

Eastern Regional Appeal Board

Appeal #	15-006-072-036
Appellant(s)	Jerome Coady
Respondent / Authority	Town of Portugal Cove-St. Philips
Date of Hearing	September 22, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Paul Boundridge, MCIP

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Jerome Coady, Coady Excavating and Construction Ltd. Brad Dyke, Consulting Geologist, NCD Consulting
Representatives for the Authority	Brian Peach, P. Eng, Director of Planning and Development Les Spurrell, Planning and Development Coordinator
Secretary to the Board	Sean McGrath, Planner III
Technical Advisor to Board	Darren Randell, MCIP, Planner III
Interested Parties	Kevin McDonald (area resident)

Note:

This Appeal #15-006-072-036 is linked to Appeal #15-006-072-019. Both Appeals pertain to Applications submitted by Coady Excavating and Construction Ltd. to establish a quarry operation on property on Bauline Line Extension, Portugal Cove/St. Philips. With the consent of the Appellant and Authority, these two (2) linked Appeals were heard consecutively on September 22, 2022. Presentations by the Appellant, the Authority and an Interested Party spoke to both Appeals consecutively. 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 Regional Appeal Board (the Board) is to determine if the Authority acted in accordance with its Municipal Plan and Development Regulations, 2014, when it refused a development application for a mineral working operations at 483-687 Bauline Line Extension (7.5 hectares area) in the Town of Portugal Cove-St. Philips on September 29, 2020.

Presentations During the Hearing

The following is a synopsis/summary of the verbal representations made to the Board during the appeal hearing. The Board has also received and reviewed written submissions from the Technical Advisor, as well as representatives for the Appellant and the Authority.

1. Planner's Presentation (Material Extracted from Technical Report)

On July 08, 2021 the Authority (The Town of Portugal Cove-St. Philips) issued a letter as notice of Council decision to refuse a Development Permit application for a proposed Mineral Working Operation at 483-687 Bauline Line Extension, in the Town of Portugal Cove-St. Philips.

On July 08, 2021, the Appellant (Jerome Coady) received the Authority's letter as notice of Council's decision to refuse the application. On July 20, 2021, the Appellant filed an appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board.

Chronology

Chronology assembled from the material submitted by the Appellant, and the Authority.

Nov 19, 2020	Applicant provides Council with in person presentation of proposal.
April 20, 2021	Applicant provides Council with a second in person presentation to address Council concerns and proposes to reduce the quarry footprint from 22.5 hectares to 7.5 hectares at the request of the Town.
May 28, 2021	The Authority received an application for a mineral working operation at 483-687 Bauline Line Extension.
June 19, 2021	A Discretionary Use application was advertised in the Telegram newspaper. (2 responses were received and considered by Council)
July 06, 2021	The Authority resolved to reject the Development Permit application at its Regular Council Meeting of July 6, 2021.
July 08, 2021	The Authority emailed a letter, as notice of Council decision to reject the Development Permit application for the proposed quarry, citing the full text of Resolution #2021-178, and notifying of the right of appeal and the

	procedures to file an appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board.
July 08, 2021	The Appellant received the emailed letter confirming Council's decision to reject the Development Permit application.
July 20, 2021	<p>The Appellant submitted an Appeal Application Form to the Secretary of the Eastern Newfoundland Regional Appeal Board (with supporting information), which established:</p> <ul style="list-style-type: none"> • the facts of the appeal • a summary of the grounds of appeal • confirmation of fee payment • details of Appellant's contact information

Grounds of Appeal

This appeal is based on the following provision of the **Urban and Rural Planning Act, 2000**: Section 42(1)(a) (an application to undertake a development).

The Act establishes the types of decisions that may be appealed to the Board:

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;

The Appellant is appealing the decision of Council to refuse the Development Permit application for a quarry at 483-687 Bauline Line Extension in Portugal Cove-St. Philip's, NL on the following grounds:

That the Town's concern with Schedule E – the Environmental Protection Map (Overlay) of the Development Regulations was not brought forward by the Town with the previously refused application or during presentations to the Town in November 2020 and April 2021; and that the proposed quarry area is adjacent to a partially developed quarry located along the same slope that was previously approved under the same Development Regulations in effect.

