

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Gary and Anne Marie Churchill **Appellants**

AND Town of Witless Bay **Respondent**

RESPECTING Refusal of permit of a gazebo on 0 Mullooney's Lane in Gallows Cove,
Witless Bay

BOARD MEMBERS Michelle Downey, Chair
Raelene Thomas, Member
Mary Thorne-Gosse, Member

DATE OF HEARING December 7, 2017

IN ATTENDANCE:

Gary Churchill – Appellant
Geraldine Caul – Respondent

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

DECISION

Facts/Background

On August 6, 2015, Gary and Ann-Marie Churchill applied to the Town of Witless Bay for a permit to construct a gazebo on their property located at 0 Mallowney's Lane in Gallows Cove. Council considered and approved Mr. and Mrs. Churchill's application at the August 11, 2015 Regular Meeting of Council. A permit was issued to the applicants on August 12, 2015. Mr. and Mrs. Churchill subsequently built the gazebo.

On August 24, 2015, Mr. Edward Vickers, an interested party, filed an appeal with the Eastern Newfoundland Regional Appeal Board (ENRAB) against Council's approval of the above noted application. The appeal was heard by the Eastern Newfoundland Regional Appeal Board (the "Board") on November 23, 2015. The Board vacated the Town's decision and ordered the Town to reconsider the application. Specifically, the Board stated that the Town may have the authority to approve the application as a discretionary use but must advertise the application pursuant to section 32 and 90 of the Town's Development Regulations and the Town, must consider any comments or objections received as a result of the public advertisement prior to making a decision in accordance with section 90 of the Town's Development Regulations.

The Town council of Witless Bay acknowledged the Board's November 23, 2015 decision and proceeded to advertise the discretionary use application. Submissions were received and distributed to the council members. At a public council meeting held on May 10, 2016 the Town council of Witless Bay denied the application on the basis that the gazebo was not a permitted use in the Rural Zone as council was no longer treating the application as a discretionary use application.

In accordance with the Act a notice was published in the Telegram on June 18, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Town of Witless Bay Municipal Plan and Development Regulations, 2005

Matters presented to Board

Did the Town implement the decision of ENRAB made on November 23, 2015?

The Board heard that the Town Council of Witless Bay advertised the discretionary use application to construct the gazebo and gave 30 days for public consent.

The Town received comments, however, the Board heard at the December 7, 2017 hearing that the council did not take these comments into consideration because the authority determined the application was to be decided under the permitted use of the "Rural Zone". By choosing to consider an application under permitted use council did not comply with the Eastern Newfoundland Regional Board's Order of November 23, 2015.

Did the Town process the application in accordance with Town of Witless Bay Development Regulations?

Schedule C of the Town of Witless Bay Development States:

Zone Title	RURAL	(R)
PERMITTED Use Classes (See Regulation 85 and Conditions)		
Agriculture, forestry and conservation..		
DISCRETIONARY Use Classes (See Regulations 22 and 86 and Conditions)		
Outdoor assembly, single dwelling, veterinary, office, outdoor market, general industry, light industry, mineral working, hazardous industry, recreational open space, cemetery, animal, transportation, antenna.		

The Board heard from the authority and appellant that no consideration was given to any representations or objections received even though councilors were provided with numerous submissions.

The Board finds the Town of Witless Bay did not comply with section 90 of the Town's Development Regulations nor did the town carry out the decision of ENRAB dated November 23, 2015.

In arriving at its decision the Board reviewed the submissions and evidence presented by all parties along with technical information and planning advice.

Conclusion

The Board is bound by section 42 of the Urban and Rural Planning Act, 2000 and therefore must make a decision that complies with applicable legislation, policy and regulations. In particular sections 10 and 11 of the Urban and Rural Planning Act 2000 which state:

(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.

(11) Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision.

The Board determined a valid permit was issued to Mr. Churchill on August 11, 2015. That permit was issued as a discretionary decision of council under section 90 of the Town of Witless Bay Development Regulations. The Board finds Section 90 shall continue to apply.

Council is required to make a decision on the discretionary use application in accordance with its Regulations. As the Town has already advertised for this application as a discretionary use application, it now must consider all submissions received as a result of the public advertisement of May 14, 2016-April 5, 2016 and make a decision on the discretionary use application.

Order

The Board orders the decision made by the Town of Witless Bay on May 10, 2016 to deny Gary and Ann Marie Churchill's application to develop a gazebo in Gallows Cove be reversed.

The Board further orders that the application must be considered as a discretionary use decision as per section 90 of the Town of Witless Bay Development Regulations. The original application dated August 6, 2015 remains valid as it was advertised and responses have been received.

In exercising its discretion council must consider any objections or comments received in response to the advertising already completed.

The Board further orders that the Town of Witless Bay pay an amount of money equal to the appeal filing fee of \$226.00 paid by the appellant to the appellant.

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 St. John's, Newfoundland and Labrador, this 7th day of December, 2017



**Michelle Downey, Chair
Eastern Newfoundland Regional Appeal Board**



**Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board**



**Raelene Thomas, Member
Eastern Newfoundland Regional Appeal Board**

