

Public Meeting of Witless Bay Council
Town Hall
October 8, 2019

Attending: Deputy Mayor Maureen Murphy, Councillors Fraser Paul, Vince Swain and Lucy Carew
Mayor Rene Estrada attended via Remote Means

Reporting: Geraldine Caul and Barb Harrigan

1. Deputy Mayor Maureen Murphy opened the meeting at 7:30 pm
2. **2019-255** Councillor Vince Swain/Councillor Fraser Paul
Be it resolved that Council adopt the Agenda of October 8, 2019 as presented.
Motion carried unanimously.
3. Adoption of Minutes:
 - a. **2019-256** Councillor Fraser Paul/Councillor Vince Swain
Be it resolved that Council adopt the Minutes of Public Meeting of September 10, 2019.
Motion carried unanimously.
 - b. **2019-257** Councillor Fraser Paul/Councillor Lucy Carew
Be it resolved that Council adopt the Minutes of Special Public Meeting of September 19, 2019.
Motion carried unanimously.
 - c. **2019-258** Councillor Lucy Carew/Councillor Fraser Paul
Be it resolved that Council adopt the Minutes of Special Public Meeting of September 30, 2019.
Motion carried unanimously.
4. Business Arising from Minutes
 - a. Call for Quotes for salt and sand pit

2019-259 Councillor Fraser Paul/Councillor Vince Swain

Be it resolved that Council call for quotes for work for salt and sand pit.

Motion carried unanimously.

5. Public Works & Infrastructure

a. Application to construct a residential dwelling on Harrigan's Lane

2019-260 Councillor Fraser Paul/Councillor Vince Swain

Be it resolved that Council defer approval to construct a new home on Harrigan's Lane.

In order for this application to be approved, the driveway for the new home which is currently under construction must have their own driveway developed before this new application can be considered. Further to this, Schedule A of the surveys must be submitted to the office for each separate piece of property.

Motion carried unanimously.

b. Preliminary application to construct a Community Health Services Centre on Dean's Road – Councillor Fraser Paul declared a conflict of interest on this application because his company may be involved with work for with this company. Councillor Paul left the Chamber at 7:34 pm.

Councillor Lucy Carew reported that there was no documentation submitted on this proposal.

Councillor Fraser Paul returned to the Chamber at 7:35 pm.

6. Finance.

a. Payable Chart

2019-261 Councillor Lucy Carew/Councillor Vince Swain

Be it resolved that the Payable Chart be approved for payment.

Motion carried unanimously.

b. Mobile High School request for donation towards their Breakfast Club

2019-262 Councillor Lucy Carew/Councillor Fraser Paul

Be it resolved that Council approve a donation of \$250.00 to Mobile High School for their Breakfast Club.

Motion carried unanimously.

c. Southern Shore Arena request for financial contribution to the arena's annual Stabilization Fund

2019-263 Councillor Lucy Carew/Councillor Fraser Paul

Be it resolved that Council continue to support the Ken Williams Southern Shore Arena Stabilization Fund for \$6500.00.

Motion carried unanimously.

- d. Invoice for Mercer's Paving – Potholes and other road maintenance (\$39,256.26)

2019-264 Councillor Fraser Paul/Councillor Vince Swain

Be it resolved that Council make payment to Mercer's Paving for Potholes and Other Road Maintenance Project in the amount of \$39,256.26 and to pay the final installment to Mercer's Paving for the Paving of Local Roads Project.

Motion carried unanimously.

- e-f. Martin's Survey Services Land survey on Southside Track & Ball Field (\$2875.00) and Compilation Plan on Southside Track (\$287.50)

2019-265 Councillor Fraser Paul/Councillor Vince Swain

Be it resolved that Council include items e) and f) for Martin's Survey Services and pay both invoices for a total amount of \$3,162.50.

Motion carried unanimously.

- g. Invoice for Hickman Motors for brake work and other repairs (\$19,019.08)

2019-266 Councillor Lucy Carew/Councillor Vince Swain

Be it resolved that Council approve payment for Hickman Motors for brake work and other repairs for the fire department tanker for a total amount of \$19,019.08).

Motion carried unanimously.

7. New Business

- a. LW Consulting: Proposal for Development of Regulations, Policies & Procedures

2019-267 Councillor Lucy Carew/Councillor Vince Swain

Be it resolved that Council accept LW Consulting's Proposal for Development of Regulations, Policies & Procedures in principle pending clarification on Phases 3, 4 & 5.

Motion carried unanimously.