Validity

Sections 42(4) and (5) of the **Urban and Rural Planning Act, 2000** establish that:

42. (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.

42. (5) An appeal shall be made in writing and shall include

- (a) a summary of the decision appealed from;
- (b) the grounds for the appeal; and
- (c) the required fee.

The appeal submission package establishes that appeal was filed on July 20, 2021 which is not more than 14 days from the date of receipt of the Council decision. The Appellant's submission included the following, per the requirements of the Act:

- appeal application form
- appeal/decision summary
- grounds of appeal, and
- required fee.

Legislation and Regulations

The applicable legislation, policies, and regulations with respect to this appeal are:

- The St. John's Urban Region Regional Plan
- Urban and Rural Planning Act, 2000
- Town of Portugal Cove-St. Philip's Municipal Plan, 2014-2024
- Town of Portugal Cove-St. Philip's Development Regulations, 2014-2024

Land Use Planning

The St. John's Urban Region Regional Plan

The site is situated with the Rural designation of the St. John's Urban Region Regional Plan where quarrying operations are permitted. The Rural policy includes a policy related to approving sand and quarrying operations in the Region, which states:

Until such time as areas for sand and gravel quarrying operation are defined in the Regional Plan, applications for such quarrying operations shall be considered only after taking into account the need to preserve scenic beauty and to generally restrict extractive operations to areas not exposed to public view. The following policies shall also be adhered to:

- a) *Effective tree screens shall be maintained around the periphery of any area to be mined or quarried.*
- b) *Topsoil removed prior to or in the course of the mining or quarrying operation shall be retained for restoration of the site.*
- c) *Upon completion of the mining and quarrying operations, and when there is no intention to re-open such operations, all buildings and machinery shall be removed from the site and the site restored so as not to constitute a danger to the public or present an unsightly appearance.*

- d) All mining or quarrying operation shall be conducted so that no danger or nuisance is caused to the public.
- e) No mining or quarrying operation shall take place within the view of a designated scenic road.

The Town of Portugal Cove-St. Philip's Municipal Plan and Development Regulations, 2014-2024 came into effect on October 17, 2014. The subject property is located within the 'Rural' land designation, as established in the Future Land Use Map.

Municipal Plan section 3.4.9 outlines a general policy goal for the 'Rural' land designation:

*"The Rural designation recognizes the importance for conservation, habitat preservation, and outdoor recreational and open space initiatives, as well as for natural resource based activities of forestry and agriculture, **and to a lesser extent through discretionary use consideration for mineral working and other general and light industry resource operations**, as well as for a diverse and varied number of other discretionary use."*

Municipal Plan policy 3.4.9 establishes specific land use policies in the Rural zone pertaining to mineral workings.

Policy RUR-2:

Varied discretionary uses such as mineral workingsmay be considered by Council within the RUR designated areas.

Municipal Plan policy 3.4.9 also establishes specific Aggregate Extraction policies in the Rural zone.

Policy RUR-8:

Council shall require that the extraction of aggregate resources be carried out in a manner so as to protect existing land uses and environmental and scenic resources throughout the Planning Area. To this end, minimum separation distances and buffering requirements will be implemented between pits and quarries and nearby uses such as residential areas, public highways and streets, and watercourses; the details of these requirements are outlined within the Rural zone discussion of the Town's Development Regulations.

Policy RUR-9:

Council shall require proposals for new aggregate operations to be assessed for potential impacts on environmental and scenic resources and existing nearby land uses, and where impacts are identified, the

proponent shall adequately address remedial management strategies to the satisfaction of Council.

Policy RUR 10:

Council shall establish standards in the Development Regulations aimed at reducing the potential impacts of aggregate operations on surrounding built-up areas and environmentally sensitive areas, and may: (a) Restrict aggregate development in locations that are normally exposed to public view such as near high traffic roads and residential areas; (b) Establish minimum separation distances from existing and proposed residential areas, roads, and other built-up areas; (c) Establish minimum setbacks from watercourses, wetlands, steep slopes, and other environmentally sensitive areas; (d) Establish restrictions on operating schedules; and (e) Establish conditions for site management, upkeep, and site reclamation and rehabilitation.

