

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Bauline Line Local Group of Residents **Appellants**

AND Town of Torbay **Respondent**

RESPECTING Approval-in-principle of a quarry development

BOARD MEMBERS Michelle Downey, Chair
Raelene Thomas, Member
Colleen Hanrahan, Member

DATE OF HEARING December 7, 2017

IN ATTENDANCE:

Jason Martin and a group of residents of the Town of Torbay

Michael Duffy – Solicitor for Jason Martin and a group of residents of the Town of Torbay

Brian Winter – Development Control Officer, Town of Torbay

Giles Ayers – Solicitor for Town of Torbay

Madeline Florent- interested party

Robert Cotter: Secretary to the Eastern Newfoundland Regional Appeal Board

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

DECISION

Facts/Background

An application was initiated by Mr. Paul Quigley to the Town of Torbay on February 10, 2016, with a plan to develop a quarry at 454A Bauline Line (Back Land) Middle Three Island Pond Area.

The Town of Torbay had received a referral letter for the quarry on November 17, 2015 from the Department of Natural Resources. The Town (Dawn Chaplin, CAO) responded to the referral letter of December 9, 2015 referral letter file number: 71111195 with three (3) conditions.

- Proposed layout will have to be adjusted to not interfere with the Town's application
- Referral is sent to Eastern Habitat Joint Venture
- Formal application be submitted to the Town at which time it will go through the discretionary use procedure

The developer of the quarry submitted an application on February 10, 2016. The application was treated as a discretionary use application, advertised and mailed out to nearby residents. Responses were received. The Town developed Mineral Working Conditions to address all quarrying within the town.

The application was approved in principle on June 14, 2017. The approval in principle contained 14 conditions, including the Mineral Working Regulations. The decision of council was appealed by a third party representing himself and a group of other residents of the Town of Torbay on June 28, 2017.

In accordance with the Urban and Rural Planning Act 2000 the public notice of appeal was published in the Telegram on June 18, 2016. A Notice of Hearing was sent to parties on November 15, 2017.

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

Urban and Rural Planning Act, 2000

Town of Torbay Municipal Plan and Development Regulations, 2015-2025

Paradise (Town Council) v. Newfoundland and Labrador (Eastern Regional Appeal Board), 2010

NLTD(G) 116

Matters presented to and considered by the Board

Did the Town have the authority to grant approval in principle with conditions?

At the hearing the Appellant argued that in order to be entitled to exercise discretion council must first confirm that the intended uses are complementary to permitted uses and will not inhibit or prejudice the existence of the permitted uses.

The appellant stated a quarry is not complementary to and will most certainly inhibit agriculture, forestry, recreational open space and conservation.

The Town argued the proposed quarry was located in a Rural Zone and that the use zone table permitted mineral working as a conditional use. Council has previously determined the discretionary use classes contained in a use zone table are permissible with the exercise of its discretion. The Town's Development Regulations at 10(2) state:

- (2) *The Council may in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed the Council's regulations as discretionary, permitted or prohibited uses for that area.*

Schedule C from the Town's Development Regulations states in part;

USE ZONE TABLE

ZONE TITLE RURAL	(RUR)
PERMITTED USE CLASSES - (see Regulation 89) Agriculture, forestry, recreational open space, and conservation.	
DISCRETIONARY USE CLASSES - (see Regulations 33 and 90) Single dwelling, general industry, mineral working, antenna, place of worship and cemetery.	

CONDITIONS FOR RURAL ZONE

1. Discretionary Use Classes

The discretionary use classes listed in this table may be permitted at the discretion of Council provided that they are complementary to permitted uses and will not inhibit or prejudice the existence or development of permitted uses.

The Board finds that the condition in #1 above to be an additional consideration required to be made by council when it considers a discretionary use application.

Did the Town exercise its authority appropriately?

