

West Newfoundland Regional Appeal Board

Appeal #	15-006-064-044
Board Members	Chair: Lloyd Walters Member: Boyd Noel Member: Derrick House
Date of Hearing	October 16, 2020

In Attendance

Appellant	Helena Pittman
Respondent/Authority	Digital Government and Service NL
Representatives for the Authority	Debbie Goosney, Design Approval Technician II
Secretary to the Board	Robert Cotter
Technical Advisor to the Board	Elaine Mitchell, MCIP

The provision for appeal is enabled under s. 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the West Newfoundland Regional Appeal Board is to determine if the Department of Digital Government and Service NL acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Protected Road Zoning Regulations* when it refused an application for an RV park at Pynn's Brook made by Helena and Craig Pittman.

Background

On May 15, 2019, Helena and Craig Pittman (the Appellants) applied to the Department of Digital Government and Service NL to develop a RV Park at Pynn's Brook under the *Protected Road Zoning Regulations*. Service NL refused the application in a letter to Mr. and Mrs. Pittman dated October 28, 2019. This correspondence provided the following reason for refusal:

- The subject site is located in the Pasadena municipal planning area. According to the Pasadena Development Regulations, the subject site is located in the Rural zone. Recreational open space is listed as a discretionary use in the Rural zone. While Schedule B lists trailer/campgrounds as an example of a recreational open space use, condition 3 of the Rural zone states "Recreational open space shall be restricted to activities such as hiking, walking, bird watching, fishing, cycling and adventure tourism. As a trailer park/campground does not comply with this condition, the application cannot be approved.

The decision letter also included a statement advising of the right to appeal and how to file an appeal.

In their submission, the Appellants note that the Town of Pasadena has issued them a permit for an 80 lot RV parking on January 7, 2020. The Appellants also note that they had previously been granted approval from Service NL for a RV park at this location as did a previous applicant.

Validity

Section 42 (4) and (5) of the Act state:

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.*

According to the documents provided, the appeal was filed on January 7, 2019. The decision letter issued by Service NL was dated October 28, 2019.

In their submission, Service NL indicates that it mailed the decision letter again on December 19, 2019. In the Appellant's submission, there is no information about receipt of the October 28, 2019 decision letter or the subsequent request that it be mailed again.

The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee.

Grounds of Appeal

This appeal is based on the following section of the Act: 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 Appellants appealed a decision with respect to an application to undertake development being the refusal of their application to develop a RV park at Pynn's Brook. The Appellants appealed the decision to refuse the application on the following grounds:

1. That the application for an RV park had been previously approved by Service NL;
2. The Service NL regulations allow for RV parks in the Rural Conservation zone; and
3. That the appellant is attempting to resolve the issue with Service NL and the Town of Pasadena.

The Board's authority is restricted to those grounds with respect to compliance with legislation and regulations. The Board will determine w determine if the **Error! Reference source not found.** acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Protected Road Zoning Regulations* when it refused an application for an RV park at Pynn's Brook made by **Error! Reference source not found.**

Planner's Technical Analysis

The applicable legislation with respect to this appeal is:

Urban and Rural Planning Act, 2000

Protected Road Zoning Regulations

The West Newfoundland Regional Appeal Board considered this technical analysis.

Schedule B of the *Protected Road Zoning Regulations* identifies the Trans-Canada Highway, excluding the portion of the highway within Terra Nova National Park, as a protected road.

TRANS CANADA HIGHWAY

The Trans Canada Highway (Route 1), as existing or proposed, from the western face of the Kenmount Road Overpass, at St. John's, to the eastern abutment of the Grand Bay Bridge, at Port aux Basques, but excluding that portion of the highway within the Terra Nova National Park. For the purpose of controls, 2 portions of this highway shall be considered a limited access highway, namely,

*(a) from the western face of the Kenmount Road Overpass to the intersection of the Argentia Access Road (Route 100); and
(b) from its intersection with the Nicholville Road , at Deer Lake , to its intersection with Massey Drive , at Corner Brook.*

According to section 5 of the *Protected Road Zoning Regulations*, a building control line is established on each side of a protected road. The building control line is measured from the centreline. Within a municipal planning area but outside of a municipal boundary, the building control line is 150 metres.

Pynn's Brook is located within the Pasadena municipal planning area but is located outside of the Pasadena municipal boundary. A portion of the subject property, including the access to the property, are located within the building control lines which extend 150 metres from the highway centreline.

*5. (1) Subject to subsections (2), (3) and (4), there is established on each side of every protected road a building control line which is 400 metres distant, measured perpendicular, from the centre line of the roadway.
(2) Within the municipal boundary of each incorporated municipality the building control line shall be 100 metres distant, measured perpendicular, from the centre line of the roadway.
(3) Outside a municipal boundary, but within a municipal planning area boundary, the building control line shall be 150 metres distant, measured perpendicular, from the centre line of the roadway.*

Section 10 of the *Protected Road Zoning Regulations* states that if the protected road passes through an area with a plan in effect, the land shall be used only in accordance with the approved plan and regulations.

10. Where a protected road passes through an area covered by an approved plan made under the provisions of Part II, III, IV, V or VI of the Act, the land included shall be used only in accordance with the approved plan and associated regulations.