- b. Correspondence regarding Right of Way (Information Purpose) – Councillor Lucy Carew reported that Council will continue to do more research on ownership of the Right of Way.

- c. Results of Appeal: Vickers vs Town of Witless Bay related to Mallowney's Turnaround/Gallows Cove Road Erosion – Councillor Lucy Carew reported on a recent appeal related to the Mallowney's Lane Turnaround and Erosion projects. Councillor

Carew stated that the Board has determined that because the appeal was filed outside of the 14 day time limit, it was deemed to be outside of their jurisdiction. Councillor Carew also noted that from this point going forward, any appeals and court cases will be included in the minutes and placed on the town's website once the minutes are ratified. (Appendix A).

d. Appointing alternate Returning Officer for By-election

2019-268 Councillor Lucy Carew/Councillor Fraser Paul

Be it resolved that Council appoint Barb Harrigan as Alternate Returning Officer for the upcoming by-election.

Motion carried unanimously.

8. **2019-269** Councillor Fraser Paul/Councillor Lucy Carew

Be it resolved that Council adjourn the meeting at 7:43 pm.

Motion carried unanimously.

Don Moran

Appendix A

EASTERN NEWFOUNDLAND REGIONAL
APPEAL BOARD

Urban and Rural Planning Act, 2000

September 17, 2019

Mr. Edward Vickers

Witless Bay, NL A0A 4K0

Dear Mr. Vickers:

Re: Appeal to the Eastern Newfoundland Regional Appeal Board

On September 12, 2019, the Eastern Newfoundland Regional Appeal Board (the "Board") received your appeal via the Secretary of the Board, Robert Cotter, as against the Town of Witless Bay.

The Board has determined that your appeal is outside the jurisdiction of the Board, as it was filed outside the 14 day time limit set out in the *Urban and Rural Planning Act, 2000* ("URPA").

The Board is established pursuant to Part VI of URPA. URPA specifically outlines the matters that may be heard by the Board; and therefore, limits the Board's jurisdiction accordingly. URPA provides for the appeal of development decisions, including approvals or permits to undertake development, revocation of development approvals or permits, refusal of building permits, or the issuance of Orders.

The Board reviewed section 42 of URPA, as follows:

"Appeal

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.*

(2) A decision of a council, regional authority or authorized administrator to adopt, approve or proceed with a plan, scheme, development regulations and amendments and revisions of them is final and not subject to an appeal.

(3) An appeal board shall not make a decision that does not comply with a plan, scheme and development regulations that apply to the matter being appealed.

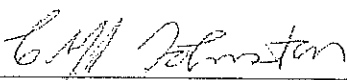
(4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed."

The intention to address erosion on Gallows Cove Road was first raised by Council in a public meeting on November 13, 2018; and in the July 9, 2019, public meeting Council voted to accept a quote from a contractor in relation to Gallows Cove Road. Finally, on July 30, 2019, the Town of Witless Bay undertook action with respect to the erosion project on Gallows Cove Road; as such, your appeal was received outside the 14-day requirement.

The Board is bound by the 14-day time limitation, as set out in subsection 42(4) of URPA. Further, your appeal does not set out any of the grounds of appeal under subsection 42(1) paragraphs (a), (b), (c) and (d).

To conclude, as Chair of the Eastern Newfoundland Regional Appeal Board, this letter is to inform you that a quorum of the Board has reviewed your appeal submission, and we have determined that it is outside of our jurisdiction. Therefore, the Board will not process your appeal any further nor conduct a hearing on the matter, and the file is closed.

According to section 46 of URPA, this 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 (of the Board). If this action is contemplated, the appeal must be filed with the Court no later than ten (10) days after the date you (the Appellant) receive the Board's decision.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board

Copy: Robert Cotter
Secretary to the Eastern Newfoundland Regional Appeal Board

Copy: Town of Witless Bay

EASTERN NEWFOUNDLAND REGIONAL APPEAL
BOARD

Urban and Rural Planning Act, 2000 (URPA)

September 12, 2019

Mr. Edward Vickers

Witless Bay, NL
A0A 4K0

Dear Mr. Vickers:

Re: Appeal to the Eastern Newfoundland Regional Appeal Board

Your appeal, registered with the Eastern Newfoundland Regional Appeal Board (ENRAB) on July 29, 2019 against a decision of the Town of Witless Bay, has been deemed outside the jurisdiction of this Appeal Board.

