

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-008
Appellant(s)	Chris Warren
Respondent / Authority	Town of Holyrood
Date of Hearing	February 10, 2021

## Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Eugene Warren, father of Appellant Chris Warren
Representatives for the Authority	Robert Stacey, Director of Infrastructure and Public Works; Travis Payne, Solicitor, Curtis Dawe
Secretary to the Board	Robert Cotter
Technical Advisor to the Board	Tolulope Victoria Akerele
Interested Parties	Don Battcock (Applicant)

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 is to determine whether the Town of Holyrood was within its authority to approve Don Battcock's application to construct a fence on a portion of a public right of way located at Crawley's Road, Holyrood.

## Presentations During the Hearing

### 1. Planner's Presentation

This appeal is based on the following section of the Urban and Rural Planning Act: Section 42.(1)(a) (an application to undertake a development).

*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 a 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 the decision based on the following grounds:

- The Town does not have the right to approve the construction of a fence on a public right of way.
- The fence will restrict future development of the right of way.

Section 6 of the Town's Development Regulations sets out that all development within the planning area must comply with the Development Regulations.

#### *6. Compliance with Regulations*

*No development shall be carried out within the Planning Area except in accordance with these Regulations.*

As per section 7 of the Town's Development Regulations, a permit is required for all development within a planning area. The appeal submission shows that after the Town reached out to the applicant to apply for a fence permit, the applicant sent his application to the Town.

#### *7. Permit Required*

*No person shall carry out any development within the Planning Area except where otherwise provided in these Regulations unless a permit for the development has been issued by the Authority.*

In compliance with section 17 of the Town's Development Regulations that sets out the requirement to complete a form of application for a development permit, the appeal package shows that the applicant completed a form of application to erect a fence.

#### *17. Form of Application*

*(1) An application for a development permit or for approval in principle shall be made only by the owner or by a person authorized by the owner to the Authority on such form as may be prescribed by the Authority, and every application shall include such plans, specifications and drawings as the*

*Authority may require, and be accompanied by the permit fee required by the Authority.*

*(2) The Authority shall supply to every applicant a copy of the application forms referred to in Regulation 17(1) and a description of the plans, specifications and drawings required to be provided with the application and any information or requirements applicable to the application.*

According to section 21 of the Town's Development Regulations, the Town may attach conditions deemed fit to ensure the proposed development will be in accordance with the purposes and intent of subject regulations. The appeal submission shows that while the Town approved the fence application, the Town informed the applicant that the triangular piece belonged to the Town.

*21. Development Permit*

*(1) A plan or drawing which has been approved by the Authority and which bears a mark and/or signature indicating such approval together with a permit shall be deemed to be permission to develop land in accordance with these Regulations but such permission shall not relieve the applicant from full responsibility for obtaining permits or approvals under any other regulation or statute prior to commencing the development; from having the work carried out in accordance with these Regulations or any other regulations or statutes; and from compliance with all conditions imposed thereunder.*

*(2) The Authority may attach to a permit or to approval in principle such conditions as it deems fit in order to ensure that the proposed development will be in accordance with the purposes and intent of these Regulations.*

*(3) Where the Authority deems necessary, permits may be issued on a temporary basis for a period not exceeding two years, which may be extended in writing by the Authority for further periods not exceeding two years.*

The Municipalities Act, 1999 (section 163) states that ownership of highways and decisions respecting construction of the right-of-ways in the municipality are within the purview of the Town Council. The appeal documents shows the email communication where the Town reiterates its ownership of Crawley's Road and the unwillingness of the Town to sell any portion of the subject road.

*163. Ownership of highways*

*(1) The ownership, management and control of all highways, sidewalks and bridges in the municipality, except highways vested in the Crown under section 5 of the Works, Services and Transportation Act, are vested in the council.*

*(2) Where a council is established to govern an area that was a townsite or other area owned by a corporation, all highways, sidewalks and bridges are considered to be public except those specifically retained by the corporation that are necessary to the corporation's operations.*

The appeal package shows that the Town Council approved the fence while acknowledging consideration for the future development of the road. The submission also revealed that Council considered the location of the fence and ascertained that the fence will not obstruct the free flow of

traffic on Crawley's Road. The appeal documentation also indicate that the applicant is aware of the implication of constructing a fence at the boundary between his property and the road.

