

West Newfoundland Regional Appeal Board

Appeal #	15-006-072-024
Appellant(s)	Gregory and Lana Hickey
Respondent / Authority	Service NL
Date of Hearing	October 13, 2021

Board Members

Chair	Lloyd Walters
Member	Derrick House
Member	Boyd Noel

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Jamie Brake
Representatives for the Authority	Aaron Legge, Design Approval Technician IIB, Government Service Centre, Department of Digital Government and Service NL
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Start/End Time	10:30 am – 11:25 am

The authority for appeals is under section 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 Digital Government and Service NL acted in accordance with the *Protected Road Zoning Regulations* when it refused an application on July 19, 2021.

Presentations during the Hearing

1. Planner's Presentation

The Technical Advisor outlined her report noting that the subject site is partially located in the protected road building control lines which extend 150 metres from the centreline of the Trans-Canada Highway. She noted that the development is subject to the

Pasadena Municipal Plan and Development Regulations in accordance with Regulation 10 of the *Protected Road Zoning Regulations*. The Pasadena Municipal Plan and Development Regulations permits Campgrounds in the Rural zone. She noted that under the *Protected Road Zoning Regulations* the required access must be located and constructed to the specifications of the Department of Transportation and Infrastructure and that no development can proceed until a permit for the development has been issued by Government Service Centre.

2. Appellant's Presentation

Mr. Brake presented on behalf of the Appellant. He outlined the goals and objectives of the proposed RV Park. The RV Park is located on private land and phase I of the proposal is 135 RV lots. The site was previously occupied by a farm and a Salvation Army youth camp which used the same entrance during the time the weight scale was in operation. The developer has completed work on a road way and underground pipes with appropriate permits issued by the Town of Pasadena. Access is onto a double lane highway with adequate sight lines. The RV park will be a seasonal operation so once trailers are placed they will remain on site until removed at the end of the season. Mr. Brake also noted that there is a break in the centreline to allow for entrance and exit from the Trans-Canada Highway and the development meets or exceeds the Transportation Association of Canada standards and should not have been refused. He also stated that the Commercial weight scale only operates on a week day basis. Signage would appropriately direct traffic and there is ample sight distances to accommodate the RV park access. The decision should be overturned on these grounds and the applicant should be allowed to proceed with phase 2 of the development. The approval of septic design is awaiting a permit under the *Protected Road Zoning Regulations* as is the Town's permit. The best mitigation measure is to change lane markings to meet Transportation Association of Canada standards and allow a left turn to exit from the highway.

Mr. Hickey noted that there is an existing driveway even though the Pasadena Development Regulations do not allow new accesses onto the Trans-Canada Highway at Pynn's Brook.

3. Authority's Presentation

Mr. Legge outlined the process under which the application was referred to other government departments. He explained that the Department of Transportation and Infrastructure refused the application on the basis that a separate left-turn lane was required to avoid conflict with the existing roadway operation. He noted that the Town only issued approval in principle subject to GSC approval of the septic system. He explained that Transportation and Infrastructure reviewed the application and determined that a separate left turn lane was required to avoid conflict with the existing left-turn lane associated with the commercial weight scales. He noted that the letter included contact information for the Department of Transportation and Infrastructure so that the applicants could start a dialog with departmental representatives.

Board's Analysis

What is the matter under appeal?

The matter under appeal is a decision by the Government Service Centre, under the *Protected Road Zoning Regulations*, to refuse an application for a RV park located at Pynn's Brook on July 19, 2021. The refusal letter was based on input from the Department of Transportation and Infrastructure which required a left turning lane to avoid a conflict with the existing left turning lane associated with the commercial weight scales.

What regulations relate to this matter?

The subject site is partially located within the protected road building control line which extends 150 metres from the centreline of the Trans-Canada Highway as the site is located within the Pasadena municipal planning area in accordance with section 5 of the *Protected Road Zoning Regulations*.

Section 10 of the *Protected Road Zoning Regulations* states that where a protected road runs through an area with an approved Municipal Plan made under the Act, land shall be used in accordance with that Municipal Plan and associated Development Regulations. The Pasadena Integrated Community Sustainability Municipal Plan (Municipal Plan) and Development Regulations came into legal effect on June 11, 2021. Municipal Plan policy 12.2 Rural Land Area Policies identifies campgrounds as a permitted use and according to the Pasadena Development Regulations, the subject site is located in the Rural zone where campgrounds are a permitted use subject to conditions.

A permit from both the Government Service Centre and the Town is required before development can commence.

What is the role of the Department of Transportation and Infrastructure in this decision?

The Government Service Centre referred the application to a number of government departments. The Department of Transportation and Infrastructure recommended that the application be refused.

The Appellant's argued that the access could be configured to meet national Transportation Association of Canada standards.

Section 19 of the *Protected Road Zoning Regulations* states that accesses shall be located and constructed to the specification of the Department of Transportation and Infrastructure.

Accesses and service streets

19. (1) Accesses to protected roads shall be located and constructed to the specifications of the authority and the Department of Works, Services and Transportation.

The Board recognizes that a technical solution may be possible but it is not within the jurisdiction of the board to override the authority of the Government Service Centre and the Department of Transportation and Infrastructure who has the engineers and technical capacity to evaluate proposals and to issue approvals. The Board however, does acknowledge that the refusal letter provided contact information so that the parties could further discuss this matter.

Board's Conclusion

The Board reviewed the written submissions from both parties.

After reviewing the information presented to this Board, it concludes that the Authority made a decision which was consistent with the *Protected Road Zoning Regulations* which states that access to a protected road, such as the Trans-Canada Highway, shall be located and constructed to specifications of the Department of Transportation and Infrastructure. Despite the arguments from the Appellant that the access could meet Transportation Association of Canada standards, the Board finds that the Government Service Centre refused the application because the Department of Transportation and Infrastructure had road safety concerns related to truck traffic using the nearby commercial weight scales.

The Board's decision must be consistent with section 42 (10) of the *Urban and Rural Planning Act*.

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.

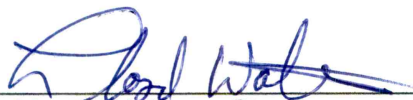
Board Order

The Board orders that the decision made by the Government Service Centre, Department of Digital Government and Service NL to refuse an application for an RV park at Pynn's Brook, within the Municipality of Pasadena, 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).

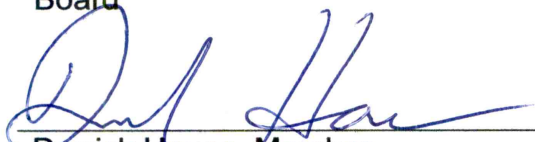
DATED at Corner Brook, Newfoundland and Labrador, this October 13, 2021.



Lloyd Walters, Chair
West Newfoundland Regional Appeal
Board



Boyd Noel, Member
West Newfoundland Regional Appeal
Board



Derrick House, Member
West Newfoundland Regional Appeal
Board