Section 3.3.2 – General Environmental Policies of the Municipal Plan empowers an Environmental Protection Overlay to supersede the authority of Section 3.4 Specific Land Use Policies and of the Generalized Future Land Use Map in the Municipal Plan. The policy also details which environmentally sensitive areas to protect.

Environmental Protection Overlay Schedule

Policy GE-1:

Council shall establish an overlay Schedule E of the Development Regulations Zoning Map as an area designated for Environmental Protection. All land that falls within this Schedule, regardless of its land use designation in Section 3.4 Specific Land Use Policies and on the Generalized Future Land Use Map of this Plan, shall be subject to the terms and conditions mapped and detailed in the overlay Schedule

Policy GE-2:

Council shall incorporate environmentally sensitive areas, including watercourses, water bodies, coastlines, designated flood risk areas, wetlands and steep slopes, into the overlay Schedule E in order to protect these areas from the potentially damaging effects of development.

The Development Regulations, 2014 in Section 65 requires steep slopes to be identified on the Environmental Protection Overlay and proposed development within the Overlay jurisdiction being subject to Schedule E – Environmental Protection Overlay.

(1) Land located within fifteen (15.0) metres (49.2 feet) of watercourses; thirty (30.0) metres (98.4 feet) of bodies of water and coastlines; designated flood risk areas; wetlands; and steep slopes shall be indicated on the map contained in Schedule E: Environmental Protection Overlay. (2) Any development that may be permitted on lands indicated by the Environmental Protection Overlay schedule will only be permitted subject to the terms and conditions stated in Schedule E of these Development Regulations.

The Development Regulations, 2014 establishes the subject property as being located in the 'Rural' use zone. The subject mineral workings use is listed as discretionary in the Rural Use Zone Table.

The Development Regulations - Schedule C in the Rural Use Zone Table lists mineral working as a discretionary use and provides standards for establishing mineral working sites, processing plants, and site rehabilitation for these uses in the Rural zone. Section 3.1 of the Rural Use Zone Table details the criteria for establishing approved mineral working sites.

3.1 Mineral Working Sites:

A mineral working use will be subject to the following, unless otherwise required by the Department of Environment and Conservation of Province of NL and authorized by Council:

- (a) No new mineral working operation will be developed without the required approvals from the Province of NL and a development permit issued by Council. The development, operation, termination, and rehabilitation of the mineral working site will only be carried out in accordance with terms and conditions specified in the development permit. The development permit will be revoked if the operator does not comply with the terms and conditions of the development permit;*
- (b) No extraction will take place in a wetland;*
- (c) No extraction will take place within 50.0 metres of high water mark of a watercourse or wetland;*
- (d) No extraction will take place within 50.0 metres of a public street or highway;*
- (e) No extraction will take place within 200.0 metres of a residential, commercial, or public building, or the boundary of any of the following zones:*
 - i. Residential Medium Density*
 - ii. Residential Low Density*
 - iii. Residential Rural*
 - iv. Residential Development Scheme Area*

v. *Traditional Community*

vi. *Mixed Use*

vii. *Public Use*

(f) *An undisturbed buffer strip will be maintained at least 30.0 metres wide between the final perimeter of a pit or quarry and the boundary of the lot on which it is located. Council may permit this buffer width to be reduced by up to 50% with the written consent of the adjacent property owner;*

(g) *Topsoil removed prior to extraction will be appropriately stockpiled for future rehabilitation of the site;*

(h) *Where a proposed mineral working site is located in the vicinity of a public street or highway, or an existing or proposed residential, commercial, or recreational area, Council will require the owner to provide for natural or artificial screening to obstruct visibility of the site;*

(i) *No mineral working shall create excessive drainage or erosion onto adjacent properties or into nearby watercourses. An access road to a mineral working site shall be ditched, bridged, and culverted in accordance with the regulations of the Department of Environment and Conservation;*

