

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Marilyn Pearcey **Appellant(s)**

AND Town of Paradise **Respondent**

RESPECTING application to house 12 chickens and 2 standard goats at 754 St. Thomas line, Paradise.
File #: 15-006-057-044

BOARD MEMBERS Clifford Johnston, Chair
Robert Warren, member
Damian Ryan, member

DATE OF HEARING December 12, 2019

IN ATTENDANCE

Marilyn Pearcey, appellant
Alton Glenn, Director of Planning and Protection Services, Town of Paradise
Darren Randell, Planner, Town of Paradise
Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Tolulope Victoria Akerele, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

Marilyn Pearcey (Appellant) submitted an application to house 12 chickens and 2 standard goats at 754 St. Thomas line, Paradise. The request was considered by the Town of Paradise (the Authority) Council and refused on November 21, 2018. Ms. Pearcey completed an appeal summary form to appeal the decision on January 4, 2019.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Paradise Development Regulations

The Town of Paradise has the right to plan and guide development under the Urban and Rural Planning Act, 2000. In pursuant to this legislative framework, the Town's Municipal Plan and Development Regulations came into legal effect on April 6, 2018. The Board has no powers to change policy or regulations.

Matters presented to and considered by the Board

What is the matter under appeal?

Marilyn Pearcey (Appellant) submitted an application to house 12 chickens and 2 standard goats at 754 St. Thomas line, Paradise. The request was considered by the Town of Paradise (the Authority) Council and refused on November 21, 2018. In rendering its decision, Council advised the applicant that the surplus number of chickens (eight) and goats (two) would need to be removed by June 30, 2019. This seven month period was intended by the Town to allow the applicant time for the rehousing of the animals.

Ms. Pearcey indicated that her daughter was the owner of the animals and that they were being kept on her property at 754 St. Thomas Line. In the absence of her daughter, Ms. Pearcey read a prepared statement from her.

The statement capture the history of the goats and condition and how they arrived on the property. While the Board sympathizes and express Ms. Pearcey daughter's perspective on goats, the Board mandate is to deal with current regulations under the Town of Paradise Town Plan and

Development Regulations. Under the *Urban and Rural Planning Act, 2000* the Board is bound by section 42. (9).

A Board shall consider and determine appeals in accordance with this Act and a plan, scheme and regulations that have been registered under section 24 and having regard to the circumstances and merits of the case.

How is the property zoned?

The Board reviewed and confirmed that the Town's Municipal Plan and Development Regulations came into legal effect on April 6, 2018. According to the subject Development Regulations, the subject property is located in the part of the Town zoned 'Residential Medium Density' (RMD). According to the Town's Development Regulation, urban agriculture is listed as permitted use within the RMD zone Residential Medium Density (RMD)

1. Permitted Uses

The following Uses shall, subject to the requirements of these Regulations, be permitted:

- Assisted Living Residential Complex
- Duplex Dwellings
- Family Child Care
- Home Office
- Single-detached Dwelling
- Semi-detached Dwelling
- Subsidiary Apartment
- **Urban Agriculture**

Section 5.4 of the Town's Regulation, specify that a maximum of four chickens (no roosters), and maximum of two small goats (dwarf, pygmy) are permitted as urban agriculture uses in this zone. Agriculture (Urban)

Urban Agriculture Uses shall be limited to the keeping of poultry, small goats (dwarf, pygmy) and beehives on a residential Lot subject to the following conditions:

- a. The owner shall keep the poultry, goats, eggs or honey produced for personal use.
- b. Goats
 - i. No more than two (2) small goats shall be permitted on a property; and
 - ii. The property shall be fenced.

How did the Town classify what type of goats would be permitted in the RMD zone?

The Town's representative explained that the Town consulted with other municipalities in the province and other Canadian municipalities to determine their policies and regulations regarding

urban agricultural uses. The Town staff prepared a draft regulations for council to consideration. Council subsequently adopted regulations for urban and agricultural operations which are now incorporated within the Town's Development Regulations.

Ms. Percey's presentation to the Board questioned the lack of solid criteria in developing the Town's Regulations. Specifically:

- There is no breed registration
- No official height to determine a species of goat
- Pygmy and dwarfs goats are defined by genics and not by height and weight that is, cannot tell a breed of a goat by looking at it, genic testing only

Is Council decision a discretionary matter?

Ms. Pearcey noted that the policy is unreasonable and that council should exercise its discretion. The Board review the scheduled C of Town's Development Regulations) and noted that the keeping of goats is not a discretionary decision in the RMD the zone. The Board notes that the keeping of small goats is a permitted use subject to section 5.4 of the Town's Development Regulations.

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.

The Board is bound by the *Urban and Rural Planning Act 2000*,

(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 Board reviewed the following:

Urban and Rural Planning Act, 2000

Town of Paradise Development Regulations

The Board has determined that the Town has the authority under section 5.4 of the Town's Development Regulations to refuse that portion of the application to house 12 chickens.

The Board has furthered determine that the Town's definition of a small goat is inadequate for the Town's purpose in processing applications for urban agricultural activities due to the fact that it does not specify what constitutes size and has no criteria to support what is meant by "small" (goat).

Thereby, the Board confirms the Council decision of refusal (dated November 20, 2018) by accepting that a maximum of four chickens may be kept on the subject property. However, under the *URPA, 2000* the Board will vary the refusal decision by directing that the two existing goats on the property may stay and directs the Town to issue a permit to house the goats. The Board determined that the goats are permitted under the Town Development Regulations as they currently exist. The Board also directs the Town to review its definition of "small goats" to provide specific criteria for classification.

Order


Based on the information presented, the Board orders that the decision made by the Town of Paradise refusal be varied. The Board varies the Council decision of refusal (dated November 20, 2018) by accepting that a maximum of four chickens may be kept on the subject property and further by ordering that the two existing goats on the property may stay and directs the Town to issue a permit to house them. The Board also orders the Town to review its definition of “small goats” to provide specific criteria for classification.

The Town of Paradise and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

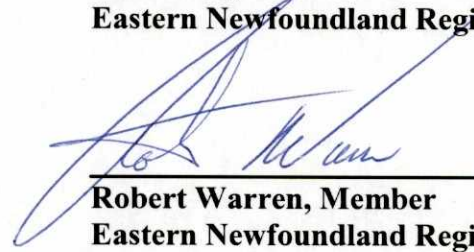
According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction. If this action is contemplated, the appeal must be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

DATED at Portugal Cove-St. Philips Newfoundland and Labrador, this 12 day of December 2019.

Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member
Eastern Newfoundland Regional Appeal Board