

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-051
Appellant(s)	Gary Churchill
Respondent / Authority	Town of Witless Bay
Date of Hearing	April 22, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Carol Ann Smith

Also in Attendance

Appellant(s)	Gary Churchill; Ann Marie Kelland-Churchill
Representatives for the Appellant(s)	
Representatives for the Authority	Shawn Kavanagh, Town Manager
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	Edward Vickers

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Eastern Newfoundland Regional Appeal Board (the "Board") is to determine if the decision of the Town of Witless Bay (the Authority) to rescind a motion is in accordance with the Urban and Rural Planning Act, 2000.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Town of Witless Bay, Municipal Plan and Development Regulations

Background:

The Board's role is to determine whether the decision of the Town of Witless Bay to rescind a motion was in accordance with the Urban and Rural Planning Act, 2000 and the Witless Bay Municipal Plan and Development Regulations. The motion, passed by the Witless Bay Town Council (the Authority) on August 17, 2022 was to support an application by Mr. Gary Churchill (the Appellant) to seek approval for a well and septic system at 0 Mallowneys Lane from the Department of Digital Government and Service NL. The Authority rescinded this motion at a public meeting of Council on November 9, 2021.

Presentations During Hearing

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant and the Authority.

The Board heard from the following:

Technical Advisor:

The Appellant is appealing the November 9, 2021 decision of the Witless Bay Town Council to rescind the Council's motion of August 17, 2021 supporting the Appellant seeking approval from Digital Government and Service NL for a well and septic system for the property located at 0 Mallowney's Lane. The Appellant's Grounds of Appeal are as follow:

- Council acted outside of its jurisdiction as Digital Government and Service NL is the authority for the approval of septic systems;
- The appellant followed proper procedure and submitted an application to the Town and worked with Digital Government and Service NL on the design and installation of the septic system;
- A permit was issued by Digital Government and Service NL and on-site work has started; and
- There has been no communication from the Authority regarding the revocation of the motion.

The decision made by the Authority was to rescind motion 2021-267. According to the minutes of the public council meeting held on August 17, 2021, motion 2021-267 stated:

2021- 267 It was moved by Councilor Paul, seconded by Councilor Swain, to support the application and refer back to Digital Government and Service NL for final system approval. The mayor called for discussion.

The motion does not approve an application or the issuance of a permit to undertake development. Section 42 (1) (b) of the Act specifies that an appeal may be filed with respect to a decision regarding a revocation of an approval or a permit to undertake development.

The Technical Advisor noted to the Board that there is a question of jurisdiction for the Board to address regarding the timing of the submission of the Appellants' appeal. The Appeal was filed on January 20, 2022 against a Council decision made on November 9, 2021. Further, the Board should address the matter of its jurisdiction to hear the appeal with respect to section 42(1) of the Urban and Rural Planning Act.

NOTE: At this point, the Board asked both the Appellants and the Representative for the Authority to speak on the jurisdictional issues

The Appellant:

- The Appellants advised that they did not receive any written correspondence from the Town regarding Council's decision of November 9, 2021 to rescind Motion 2021-267.
- The revocation of Motion 2021-267 is out of order because the Appellants followed proper procedure that requires an Applicant to get Town approval and then work with Service NL on the design and installation of the septic system. In this case, the process is already past the Town's authority or purview as their approval was granted and design work conducted and paid for, the permit issued by Service NL, and the on-site work begun.

The Authority:

- Town records show that a letter from the Town was sent to the Appellants on November 10, 2021 informing them of Council's decision of November 9, 2021 to rescind Motion 2021-267.
- Council's motion of August 17, 2021 (Motion 2021-267) did not give any level of Town approval or authorize permits for the installation of well and septic systems for the subject property.

NOTE: At this point in the Hearing, the Board took a short adjournment to deliberate on the matter of the jurisdiction of the Board to hear the appeal.

Upon completion of its deliberations, the Board reconvened the Hearing and advised all parties that the Board had determined that it did not have jurisdiction to hear the Appeal. The Board therefore concluded the Hearing.

BOARD ANALYSIS

Q. Does the Board have jurisdiction to hear this Appeal?

A. No. In accordance with Section 42 of the Urban and Rural Planning Act, 2000, the Board has determined that it has no jurisdiction to hear this Appeal. The matter being appealed does not involve an application to undertake development or a decision to allow/approve a development.

Section 42 of the Urban and Rural Planning Act, 2000:

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to
- (a) an application to undertake a development;
 - (b) a revocation of an approval or a permit to undertake development;
 - (c) the issuance of a stop work order; and
 - (d) a decision permitted under this or another Act to be appealed to the board.

The Appellant is appealing Council's decision of November 9, 2021 to rescind Motion 2021-267, which was approved August 17, 2021. This motion did not approve an application or involve the issuance of a permit to undertake "development". Section 42(1)(b) of the Urban and Rural Planning Act, 2000 specifies that an appeal may be filed with respect to a decision regarding a revocation of an approval or a permit to undertake "development".

According to Section (g) of the Urban and Rural Planning Act, development is defined as "...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings, or premises and the:

- (i) making of an access onto a highway, road or way,
- (ii) erection of an advertisement or sign,
- (iii) construction of a building,
- (iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation..."

Board's Conclusion and Decision

In arriving at its decision, the Board reviewed the submissions and comments given by Parties present at the hearing, along with the technical information. The Board is bound by Section 42 of the Urban and Rural Planning Act, 2000 and therefore must make a decision which applies with the applicable legislation, policy, and regulations.

As per Section 42 of the Urban and Rural Planning Act, 2000, a decision that can be appealed is limited to decisions based on an application. In this case, Council's motion of August 17th, 2021 (Motion 2021-267) does not approve an application or involve an issuance of a permit from the Town to undertake development.

The Board has determined that it has no jurisdiction to hear this appeal.

Board's Order

The Board has determined that it has no jurisdiction to hear the appeal from Gary Churchill and Ann Marie Kelland-Churchill against the Council Motion of November 9, 2021 (Motion 2021-372) to rescind the Council Motion 2021-267 which was adopted by Council on August 17, 2021.

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

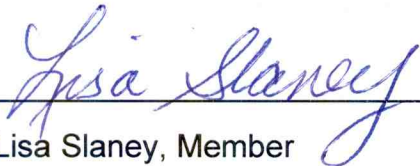
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after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

DATED at St. John's, Newfoundland and Labrador, this April 22, 2022.



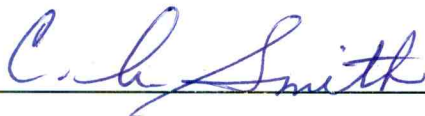
Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member

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