

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**BETWEEN** Gerry MacDonald **Appellant(s)**

**AND** Town of Pouch Cove **Authority**

**RESPECTING** Refusal of application to sub-divide land  
660 – 682 Pouch Cove Line  
MAF 15-006-054-007

**BOARD MEMBERS** Chair – Cliff Johnston  
Member – Carol Ann Smith  
Member – Robert Warren

**DATE OF HEARING** October 24, 2018

**IN ATTENDANCE**

Appellant: Gerry MacDonald  
Respondent: Town of Pouch Cove, Acting Town Clerk, Susan Arns  
Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board  
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board  
Patrick MacDonald, Brother of Appellant, Interested Party

## DECISION

### Facts/Background

This appeal arises from the Town of Pouch Cove refusal of an application from Gerry MacDonald to sub-divide land at 660-682 Pouch Cove Line.

On May 28, 2017, Gerry MacDonald applied to the Town to sub-divide land located at 660-682 Pouch Cove Line. The application was refused by the Town on May 15, 2017. Correspondence advising of the refusal was sent to the applicant on May 17, 2017. This letter advised the applicant that he did not have the right to appeal the Council decision. There was a follow-up letter from the Town to the applicant on June 7, 2017, clarifying the reasons for the refusal and advising of the applicant's right to appeal this decision to the Eastern Regional Appeal Board.

On July 12, 2017, Mr. MacDonald filed an appeal with the Eastern Regional Appeal Board against Council's decision. The Appellant is appealing the refusal on the following grounds:

- Council's reasons for refusing the application were not the same as the information in the minutes of the Council meeting at which the application was refused; and
- Council improperly used Regulation 10 of the Town Development Regulation when making its decision.

*"Although Regulation 10 was cited as the reason the application was defeated, the notes from the Development Committee meeting of May 15, 2017 indicate a different reason for defeating the application. The Development Committee notes indicate the reason that the application was defeated was 'we heard nothing from them (the MacDonalds) until the receipt of this application for only one building lot. The Committee agreed that the application for one building lot is an effort to avoid the requirements for a sub-division agreement and that we should not approve the application.'*

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Telegram* on September 28, 2018 and a notice of the time, date, and place of the Hearing was provided to the Appellant and Respondent.

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

Urban and Rural Planning Act, 2000

Town of Pouch Cove Municipal Plan

Town of Pouch Cove Development Regulations

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

**Q:** Does the zoning of the property located at 660 – 682 Pouch Cove Line allow new residential development?

**A:** The subject property is located within an area zoned Residential Rural (RR). The RR zone permits single dwellings. The RR zone requires the lots must meet a minimum requirement of 4050 sq. meters with a 45 meter frontage on a publicly maintained road.

**Q:** Does the Appellant require the Town's approval to sub-divide their land?

**A:** Yes, the Town's approval is required in order to allow any proposed sub-division on the property for new home development. (Section 70 of the Town of Pouch Cove Development Regulations.)

**Q:** Why was the application submitted on May 8, 2017 for a sub-division of the subject property into two (2) lots rejected by the Town?

**A:** The recommendation to reject the application for a sub-division of the property was recommended by the Development Committee, and approved by Council on May 15, 2017. Correspondence was sent to the Appellant from the Town dated May 17, 2017 advising that the application was rejected as being "in contravention" of Regulation 10 of the Town Plan. Subsequently the Town sent a letter dated June 7, 2017 to the Appellant, clarifying the reason for using Regulation 10. *"The reason for the refusal was: The applicants met with the Development Committee on three occasions, discussing open space, level 1 groundwater assessment, sub-division agreement, etc. Council is of the opinion that these items were outstanding and left with the applicants to complete. These items have not been submitted to date, therefore Regulation 10 was used."*



**Q:** Was the Town within its Authority to reject the application for sub-division of property?

**A:** Yes. In considering an application for permit or approval in principle to carry out development, the Town can assess the application under the discretionary authority of Regulation 10, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

### **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.

Section 42 (11) of the Urban and Rural Planning Act, 2000 states that “*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.*”

Based on its findings, the Board determined that the Town of Pouch Cove was within its authority to reject the Appellant’s application of May 8, 2017.

**Order**

Based on the information presented, the Board orders that the decision dated May 15, 2017 of the Town of Pouch Cove to reject the application for the sub-division of property located at 660-682 Pouch Cove Line 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 Portugal Cove-St. Philips, Newfoundland and Labrador, this 24<sup>th</sup> day of October, 2018.



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



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



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