

Urban and Rural Planning Act, 2000
Eastern Newfoundland Regional Appeal Board
Appeal No.15-006-072-002

BETWEEN

Don Murrin

APPELLANT(S)

AND

Town of Logy Bay-
Middle Cove-Outer Cove

RESPONDENT / AUTHORITY

Date of Hearing February 24, 2022
Place of the Hearing Capital Hotel, St. John's

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

Appearances

Don Murrin	Appearing on his own behalf
Tina Murrin	Appearing with appellant, interested party
Janine Walsh	Town Manger/Clerk, Town of Logy Bay – Middle Cove – Outer Cove
Justin Greeley	Project Manager/Development Officer Town of Logy Bay – Middle Cove – Outer Cove
Keith Batstone, MCIP	Technical Advisor to the Board
Robert Cotter	Secretary to the Board(s)

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 Regional Appeal Board (the Board) is to determine if the Town of Logy Bay-Middle Cove-Outer Cove (the Authority) acted in accordance with the Urban and Rural Planning Act, 2000 and the Town of Logy Bay-Middle Cove-Outer Cove Municipal Plan and Development Regulations, 2005-2015, when it refused an application from Don Murrin (Appellant) for subdivision of land on April 12, 2021.

Presentations at the Hearing

The following is a summary/synopsis of the verbal presentations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor as well as representatives for the Appellant and the Authority.

1. Technical Advisor's Presentation

On April 13, 2021 the Authority issued a letter as notice of a decision to refuse an application for the subdivision of lands at 13-17 Cadigan's Road. On April 21, 2021 the Appellant (Mr. Don Murrin) filed an appeal with the Regional Appeals Board.

Chronology

- | | |
|-----------------|---|
| November 2020: | The Town of Logy Bay-Middle Cove-Outer Cove (the Authority) indicates that Mr. Don Murrin (the Appellant) initiated discussion about the potential subdivision of lands at 13-17 Cadigan's Lane. The Town further indicates that "numerous" in person and telephone meetings occur prior to application. |
| March 23, 2021: | The Appellant submitted an application dated March 19, 2021 for a proposed subdivision of 0.43 acres of land from the exiting 1.69 acre parcel at 13-17 Cadigan's Lane. |
| March 26, 2021: | Town staff prepared a Memorandum to Planning and Development Committee summarizing the intent of an application for subdivision of lands (1.69 acres) in the Residential Low Density (RLD) Use Zone and the relevant standards of the Development Regulations, 2005-2015 to be considered in decision(s). |
| April 6, 2021: | The Planning and Development Committee reviewed and discussed the application for subdivision of lands and submitted a recommendation to Council. |

April 12, 2021: At a regular meeting of Council, the subject application is presented – Agenda Item 7(c) – for consideration and the Planning and Development committee recommendation is discussed prior to a decision. Council resolved to refuse the application on the basis of non-conformity with the Development Regulations. The Council resolution reads, as follows:

Motion 2021-05-05: D.Hickey / B.Power:

Resolved that Council reject the application for the sub-division of land located at 17 Cadigan's Road as it does not meet the development regulations for the current zoning (RLD) which requires 1 acre lots.

In favour 6. Councillor Power Against. Carried.

April 13, 2021: The Authority issued a letter as notice of the Council decision to refuse the application for subdivision, with the stated reason being that the application was contrary to:

...the Town of Logy Bay – Middle Cove – Outer Cove Municipal Plan and Development Regulations for the current zoning (RLD) which requires 1.0 acre lots.

The notice letter included, as attachment, the Regional Appeals Board, Appeals Summary Form.

April 19, 2021 The Appellant (Don Murrin) received a letter as notice of the decision of Council to refuse the application for a subdivision of land at 13-17 Cadigan's Lane.

April 21, 2021 The Appellant submits an Appeals Summary Form with the Secretary of the Regional Appeal Boards, providing details about notice received from the Town, as well as, various supporting background documents detailing: the contents of the application to the Town, recent changes to property assessment, municipal compliance review history, property survey history, and ownership history.

April 27, 2021 The Appellant submits an Appeal Application Form with the Secretary of the Regional Appeal Boards, which establishes the facts of the appeal, a summary of the grounds of appeal, and, details about fee payment and appellant contact information.

May 3, 2021 The Authority received a Notice of Appeal summary from the Secretary, Regional Appeals Board.

Grounds of Appeal

This appeal is based on the following section of the Urban and Rural Planning Act, 2000: 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 of the Town of Logy Bay-Middle Cove-Outer Cove Council to refuse an application for the subdivision of lands at 13-17 Cadigan's Lane, based on the following grounds (excerpt from appeal package):

- "The application was intended to grandfather the property at .43 acres. The property in question is .43 acres. It was occupied by John & Alice Murrin & family of 5 as a family home effective 1956. Actual title to the property was acquired June 15, 1978 and noted as Parcel Lot 3. This lot at .43 acres was and still is an independent stand alone property with well & septic and largely defined by its own fencing. The Estate property at .43 acres is the only land/property that is available and as such is the only property subject to sale. The Estate property at .43 acres is consistent with many other properties in the area and in deed the community at large. As with multiple other properties in the community the estate property cannot meet current day Municipal Plan and Development Regulations and should not be held to same."