(j) *No mineral working activity shall cause the accumulation or ponding of water in any part of the site. Settling ponds will only be permitted with approval from the Department of Environment and Conservation;*

(k) *The mineral working site shall be kept clean of refuse, abandoned vehicles, abandoned equipment and derelict buildings;*

(l) *During seasonal or other extended periods of shutdown, the slope of any sand or gravel embankment shall not have a gradient steeper than 60% for the full depth thereof; and*

(m) *Other such conditions as Council considers necessary upon detailed review of the proposal and the proposed site location.*

Development Regulations S.102 – *Discretionary Uses* provides Council the authority to approve uses listed as discretionary within a Use Zone, subject to Council considering public objections and representations that may be received as a result of a Public Notice advertising the discretionary use application.

Subject to these Regulations, the uses that fall within the Discretionary Use Classes identified in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if 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 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.

Development Regulations S.33 – *Notice of Application* provides that Council shall advertise when discretionary use applications are received and specifies the time period to allow public response to the advertisement,

*... when the development proposed is listed as a discretionary use in Schedule C of the Development Regulations, **Council shall at the expense of the applicant, give notice of an application** [emphasis added] for a permit or for approval in principle, by public advertisement in a newspaper circulating in the area, and allow a minimum period of seven (7) days for response.*

Development Regulations S.8 – *Permit to Be Issued* stipulates the criteria when a development permit shall be issued.

*Subject to Regulations s.9 and s.10, a permit **shall** [emphasis added] be issued for development within the Planning Area that conforms to: (1) the General Development Standards outlined in Part II of these Regulations, the requirements of Part V of these Regulations, and the use classes, standards, requirements, and conditions prescribed in Schedule C of these Regulations for the use zone in which the proposed development is located;...(7) the applicable approval requirements of the Province.*

Development Regulations S.9 - *Permit Not to Be Issued in Certain Cases* stipulates when Council cannot issue a permit or an approval in principle based on specific deficiencies relating to a proposal.

Neither a permit nor approval in principle shall be issued for development within the Planning Area when it is premature by reason of the site lacking adequate road access, power, drainage, sanitary facilities, or domestic water supply, or being beyond the natural development of the area at the time of application unless the applicant contracts to pay the full cost of construction of the services deemed necessary by Council and such cost shall attach to and upon the property in respect of which it is imposed.

Development Regulations S.10 - *Discretionary Powers of Council* offers Council the ability to: approve applications that conform to the Municipal Plan and Development Regulations; refuse an application that explicitly contradicts the Municipal Plan and Development Regulations, and; to refuse applications that may conform to the Municipal Plan and Development Regulations but has some distinct undesirable impact to the community.

- a) *In considering an application for a permit or for approval in principle to carry out development, Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, shall consider any applicable report and recommendation submissions from a qualified consultant, shall further consider recommendations from the Town Engineer, and shall assess the general appearance of the development of the area, the amenity of the surroundings, potential environmental effects, availability of municipal services and utilities, public safety and convenience, and any other considerations which are, in its opinion, material. Notwithstanding the conformity of the application with the requirements of these Regulations, Council may as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.*

The Authority's appeal package outlines that the Town received a permit application for a quarry at 483-687 Bauline Line Extension on May 08, 2021. The Town indicates that a discretionary use notice was advertised in the Saturday, June 19, 2021 edition of the Telegram Newspaper and that two written submissions were received and considered by Council prior to decision making. Council at its regular meeting of July 06, 2021 motioned to reject the application on the basis that the proposed operation would be located within steep slope areas identified on the Environmental Protection Map (Overlay) and that opposition was received from an area resident. The meeting minutes were included with the Town's appeal submission however the information pertaining to the resident in opposition was not supplied by the Town.

The Authority's meeting minutes for the Council meeting of September 29, 2020 establish that Council passed the following motion:

Resolution #2021-178

Harding / Layhem

Resolved that the application to establish a mineral working operation (quarry) on a portion of Civic # 483-687 Bauline Line Extension be rejected as the proposal is contrary to the Town's Municipal Plan and Development Regulations 2014-2024 as the proposed operation would be located within steep slope areas identified on the Environmental Protection Map, in which development activity is contrary to Schedule E: Environmental Protection Overlay, and due to opposition from area residents in accordance with Development Regulation 102.