The Eastern Newfoundland Regional Appeal Board is established pursuant to Part VI of the Urban and Rural Planning Act, 2000 (the Act). This Act specifically outlines the matters that may be heard by the Board and therefore limits the Board's jurisdiction accordingly. The Act provides for the appeal of development decisions, including approvals or permits to undertake development, revocation of development approvals or permits, refusal of building permits, or the issuance of Orders.

The Appeal Board has reviewed your submitted appeal documentation and understands from the information provided that the appeal stems from a decision by the Town of Witless Bay, dated July 23, 2019 to award a contract to O'Brien's Trucking to develop a turn-around and parking lot beyond Mallowney's Lane, Gallow's Cove, Witless Bay.

Your grounds for appeal are summarized as follows:

The Town Council:

- * has undertaken development as described in the Urban and Rural Planning Act (Section 42(1)),
- * has enabled development that does not conform with the Town's Municipal Plan and Development Regulations,
- * has no lawful access to the subject land,
- * other submissions the Board has considered since your original filing of the appeal

What did the Appeal Board consider in determining the appeal to be outside its jurisdiction?

The Board reviewed the definition "Development". "Development" is a legislative definition contained in the Urban and Rural Planning Act, 2000 and Section 2(g)(vi) of the Act excludes from the definition of "Development" the "carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation".

The Board also reviewed The Municipalities Act, 1999 which is the legislative framework that sets out the subject matters for which municipalities have authority as legal entities. Section 165 of the Municipalities Act, 1999, gives councils the authority to construct, repair and make changes to public highways/roads. Section 163 of the Municipalities Act, 1999, directs that management and control of highways is vested in the municipal council and, unless otherwise specified, all such highways are public.

The Town of Witless Bay Council's decision to acquire the subject Crown Land property was for the purpose of constructing a turn-around and parking lot for users of the East Coast Trail. The use of the land for turn-around was considered a public service (municipal infrastructure), which is allowed in all land use zones in the Town in accordance with Regulation 55 of the Town's Development Regulations. In land use terms, parking is generally considered an ancillary use and, in this instance, to support the users of the existing trail (an existing recreation open space use).

Regulation 55 of the Town's Development Regulations provides that:

"Services and Public Utilities

The Authority may within any zone permit land to be used in conjunction with the provision of public services and public utilities if the use of that land is necessary to the proper operation of the public service or public utility concerned provided the design and landscaping of any development of any land so used is, in the opinion of the Authority, adequate to protect the character and appearance of the area."

The Board also considered that when an appeal is filed under Section 42 of the Urban and Rural Planning, 2000, there is a legislative requirement per Section 45 of the Act that work related to a matter under appeal shall not proceed, pending a decision of the Appeal Board. In that regard, an authority shall adhere to section 8 of the Minister's Regulations under URPA, 2000, which states,

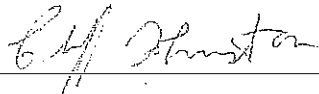
8. (1) *Immediately upon notice of the registration of an appeal the appropriate authority shall ensure that any development upon the property that is the subject of the appeal ceases.*

The Board determined that there are some decisions made by the Council of a Municipality that are not subject to appeal. As explained above, your appeal does not fall under the Board's mandate. While there is development occurring, it is the prerogative of the Authority (the Town of Witless Bay) to determine its services and public uses (Regulation 55 of the Town's Development Regulations).

It should be noted that the Board's decision on this matter is based on the Board's understanding that work on the road turn-around and parking lot will be confined to land solely within the boundaries of the road reservation as contained within the Crown Land property which has recently been acquired by the Town (Crown Land Grant # E153494).

To conclude, as Chair of the Eastern Newfoundland Regional Appeal Board, this letter is to inform you that a quorum of the Board has reviewed the matter that you have appealed to this Board and we have determined that it is outside of our jurisdiction. Therefore, the Board will not conduct a hearing on the matter, and the file is closed.

According to Section 46 of the Urban and Rural Planning Act, 2000, this 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 (of the Board). If this action is contemplated, the appeal must be filed with the Court no later than ten (10) days after the date you (the Appellant) receive the Board's decision.



Cliff Johnston, Chair

Eastern Newfoundland Regional Appeal Board

Copy: Robert Cotter

Secretary to the Eastern Newfoundland Regional Appeal Board

Copy: Town of Witless Bay

APPEAL SUMMARY FORM

- Your appeal and fee must be filed with the Regional Appeal Board (Attention: Robert Cotter) at the address below within the 14 day appeal period.
- The following information is required. With this form, you **must** submit:
 - a copy or summary of the decision being appealed
 - statement outlining the grounds for your appeal
 - appeal fee \$200.00 plus HST (total \$230.00)

In providing the documentation, please check the items indicating that they are submitted with this appeal form.

