

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

Appeal # 15-006-067-056

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-056
Appellant(s)	Dana Kelly
Respondent / Authority	Town of Torbay
Date of Hearing	March 18, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Paul Boundridge, MCIP

Also in Attendance

Solicitor for the Appellant(s)	Lee Ballett
Representatives for the Appellant(s)	Dana Kelly; Brendan Kelly
Representatives for the Authority	John Samms – Solicitor; Julia Schwarz, MCIP – Director of Planning and Development
Developer	Robyn Summers P.Eng.; Keith James; Steve Saunders
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	

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 (the "Board") is to determine if the decision of the Town of Torbay (the Authority) to issue an Approval in Principle for a six-lot residential subdivision including an extension to Wildberry Lane is in accordance with the *Urban and Rural Planning Act, 2000* and the Torbay Municipal Plan and Development Regulations

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

- Urban and Rural Planning Act, 2000
- Torbay Municipal Plan and Development Regulations

Background:

On February 9, 2021, the Authority passed a motion to conditionally approve the development of a residential subdivision at the west end of Wildberry Lane. On February 19, 2021, the Authority issued an Approval in Principle letter outlining conditions. The proposed development includes 6 lots serviced with on-site wells and septic systems, an extension of Wildberry Lane and a temporary cul de sac bulb.

On March 10, 2021, Ms. Kelly's (the Appellant) legal representative filed an appeal.

Presentations To The Board During Hearing

The following is synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant, the Authority and the Developer.

The Board heard from the following:

Technical Advisor:

The Appellant is appealing the Authority's decision to issue an Approval in Principle on the following grounds:

1. The development is unsuitable for the area due to storm water, a high groundwater table and the potential to worsen water and flooding issues in the area;
2. The development will require wells and test pits which will create additional flooding in the area;
3. The site is unsuitable because there are standing water that is unsuitable for installation of wells and septic systems and the potential of contaminating Western Island Pond from run-off.
4. The development does not comply with the Torbay Development Regulations with respect to the cul de sac and lack of an appropriate emergency access.

According to the Torbay Development Regulations, the subject site is zoned Residential Large Lot (RLL). Dwellings are a permitted use. The Residential Large Lot (RLL) Use Zone Table sets out minimum development standards including:

Minimum lot size	3035 m ²
Minimum frontage	36.4 m

Regulation 20 of the Torbay Development Regulations gives Council the discretion to issue an approval in principle.

20. Approval in Principle

(2) The Council may issue an Approval in Principle if it determines the application conforms to the Municipal Plan and these Regulations.

(3) An Approval in Principle shall be valid for a period of 1 year, and may be extended 1 year (must be requested by applicant), up to a total maximum period of 2 years.

(4) No development shall be carried out under an Approval in Principle.

Condition 10 of the Approval in Principle letter, dated February 19, 2021, states that detailed engineering drawings and specification are required before any development or building permit is issued.

10. More detailed engineering drawings and specifications are required to be submitted for review and approval (Master Survey, Perimeter Survey, Drainage & Grading Plans, and Road Plan/Profiles etc.) prior to any development/building permit being issued....

Regulation 21 of the Torbay Development Regulations requires the issuance of a development permit before any work can commence.

21. (Development Permit)

(1) A written Permit to Development, including a temporary Permit to Develop, issued by the Council shall be permission to develop. The permission shall not relieve the applicant from full responsibility of obtaining all other approvals, prior to the commencement of development, and complying with the requirements of all other regulations and statutes during development.

The Appellant:

- Mr. Ballett, the solicitor for the Appellant, indicated to the Board that his client would be withdrawing the concerns regarding the cul de sac and lack of an appropriate emergency access based on the affidavit supplied by the Town's Director of Planning and Development dated March 17, 2022.
- Mr. Ballett indicated that the Appellant's primary concern relates to the high water table at the proposed development site and other properties in the vicinity. The proposed residential development will prejudice/negatively impact other existing residential properties in the area.
- The proposed development is not in keeping with the goals and objectives of the Town's Municipal Plan. In exercising their discretionary authority to grant an Approval in Principle for this project, Council did not follow the intent of the Municipal Plan. Council's decision was premature and they have not ensured compliance with the Municipal Plan and Development Regulations.
- The Appellant is not alleging any misconduct on the Town's part regarding its decision to grant the Approval in Principle.