Carried. unanimously

The Town provided to the Appellant written confirmation, dated July 08, 2021 that Council refused the Development Permit application with stated reasons.

The Appellant contends that it is pertinent to the Board's consideration of the appeal matter that:

- The Town had not raised a concern with slopes noted in Schedule E – Environmental Protection Overlay of the Development Regulations when reviewing their initial application, and

That another partially developed quarry exists on the same steep slopes which was approved in 2015 and subject to the same Development Regulations in effect.

Procedural Compliance

The Appellant submitted a Building and Development Application for to the Authority on May 28, 2021 for a mineral workings operation at 483-687 Bauline Line Extension which is a discretionary use in the area zoning as listed in Schedule C of the Development Regulations. Council advertised the discretionary use application in a newspaper circulating in the area for seven days as per section 33 of the Development Regulations.

33. NOTICE OF APPLICATION

When a change in non-conforming use is to be considered under Regulation 49, or when the development proposed is listed as a discretionary use in Schedule C of the Development Regulations, Council shall, at the expense of the applicant, give notice of an application for a permit or for approval in principle, by public advertisement in a newspaper circulating in the area, and allow a minimum period of seven (7) days for response.

The Authority resolved to reject the development application at its regular Council meeting of July 06, 2021. Minutes of the meeting establish that Council passed the following motion:

Resolution #2021-178

Harding / Layhem

Resolved that the application to establish a mineral working operation (quarry) on a portion of Civic # 483-687 Bauline Line Extension be rejected as the proposal is contrary to the Town's Municipal Plan and Development Regulations 2014-2024 as the proposed operation would be located within steep slope areas identified on the Environmental Protection Map, in which development activity is contrary to Schedule E: Environmental Protection Overlay, and due to opposition from area residents in accordance with Development Regulation 102.

Carried. unanimously

The Town provided to the Appellant written confirmation, dated July 08, 2021 that Council refused the Development Permit application with stated reasons as required by Development Regulation section 23.

23. REASONS FOR REFUSING PERMIT Council shall, when refusing to issue a development permit or attaching conditions to a permit, state the reasons for so doing.

Council also advised in the letter of July 08, 2021 that the decision of Council is subject to appeal to the Eastern Regional Appeal Board, as required by Development Regulation section 24.

24. NOTICE OF RIGHT TO APPEAL

Where Council makes a decision that may be appealed under Section 42 of the Urban and Rural Planning Act, Council shall, in writing, at the time of making that decision, notify the person to whom the decision applies of the: (a) person's right to appeal the decision to the board; (b) time by which an appeal is to be made; (c) right of other interested persons to appeal the decision; and, (d) manner of making an appeal and the address for the filing of the appeal.

2. Appellant's Presentation

Mr. Dyke, on behalf of the Appellant, made a PowerPoint presentation which included the following information:

- awareness of the designation and land use zoning of the subject property under the St. John's Urban Region Regional Plan (SJURRP), the PCSP Municipal Plan and Development Regulations and that the proposed quarry could be allowed as a Discretionary Use,
- the expectation that the application would be advertised (subject to the public consultation process) in accordance with Section 33 of the Town's Development Regulations before it was presented to Council for consideration,
- the absence of an opportunity to engage with Council and discuss the concerns of Council members before the application was presented to Council for consideration,
- chronology of interaction with the Town on the development application,
- the slope analysis of lands in the area of the subject property and use in the identification of the boundaries of the proposed quarry development site,
- the relation of the proposed quarry site to a nearby existing quarry and undeveloped lands in the area,
- questioned how many people are involved with the Bauline Line Resident's Group who opposed the establishing of a new Quarry at the application sites;

what are their specific concerns and could the proponent suggest mitigation measures;

- quarries are very closely regulated and monitored in the province. Prior to the approval of a new quarry application, each proposal is reviewed for consideration of approval by a number of government departments and agencies; and
- there is a strong demand to supply aggregate products for a number of construction projects on the Northeast Avalon, thereby spurring a demand/need for portable materials.