Legislation and Regulations:

The legislation that applies in respect to this appeal is:

- Urban and Rural Planning Act, 2000
- Town of Logy Bay-Middle Cove-Outer Cove Municipal Plan, 2005-2015
- Town of Logy Bay-Middle Cove-Outer Cove Development Regulations, 2005-2015

Land Use Planning:

The Town of Logy Bay-Middle Cove-Outer Cove Development Regulations, 2005-2015 came into legal effect on September 9, 2005.

The subject site is located in the 'Residential' designation, as per the Future Land Use Map of the Municipal Plan and the Residential Low Density (RLD) Use Zone, per the Zoning Map of the Development Regulations.

The Municipal Plan identifies the purpose of the Residential designation in policy Section 4.4.1, which states:

4.4.1 Residential

The purpose of the Residential designation is to preserve the amenity and character of the existing residential areas and to reserve lands for future residential use through the Planning Area. The Town does not have any municipal services and shall promote residential of a low density that can accommodate onsite services. Infill development on existing roads shall be encouraged to increase density of development along existing roads and to make municipal services such as snow clearing and garbage collection more efficient and reduce operating costs.

The Authority provided information in the appeal package submission demonstrating consideration of the standards of the Development Regulations intended to implement the goals and objectives of the Municipal Plan for residential land uses. For example, the Memorandum to Planning and Development Committee dated March 26, 2021 outlined the development standards table of the RLD zone and specifically highlighted non-conformance with the minimum lot area standard of 4050 square metres (1.00 acres).

The Authority has also not specifically detailed in the appeal submission package how or whether Council gave consideration to the Part IV – Subdivision of Land standards in the Development Regulations. It may, however, be necessary for the Board to give explicit consideration, particular in the context of the Appellant's grounds for appeal, to the applicability of any of the following development standards for subdivision:

70. Permit Required

No land in the Planning Area shall be subdivided unless a permit for the development of the subdivision is first obtained from the Council.

71. Services to be Provided

No permit shall be issued for the development of a subdivision unless provisions satisfactory to the Council have been made in the application for a supply of drinking water, a properly designed sewage disposal system, and a properly designed storm drainage system.

73. Issue of Permit Subject to Considerations

A permit shall not be issued when, in the opinion of the Council, the development of a subdivision does not contribute to the orderly growth of the municipality and does not demonstrate sound design principles (...)

Appeal: Grounds of Appeal

The appellant submitted that the proposal to subdivide lands at 13-17 Cadigan's Road is intended to "grandfather the property at .43 acres".

The appeal package does not provide clear evidence to substantiate that the lands that are the subject of application for subdivision are recognized by any development authority to be a 'lot' for the purposes of subdivision and/or that any authority of jurisdiction has issued an authorization for lot subdivision in the past.

The Development Regulations, 2005-2015 state that:

"LOT means a plot, tract or parcel of land that can be considered as a unit of land for a particular use or building."

The appeal package includes various partial survey plans that describe areas of the existing 1.69 acre property and would appear to have the effect of granting exclusive tenure to portions of the lands since the establishment of the real property. It is not clear as to the intent or alleged effect of conveying portions of a property to different owners within an existing lot that has never been authorized for subdivision. However, it would appear that the described conveyance actions are not consistent with the provisions for 'subdivision' established in the Development Regulations which states:

- *"Subdivision" means the dividing of land, whether in single or joint ownership, into 2 or more pieces (including lots), for the purpose of development.*

The Appellant also argues that the property is non-conforming with the current Development Regulations and, therefore, subject to Section 49, which states:

49. Non-Conforming Use

(1) Notwithstanding the Municipal Plan, scheme or regulations made under this Urban and Rural Planning Act, 2001, the Council shall, in accordance with regulations made under this Act, allow a development or use of land to continue in a manner that does not conform with a regulation, scheme, or plan that applies to that land provided that the non-conforming use legally existed before the

registration under section 24 of the Act, scheme or regulations made with respect to that kind of development or use.

The regulations at Section 49(1) that provide for the continuation of a non-conforming development are not applicable in this case since the appellant has not provided evidence that any portion of the 1.69 acre lot was authorized for subdivision since title or titles were acquired in 1978 or since the incorporation of the Town in 1986. It may be noteworthy that the Appellant has submitted an application to obtain a permit for subdivision, despite making a claim that property may be “grandfathered” for reasons that are not made clear.

Furthermore, Section 49(3) of the Regulations impose a standard that the application does not satisfy since the new proposed lot dimension would be varied through subdivision. The proposed new lot (0.43 acres / 1751.6 sq. m) depicted on the Survey Plan of Land dated October 26, 2020 (prepared by Donald Campbell), is inconsistent with the dimensions, size, and shape of the 1977 property survey (0.44 acres).