The Authority:

- Mr. Samms, solicitor for the Town of Torbay, advised the Board that the Town Council's decision to grant an Approval in Principle for the project is a discretionary decision by Council and under the provisions of Section 42.11 of the Urban and Rural Planning Act, 2000, is not subject to Appeal.
- The appeal filed raises potential issues of concern regarding the development; not issues that will definitely happen.
- The Town is aware of potential issues of concern regarding the development, such as a high water table in the area, which is why the Town in its decision to grant the Approval in Principle, set out a detailed list of conditions which included the Level 2 Ground Water Assessment. The Town must be fully satisfied that the conditions set out in the Approval in Principle, are complied with to ensure conformity with the Town's Policies and Development Regulations before any approvals/permits are issued by the Town to start construction of the project.
- The Town feels they have taken a responsible and measured approach to the processing of the project.

The Developer:

Mr. Summers advised the Board that the Developer fully intends to comply with/satisfy all requirements in the Town's Approval in Principle for the project.

BOARD ANALYSIS

Q. What is the land use designation and zoning of the subject property?

A. The property is designated under the Town's Municipal Plan as "Residential Future". The property is zoned "Residential Large Lot". Dwellings are a permitted use in this zone subject to zone requirements including a minimum lot area of 3035m² and a minimum lot frontage of 36.4m.

According to the technical report prepared for the Appeal, indicates that each of the proposed residential building lots has a minimum lot area greater than 3035m² and lot frontages equal to or greater than 36.4m.

Q. Is the Town authorized to grant an Approval in Principle to a proposed residential subdivision?

A. Regulations 10 and 20 of the Torbay Development Regulations gives Council the discretion to issue an Approval in Principle.

10. (Discretionary Powers of Council)

(1) In considering an application for a permit or for Approval in Principle to carry out development, the Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application

20. (Approval in Principle)

(2) The Council may issue an Approval in Principle if it determines the application conforms to the Municipal Plan and these Regulations.

(3) An Approval in Principle shall be valid for a period of 1 year, and may be extended 1 year (must be requested by applicant), up to a total maximum period of 2 years.

(4) No development shall be carried out under an Approval in Principle.

BOARD'S DETERMINATIONS AND CONCLUSION

In arriving at its decision, the Board reviewed the submissions and evidence 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 therefore 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 had the authority under Regulation 20 of the Town's Development Regulations to issue an Approval in Principle (conditional approval) on February 9, 2021 for a six-lot residential subdivision including an extension to Wildberry Lane. The Board notes that the Town confirmed that the Residential Large Lot Zoning of the subject property allows single detached dwellings as a permitted use and that the preliminary concept plan for the project submitted by the developer indicates that the lots meet the minimum lot area and lot frontage requirements of the zone.

Council was satisfied that it had sufficient information on the project to utilize its discretionary authority under the Town's Development Regulations to grant an Approval in Principle to the project subject to a series of detailed conditions. These detailed conditions must be satisfied to the Town before approvals/permits will be issued by the Town for construction of the project.

The Board has determined that the Town used its discretionary authority appropriately and that this decision satisfies the requirements of the Urban and Rural Planning Act and the Town's Municipal Plan and Development Regulations.

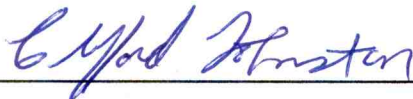
BOARD'S ORDER

The Board orders that the decision made by the Town of Torbay on February 9, 2021 to issue an Approval in Principle to 75462 Newfoundland and Labrador Inc. for a six-lot residential subdivision involving an extension to Wildberry Lane, be confirmed.

The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

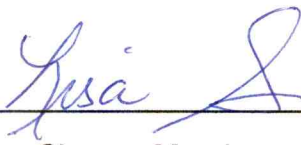
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this March 18, 2022.



Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member

Eastern Newfoundland Regional Appeal Board