Mr. Dyke advised the Board that in his twenty years of experience as a consulting geologist to quarry operators in the province, that a number of other municipalities have approved quarries that are located off designated scenic roads.

Mr. Coady expressed his concerns to the Board on what he perceived as a lack of transparency and lack of consistency on the Town's part in its review and processing of his development applications to establish a quarry. Mr. Coady also expressed his surprise and dismay that the Town would withhold the most up-to-date information relevant to his development applications respecting the slope of lands for the proposed quarry sites.

3. Authority's Presentation

In their comments to the Board, Mr. Peach and Mr. Spurrell provided the following information:

- Since 2016, the Town has had more reliable, more accurate data on the slope of lands in the Town, and has used this information in the review of updated development applications. The issue of excessive slopes was a determining factor in Council's consideration of Mr. Coady's 2021 revised application for a quarry.
- The Town's Municipal Plan and Development Regulations have not yet been amended to incorporate the updated data on the slope of lands in the Town; the Town is in the process of initiating the required amendments.
- The updated slope analysis data has not been shared with the public, including the Appellant.
- The Town's representatives advised the Board that the Town reviewed and processed both the 2020 and the 2021 applications from the Appellant for a quarry with respect to the applicable policies and requirements of the Town's Municipal Plan and Development Regulations, as well as the applicable policies of the St. John's Urban Region Regional Plan respecting Scenic Roads.
- The Town's representatives advised that it is the Town's view that it is not required to advertise for public review and comment, per Development

Regulations Section 33, discretionary use applications that are not going to be considered for approval by the Town Council.

4. Interested Parties

Mr. McDonald advised that he is a long-time resident of Bauline Line Extension and that he is of the view that the quarry development should not be allowed as it would adversely impact the natural environment.

Board's Analysis

- Q: What is the Municipal Plan designation and zoning of the subject property?
- R: The subject property is located within the Rural Land Use Designation as established on the Future Land Use Map which forms part of the Town's Municipal Plan. The subject property is located in the Rural Land Use Zone as per the Town's Development Regulations. Schedule C in the Rural Use Zone table of the Development Regulations lists "Mineral Working" as a Discretionary Use in this Zone.
- Q: How is a Discretionary Use application required to be processed in accordance with the Town's Development Regulations?
- R: Council was required to advertise the discretionary use application in a newspaper circulating in the area for seven days as per section 33 of the Town's Development Regulations.

33. NOTICE OF APPLICATION

When a change in non-conforming use is to be considered under Regulation 49, or when the development proposed is listed as a discretionary use in Schedule C of the Development Regulations, Council shall, at the expense of the applicant, give notice of an application for a permit or for approval in principle, by public advertisement in a newspaper circulating in the area, and allow a minimum period of seven (7) days for response.

Development Regulations S.102 – *Discretionary Uses* provides Council the authority to approve uses listed as discretionary within a Use Zone, subject to Council considering public objections and representations that may be received as a result of a Public Notice advertising the discretionary use application.

Subject to these Regulations, the uses that fall within the Discretionary Use Classes identified in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if 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 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 Authority did satisfy the above requirements in that the application was advertised for public review and comment prior to Council's decision of July 6, 2021 to reject the application.

- Q: Was this Discretionary Use application for a proposed Quarry at 483-687 Bauline Line Extension properly processed by the Town before the Town Council made its decision on July 6, 2021 to reject the application?
- R: No. The Board has reviewed the applicable sections of the Town's Municipal Plan and Development Regulations respecting applications for Quarry development.

The Board was advised by the Authority at the appeal hearing on September 22, 2022 that it had employed slope analysis data generated in 2016 in its review of the application for the proposed Quarry. The Board has been advised that one of the factors in Council's decision to reject the application was that the proposed Quarry site would be located with an area with steep slopes identified in the Town's Environmental Protection Map. This slope information was, according to the Town's representatives, generated in 2016, and is not officially part of the Town's Municipal Plan and Development Regulations, however, is being used by the Town in the review of development applications. The Town Representatives advised the Board that steps are now underway to amend the Town's Municipal Plan and Development Regulations to officially incorporate the 2016 slope data in these planning documents.