The Pasadena Municipal Plan came into legal effect on August 28, 2008. According to the Pasadena Municipal Plan, the subject site is located in the Rural future land use designation. Municipal Plan policy 4.4.5 (ii) states that:

Lands in the Rural designation may be used for agriculture, forestry, mineral exploration and extraction, outdoor recreation and adventure tourism. Activities associated with the conservation of soil, wildlife and fish are also permitted.

According to the Pasadena Development Regulations, which came into legal effect at the same time as the Municipal Plan, the subject site is located in the Rural zone. Permitted uses in the Rural zone are "Agriculture and conservation". Discretionary uses include "recreational open space". Condition 3 of the Rural use zone table states:

*3. Recreational Open Space
Recreational open space uses shall be restricted to activities such as hiking, walking, bird watching, fishing, cycling and adventure tourism.*

A RV park does not comply with this condition.

The Town of Pasadena is in the process of conducting a review of the Municipal Plan and Development Regulations. According to the draft Development Regulations, the subject site is located within the Rural zone. Campgrounds are listed as a permitted use in the Rural zone. Section 4.3.19 states that campgrounds include trailer and recreational vehicle parks. The draft Municipal Plan and Development Regulations has not been registered by the Department of Municipal Affairs and Environment and is not in legal effect at this time. Once the process outlined in the Urban and Rural Planning Act is completed, and the Municipal Plan and Development Regulations come into legal effect, these provisions will replace exist requirements.

Procedural Compliance

Section 12 of the *Urban and Rural Planning Act* states that a Municipal Plan and Development Regulations are binding upon Council.

*12. A plan and development regulations are binding upon
(a) municipalities and councils within the planning area governed by that plan or those regulations; and
(b) a person undertaking a development in the area governed by that plan or those regulations.*

Presentations during the Hearing

Planner

During the hearing, the Board heard technical details about the Protected Road Zoning Regulations and the Pasadena Municipal Plan and Development Regulations. In particular, the planner advised the Board that the Trans-Canada Highway was a protected road and any development within 150 metres of the highway centreline required a permit from the Department of Digital Government and Service NL. As the subject site is located in the Pasadena municipal planning area, the requirements of the Pasadena Municipal Plan and Development Regulations apply. The subject site is located in the Rural zone where recreational open space is listed as a discretionary use and section 3 of the Rural use zone table does not allow for development of a RV park.

Appellant

The Board heard that the Appellants filed an appeal because they had purchased the property with an approval in place for an RV park. Ms. Pittman explained that a previous permit expired and that a new application was required. She stated that the previous application had been approved by all government agencies but the new application had been refused. She stated that she had a permit from the Town of Pasadena for the RV Park.

Authority

The Authority outlined the chronology of events related to the development applications for this property and noted that a development permit had expired on May 15, 2019. As a result, the Appellants were required to re-apply. The application was referred to appropriate government departments. Responses from most departments recommended that the application be approved or approved with conditions, except for the Department of Environment, Climate Change and Municipalities which recommended that

the application be refused for non-compliance with the Pasadena Municipal Plan and Development Regulations. The Authority outlined the reasons for refusal.

Conclusion

Validity

The Board heard preliminary arguments from both parties with respect to the validity of the appeal filed on January 7, 2020. After due consideration of the arguments by both parties and considering whether either party would be disadvantaged, the Board applied the test of reasonableness. The Board realizes that the holiday season may have interfered with the decision to file an appeal within the time lines. The Board decided to hear the appeal.

What is the matter under consideration by the Board?

The matter under consideration by the Board is whether the decision of the Department of Digital Government and Service NL to refuse an application for an RV park at Pynn's Brook, made by Helena and Craig Pittman, was in accordance with the *Urban and Rural Planning Act, 2000*, the *Protected Road Zoning Regulations* and Pasadena Municipal Plan and Development Regulations.

Was the decision made in accordance with legislation?

Yes. The subject site is located within the protected road building control lines. The *Protected Road Zoning Regulations* state that if the protected road passes through an area with a plan in effect, the land shall be used in accordance with the approved plan and regulations. According to the Pasadena Development Regulations, the subject site is located in the Rural zone. Recreational open space is listed as a discretionary use in the Rural zone, however, condition 3 of the Rural use zone table states:

3. Recreational Open Space

Recreational open space uses shall be restricted to activities such as hiking, walking, bird watching, fishing, cycling and adventure tourism.

The Board determined that a RV park does not comply with condition 3 of the Rural use zone table.

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

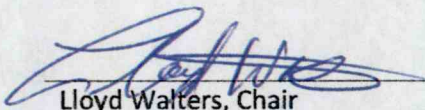
Board's Order

Based on the information presented, the Board orders that the decision by the Department of Digital Government and Service NL, made on October 28, 2019, to refuse an application for an RV park at Pynn's Brook, be confirmed.

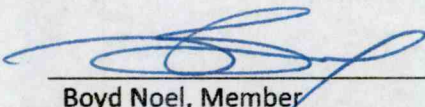
The Respondent and the Appellant(s) are bound by this decision of the West Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West Newfoundland 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 Deer Lake, Newfoundland and Labrador, this 16th day of October, 2020.



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Boyd Noel, Member
West Newfoundland Regional Appeal Board



Derrick House, Member
West Newfoundland Regional Appeal Board