This information will be managed in compliance with the Access to Information and Protection of Privacy Act.

1. (Please check one of the following) Did you,
- submit a development or building application to the Authority.
 - receive an Order;

Or, are you an interested third party.

2. I am appealing a decision made under (please check one)
- Town of WITLESS BAY Municipal Plan and Development Regulations.
 - Interim Development Regulations Protected Area Plan
 - Local Area Plan Highway Sign Regulations
 - Protected Road Zoning Regulations S. 194 or 404 of the Municipalities Act
 - S. 240 of the City of Mount Pearl / Corner Brook Acts

3. What decision are you appealing? (please check one)
- Approval Refusal
 - Order Conditions of an Approval

4. What is the street address of the subject property/development? MULLHONEY'S LAKE

5. When did the Authority make its decision? 23/07/2019

6. When did you receive notification of this decision? 27/07/2019


7. Please include any documentation from the authority related to the appeal.

8. Please copy all documents to the Authority Check

Name: <u>EDWARD VICKERS</u> Telephone: _____ Fax: _____ E-Mail: _____	Mailing Address: _____ _____ Postal Code: _____
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I certify that the information provided above is true to the best of my knowledge and belief.

Name: EDWARD VICKERS
 (Please Print)

Signature: 

27/07/2019
 Day Month Year

This information is being collected for the purposes of determining and administering an appeal in accordance with Section 42(8) of the Urban and Rural Planning Act, 2000 and the Development Regulations (CNLR 3/01).

Preliminary Information for Appeal of a Decision of the Town Council of Witless Bay

The Town Council of Witless Bay has voted on and awarded a contract to O'Brien's Trucking to begin development of a turnaround beyond Mallowney's Lane Gallows Cove Witless Bay NL

The Town of Witless Bay has undertaken this development as described in URPA Section 42(1) and this development fails to adhere to the Municipal Plan Development Regulations as required in law. Further, there is no lawful access to the land held by the Town of Witless Bay, and this is a Municipal Plan and Development Regulation Matter within the jurisdiction of ENRAB

Elements of this development extend beyond the normal municipal services development process in that the lawful access to this development on municipal land is not exempt from the jurisdiction of ENRAB as are normal town services development in areas, such as garbage, utilities, water, and sewer services.

In this instance the Town of Witless Bay is subjected to the legislation in the URPA, the Town of Witless Bay Municipal Plan, and the Town of Witless Bay Development regulations as is any owner land holder in the community. Access to the development and the development process leading to approving development of the site is within the jurisdiction of ENRAB

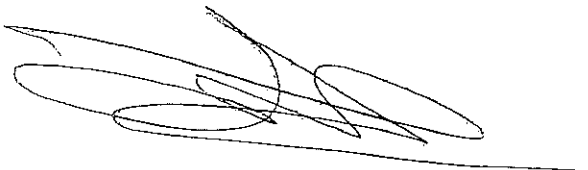
Further, The Town of Witless Bay acted beyond its lawful authority and jurisdiction in awarding a contract for the start of the development without lawful access to the site. The Town of Witless Bay is violating Section 158 & 160 of the Municipalities Act with the awarding of a contract for development.

Further, the process used by the Town of Witless Bay to undertake this development was rushed through by means of a Special Public Meeting and deceptive practices that contravened the Municipalities Act, as well as the requirements of public consultation and procedural fairness.

The development involves a vehicle turnaround on land owned By the Town of Witless Bay through a land grant from the Government of Newfoundland and Labrador to the Town of Witless Bay

As this development was undertaken through rushed and deceptive circumstances, upon receipt of additional information and relevant documents, a full brief will be filed with the Eastern Newfoundland Regional Appeal Board.

The Town of Witless Bay and The Board are advised that other residents of Witless Bay and interested third parties have expressed intention to join this appeal of the unlawful actions of Town of Witless Bay



Edward Vickers

Resident of Witless Bay

Development may not proceed

45. (1) Where an appeal is made under section 42, the development with respect to the appeal, work related to that development or an order that is under appeal shall not proceed or be carried out, pending a decision of the board.

(2) Where, on appeal, a permit to develop is confirmed or ordered to be issued, a council, regional authority or authorized administrator shall issue the permit as confirmed or ordered.

2000 cU-8 s45