. The Board does not have jurisdiction to consider the appeal by Mr. Jack Foley against the Town of Witless Bay, specifically "Conditions of an Approval", namely "Motion 2018-222" made at a public Council meeting on September 11, 2018.

Therefore, the Board is unable to confirm, reverse or vary the Council decision that is the subject of this appeal.

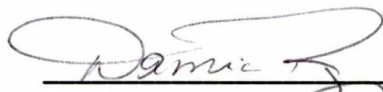
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 St. John's, Newfoundland and Labrador, this 28<sup>th</sup> day of March, 2019.



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



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**Damian Ryan, Member**  
**Eastern Newfoundland Regional Appeal Board**



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**Carol Ann Smith, Member**  
**Eastern Newfoundland Regional Appeal Board**