Section 90 of the Town of Torbay Development Regulations states;

90. Discretionary Uses

Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the Council is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if the Council has given notice of the application in accordance with Regulation 33 and has considered any objections or representations which may have been received on the matter.

The Board heard that the Town received the permit application on February 10, 2016. At the February 15, 2016 public council meeting the application was deferred for advertising as per the discretionary use requirements. From February 10, 2016 to June 19, 2017 the Planning and Development committee met numerous times to discuss the application. The discretionary use application was advertised, mailed to nearby residents and public meetings were held. In addition to responses received from residents the Eastern Habitat Joint Venture Program provided an opinion on the quarry application.

For the most part the responses received were in opposition to the proposed quarry. These responses objected to the quarry on the basis that the quarry may negatively affect the environment and did not take into consideration the slope of the land or confirm where the buffers, required for Mineral workings, would be placed.

The Town developed the Mineral Working Regulations which were approved prior to the approval in principle of the permit; the approval in principle requires compliance with the Mineral Workings Regulations. The Appellant argued the Town was required to consider the negative responses to the quarry, the negative response meant the quarry was not in the public interest and should not be approved.

The Town argued that it is required to consider the public opinion but is not bound by it.

The Board finds that the Town has complied with section 90 as demonstrated by the advertising, the public meetings and its review of the public submissions.

Did the Authority understand the request?

The Appellant argued the quarry would be located in an area where the slope of the land is in excess of 15%. At the hearing the Board heard that the submitted site plan did not show the exact location of the proposed quarry on a map which also showed the zones and the slopes of the land.

The Board notes that at section 3.2.9 Conservation of the Torbay Municipal Plan 2015-2025 in the policy statements, states

“Extensive areas of land having slopes in excess of 15 % are designated conservation. Development is not considered feasible on such slopes because of excessive run off and erosion and high costs to install and maintain services, and risk to public safety.”

The Board considered Justice Maureen Dunn’s ruling regarding the Paradise (Town Council) v. Newfoundland and Labrador (Eastern Regional Appeal Board), 2010 NLTD (G) 116 Date: 20100628. Specifically section 30, which states in part:

(3) *A decision of a Town council and/or municipal authority may be overturned in instances where the Board finds the Town council and/or municipal authority:*

(v) the town council and /or municipal authority has failed to understand the request in the application before it.

The Board finds that without a site plan to show the exact location of the proposed quarry on a map which also showed the zones and the slopes of the land, council did not have complete understanding of the application in that the council could not determine whether the proposed quarry site would be contrary to the Municipal Plan.

Conclusion

In arriving at its decision, the Board reviewed the submissions, evidence and argument presented by all parties along with the technical information and planning advice. The Board is bound by Section 42 of the Urban and Rural Planning Act, 2000, and must make a decision that complies with the applicable legislation, policy and regulations.

Based on its findings, the Board determined that the Town of Torbay did not fully understand the request in the application before it and the approval in principle is to be reversed.

Order

Based on the information presented, the Town is ordered to revise condition #4 in its approval in principle letter of June 27, 2017, to read:

A complete site plan showing the proposed layout of the site to reflect the requirements relative to buffer and slope restrictions contained in the Mineral Working Regulations and the Municipal Plan is required.”

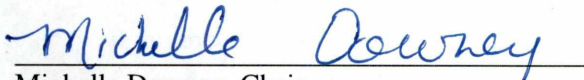
The remaining conditions continue in effect.

The Town of Torbay and the Appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.


The Board further orders that the Town of Torbay pay an amount of money equal to the appeal filing fee of \$230.00 paid by the appellant to the appellant.

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 Mount Pearl, Newfoundland and Labrador, this 6th day of December, 2017



Michelle Downey, Chair
Eastern Newfoundland Regional Appeal Board



Raelene Thomas, Member
Eastern Newfoundland Regional Appeal Board



Colleen Hanrahan, Member
Eastern Newfoundland Regional Appeal Board