The Board notes the importance/relevance of the following sections of the Town's Development Regulations to the Authority's processing and decision to reject the application for the proposed quarry at 483-687 Bauline Line Extension.

6. COMPLIANCE WITH REGULATIONS

No development shall be carried out within the Planning Area except in accordance with the Portugal Cove-St. Philip's Municipal Plan (2014-2024) and these Regulations.

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 Council.

8. PERMIT TO BE ISSUED

Subject to Regulations 9 and 10, a permit shall be issued for development within the Planning Area that conforms to:

(1) the General Development Standards outlined in Part II of these Regulations, the requirements of Part V of these Regulations, and the use classes, standards, requirements, and conditions prescribed in Schedule C of these Regulations for the use zone in which the proposed development is located;

(2) the applicable standards specified within the Building Code and/or other ancillary codes, and any Building Regulations, Waste Disposal Regulations, and/or any other municipal regulation in force in the Planning Area regulating or controlling development, conservation and use of land and buildings;

(3) the standards identified in Part III of these Regulations in the case of advertisement; (4) the standards contained in Part IV of these Regulations in the case of subdivision; (5) the standards of design and appearance established by Council;

(6) the provisions of the St. John's Urban Region Regional Plan; and, (7) the applicable approval requirements from the Province.

10. DISCRETIONARY POWERS OF COUNCIL

(1) In considering an application for a permit or for approval in principle to carry out development, Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, shall consider any applicable report and recommendation submissions from a qualified consultant, shall further consider recommendations from the Town Engineer, and shall assess the general appearance of the development of the area, the amenity of the surroundings, potential environmental effects, availability of municipal

services and utilities, public safety and convenience, and any other considerations which are, in its opinion, material. Notwithstanding the conformity of the application with the requirements of these Regulations, Council may as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

The Board questions why the Authority believes it was authorized to use data not officially included in the Town's Municipal Plan and Development Regulations to review and make its decision to reject the Quarry Application (i.e. the 2016 slope data). Further, the Board was advised by the Town's representatives at the Appeal Hearing that the 2016 slope data was not shared with/made available to either the Appellant or the general public. Had this information been shared with the Appellant before Council's decision to reject the application, the Appellant may have been able to modify its application to satisfy the Town's requirement respecting development vis-a-vis maximum slope.

Board's Conclusion/Decision

In arriving at its decision, the Board reviewed the submissions and comments given by the parties present at the appeal 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, policies and regulations.

After reviewing the information presented to this Board, the Board has determined that the Authority did not satisfy the requirements of its own Development Regulations respecting the processing of Discretionary Use applications for quarries. Specifically, the Town did not satisfy Section 6 of the Town's Development Regulations in that it employed data regarding the slope of the application site not officially incorporated within the Town's Municipal Plan and Development Regulations. Consequently, the Town Council's use of its discretionary authority to reject the quarry application is found by the Board to be invalid in this instance.

Board's Order

The Board orders that the decision made by the Town of Portugal Cove- St. Philips on July 6, 2021, to reject the application by Coady Excavating and Construction Ltd. Jerome Coady to establish a Quarry at 483-687 Bauline Line Extension, Portugal Cove- St. Philips, be reversed.

The Board orders that the Application in question be referred back to the Town for processing and decision by the Town Council in compliance with the applicable requirements of the Town's Municipal Plan and Development Regulations. Should the Authority wish to employ its 2016 slope data in its review and decision on this application, this data will first need to be officially incorporated as appropriate into the Town's Municipal Plan and/or Development Regulations, as per the applicable requirements of the Urban and Rural Planning Act, 2000.

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

DATED at St. John's, Newfoundland and Labrador, this 23rd day of September, 2022.



Clifford Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Paul Bounbridge, MCIP, Member
Eastern Newfoundland Regional Appeal
Board