**165. Construction**

*(1) A council may construct public highways, sidewalks and bridges and improve, realign, alter the level of, and repair existing public highways, sidewalks and bridges.*

*(2) A person shall not break up the surface of a public highway, sidewalk or bridge or erect or place a structure or erection in, on or under them without the prior written approval of the town council and in accordance with conditions imposed by the council in its approval.*

The Town is the decision-making authority and a review of the information submitted regarding this appeal, show that Council made the decision to approve the application for fence. The fence permit was included in the appeal submission.

**2. Appellant's Presentation**

Eugene Warren indicated that his son Chris Warren, who is the Appellant, wants to be able to access his property to cut firewood. The Town has not done any work on the public right of way (Crawley's Road); Chris Warren has done work to upgrade the public right of way.

The presence of the new fence has impeded Mr. Warren's access to his property from the Conception Bay Highway. In addition, the presence of the new fence has increased Mr. Warren's traffic risk when entering and exiting the right of way from the highway.

Eugene Warren stated that 95% of the fence is within the public right of way.

**3. Authority's Presentation**

Mr. Stacey advised the Board that Crawley's Road is not a public street, as per the Town's Development Regulations, and the Town has no interest in developing this public right of way to public road standards at this time.

Mr. Stacey also advised that in May 2020, the Appellant, the Town and the Boiler Maker's (adjacent land owner) discussed the right of way, and agreed to landscaping by Mr. Battcock on a portion of the right of way. However, Eugene Warren disputes that there was any agreement regarding the construction by Mr. Battcock of a fence in a portion of the right of way.

**4. Other Parties**

Don Battcock advised the Board that the fence which he received a permit to build from the Town, is not impeding any access to the right of way at Crawley's Road.

## Board's Analysis

Q. Did the Town have the authority to authorize the construction of a fence by an adjacent private property owner on a portion of a public right of way – Crawley's Road?

A. The Board has determined that the Town did not have the authority to authorize the construction of a fence by an adjacent private property owner on a portion of a public right of way at Crawley's Road. The Board has not been able to ascertain that there is applicable legislation which authorizes the Town to allow an adjacent private property owner to fence or encroach upon a portion of a public right of way while the right of way remains in the public domain. Further, the Town's Application Form to construct a fence clearly states that the property owner is responsible for ensuring that all fences are erected within their legal property boundaries.

## Board's 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 that complies with the applicable legislation, policy and regulations.

The Board has determined that the Town of Holyrood did not have the authority to issue a permit to Don Battcock to construct a fence on a portion of the public right of way at Crawley's Road located off the Conception Bay Highway.

## Board's Order

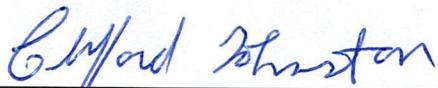
The Board orders that the Town of Holyrood's decision of May 29, 2020 to allow Don Battcock to construct a fence on a portion of the public right of way located at Crawley's Road, off the Conception Bay Highway, be reversed. The Board further orders that the fence be removed by Don Battcock on or before June 15, 2021 and that the Town ensure such removal is completed by the specified date.

The Board further orders the Town of Holyrood pay an amount of money equal to the value of the appeal fee (\$200.00 + HST = \$230.00) to the Appellant.

The Respondent 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 Board's decision has been received by the Appellant(s).

DATED at St. John's, Newfoundland and Labrador, this 1 of April, 2021.



Clifford Johnston, Chair  
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member  
Eastern Newfoundland Regional Appeal Board



Robert Warren, Member  
Eastern Newfoundland Regional Appeal Board