While it may be accurate to describe the proposed new lot as being nominally similar to the portion of lands illustrated in title survey document (1977), it is the case that the proposed subdivision would result in a varied and smaller lot, which has the effect of increasing a non-conformity contrary to Section 49(3), which states that:

(3) A building, structure or development that does not conform to a scheme, plan or regulations made under the Act that is allowed to continue under subsection (1)...

(a) shall not be internally or externally varied, extended or expanded unless otherwise approved by the Council;

The final aspect of the appeal that should be evaluated by the Board relates to the Appellant’s submission about other portions of the lands that have been conveyed (2002, 2010, 2019 and 2021) without the Town’s approval through permit. It may be that this development history is impertinent to Council’s specific decision to refuse this application. However, the Board may wish to consider, in more broad terms, whether the described practice of surveying lands and conveying lands is contrary to the intent of having Council as the sole authority to prescribe subdivision design standards.

Procedural Compliance

The Town of Logy Bay-Middle Cove-Outer Cove Development Regulations provide the authority for Council to approve or refuse the subdivision of lands for the purpose of achieving the policies of the Municipal Plan related to residential land use.

2. Appellant's Presentation

The Appellant's key points are as follows:

- There had been over time a conveyance of parts of the subject property to various family members whose title to the parts/parcels had been registered ("titled"). In his view, this constituted legal subdivision of the original property.
- The proposed 0.43 acre "grandfathered lot"/"Estate Lot", with fence, had always been viewed by him and the family as not having changed and separate from the rest of the property.
- There are numerous other residential properties in the area which have lot characteristics similar to that of the proposed 0.43 acre lot in terms of lot area and frontage (non-compliance with current requirements of the Development Regulations); and this subdivision application should be viewed in this light.

3. Authority's Presentation

- The Town has no records on file to show municipal approval for subdivision of the subject property in the past or any records that applications for subdivision were made.
- The Town confirmed that the Municipal Assessment Agency's (MAA) records regarding property ownerships on the subject property do not equate to approvals for subdivision of the property.
- From the Town's perspective, the issue is not a matter of property ownerships but the application that was submitted by the Appellant to create two non-conforming residential lots.

4. Interested Parties

- Ms. Murrin indicated that she wishes to live in the existing house on the proposed subdivided lot ("homestead/estate lot").
- Ms. Murrin has no plans to enlarge the house and feels that the proposed lot size of 0.433 acres is sufficient for existing onsite water and sewer services.

Board's Analysis

Q: What is the matter under appeal?

A: The appeal concerns an application to subdivide an existing residential property at civic number 13-17 Cadigan's Road into two lots, each of which would not be

able to comply with the Development Regulations requirements for minimum lot area and lot frontage in the Residential Low Density Zone, and the decision by the Development Authority to reject this subdivision application.

Q: What is the current zoning of the subject property and the Zone Requirements for minimum lot area and frontage?

A: The subject property is zoned Residential Low Density (RLD). In this zone a lot is required to have a minimum lot area of 4050 square metres and a minimum lot frontage of 45 metres.

Q: Could each of the proposed new lots (homestead lot and "new" lot) meet the minimum lot area and lot frontage requirements of the RLD Zone?

A: No, the homestead lot would only have an area of 1752 square meters and a lot frontage of 39 meters; while the proposed new lot would have sufficient lot area of 5099 square meters but a lot frontage of only 37 meters.

Q: Does the Town have the authority under its Development Regulations to modify the minimum lot area and lot frontage requirements of the Residential Low Density Zone?

A: Under the Town's Development Regulations, the Town has a 10% discretionary variance authority but this would not be sufficient to allow approval of the subdivision of the property as currently proposed by the Appellant.

Q: Could the Town have approved the application for subdivision to create two substandard lots?

A: No, Regulation 76 (Subdivision Subject to Zoning) of the Town's Development Regulations provides subdivision of land shall be permitted only in accordance with the Use Zones delineated on the Zoning Maps.

Board's Conclusion/Decision

In arriving at its decision, the Board reviewed the submissions and comments given by the 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.

42. (10) In determining an appeal, a board may confirm, reverse or vary the decision appealed from and may impose those conditions that the board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

The Board has determined that the Town did not have the authority under Regulation 6 (Compliance with Regulations) and Regulation 76 (Subdivision Subject to Zoning) of the Town's Development Regulations to approve the subdivision application as proposed by the Appellant.

Board's Order

The Board orders that the decision made by the Town Council of Logy Bay/Middle Cove/Outer Cove on April 12, 2021 to reject an application from Don Murrin to subdivide property at 13-17 Cadigan's Lane, be confirmed.

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).

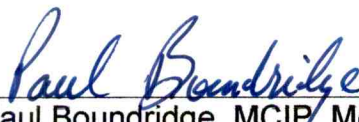
DATED at St. John's, Newfoundland and Labrador, this 24th day of February, 2022.



Cliff Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board



Paul Boudridge, MCIP, Member
Eastern Newfoundland Regional Appeal
Board