

West Newfoundland Regional Appeal Board

Appeal #	15-006-0067-014
Appellant(s)	Richard Swyers
Respondent / Authority	Town of St. George's
Date of Hearing	April 20, 2021

Board Members

Chair	Lloyd Walters
Member	Leona Gillette
Member	Helen Reid

Also in Attendance

Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	Michael Fleming Elaine Swyers
Representatives for the Authority	Jocelyn Butt
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	Rhonda Sheppard, Developer

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 Town of St. George's acted in accordance with the *Urban and Rural Planning Act, 2000* and the St. George's Municipal Plan and Development Regulations when it approved a chicken coop and pig enclosure at 7 Farm Road, St. George's, on June 15, 2020.

Presentations during the Hearing

1. Planner's Presentation

During the hearing, the Board heard technical details about the permit requirements under the *Urban and Rural Planning Act, 2000* and the St. George's Municipal Plan and Development Regulations. In particular, the Board heard that On May 28, 2020, the owner of 7 Farm Road, St. George's, submitted an application for a chicken coop and pig enclosure on a residential property. The application included a "Permit for Activities in a Protected Public Groundwater Supply" issued by the Water Resources Management Division of the Department of Municipal Affairs and Environment on May 22, 2020 for six chickens and two pigs.

After advertising the application, Council approved the application for a pig enclosure for 2 pigs and a chicken coop for 6 hens at a special meeting held on June 15, 2020. A permit was issued by the Town on June 17, 2020.

An appeal was filed with the Western Newfoundland Regional Appeal board by a third party, Mr. Richard Swyers (the Appellant) on June 18, 2020.

According to the St. George's Municipal Plan, the subject site is located within the Residential future land use designation. Section 2.3 of the Municipal Plan identifies the Residential designation as being applied to exclusively residential areas and subdivisions. Residential designations include Serviced, unserviced and semi-serviced lots with mainly single dwellings with seniors' housing, home businesses and a very limited array of commercial and public uses. This designation and zone is applied to exclusively residential areas and subdivisions.

Section 2.4 identifies overlays including the well head protected water supply area.

There are four wells which serve the Town with water and these are protected under the Well Head Protected Water Supply Area which overlaps a number of designations. There are restrictions on development and storage of hazardous products within this overlay. The Department of Environment and Conservation must give its approval for a development within this overlay.

Section 2.7 requires all agricultural development to be approved by the Agrifoods Development Branch of the Department of Natural Resources.

Section 3.1.2 states that in the Residential designation, agricultural uses area restricted to relatively small operations in the unserviced and semi-serviced residential areas.

Agricultural uses are restricted to relatively small operations in the unserviced and semi-serviced residential areas that can be accommodated in a way so as to not negatively affect existing and future residential developments.

According to the St. George's Development Regulations, the subject site is located in the Residential (Res) zone. The subject site is also located within the Wellhead Protected Water Supply Area overlay.

In the Residential use zone table (Schedule C), agriculture is listed as a discretionary use class – unserviced and semi-serviced subject to Regulations 23 and 94.

... when the development proposed is listed as a discretionary use in Schedule C of the Regulations, or, where otherwise required by the Town, the Town 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 or by any other means deemed necessary.

Regulation 94 states that a discretionary use may be permitted if the town is satisfied that the development complies with the intent of the regulations and municipal plan, public interest, that the Town has given notice in accordance with Regulation 23 and that any objections or representations have been considered.

Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the Town 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 the Town has given notice of the application in accordance with Regulation 23 and has considered any objections or representations which may have been received on the matter.

Regulation 41 states that any structure containing livestock shall be approved by the Agrifoods Development Branch.

Any structure containing livestock shall be approved by the Agrifoods Development Branch along the Town, and if necessary, a minimum separation distance shall be established between the livestock structure and other developments.

Regulation 66 outlines conditions for development within the Wellhead Protected Water Supply Area, notwithstanding the underlying use zone, including the requirement that any development shall be referred to the Department of Environment and Conservation.

Notwithstanding the use zone, within a Wellhead Protected Water Supply Area (WPSA) any development except renovations to an existing structure, fences and minor landscaping **shall** be referred to the Department of Environment and Conservation for approval before a permit is issued by the Town.

2. Appellant's Presentation

Mr. Mike Fleming representing the appellant, Mr. Swyers outlined grounds for the appeal including;

1. Schedule C does not allow a permit to be issued for agricultural use in a fully serviced area. Permits for agricultural use can only be issued in semi- serviced and unserviced areas.
2. The subject property 7 Farm Rd is fully serviced with water and sewer connections.
3. Agrifoods approval is required under regulation 41 and that approval has not been received.

3. Authority's Presentation

Ms. Butt, the town clerk indicated that the council made its decision based on the following facts;

1. The plot is large and the location being used for the barn could not be fully serviced. Therefore the town could regard it as a discretionary decision under regulations 23 and 94.
2. The permit was issued based on going to the Agrifoods department afterwards.
3. The supporters of the project were greater than those that opposed.
4. The town encouraged sustainable development to encourage food availability.

4. Interested Parties

The applicant, Ms. Rhonda Sheppard indicated to the board that she believes in being sustainable and she had signatures from neighbours supporting the application. She further stated there would be only two pigs on the plot and it would not present a nuisance.

Board's Analysis

What is the Role of the Board?

The role of the West Newfoundland Regional Appeal Board is to determine if the Town of St. George's acted in accordance with the Urban and Rural Planning Act, 2000 and the St. George's Municipal Plan and Development Regulations when it approved a chicken coop and pig enclosure at 7 Farm Road, St. George's, on June 15, 2020.

How is the property zoned?

According to the St. George's Municipal Plan, the subject site is located within the Residential future land use designation.

Is this type of development permitted in the Residential Future Land Use Zone?

In the Residential use zone table (Schedule C), agriculture is listed as a discretionary use class – un-serviced and semi-serviced, subject to Regulations 23 and 94.

Is 7 Farm Road a fully serviced lot?

The board was informed by the town clerk that 7 Farm Road is serviced with water and sewer utilities.

What sections of the town's regulations did it need to consider before approving this application?

The board heard evidence from the technical adviser that regulations 23,41,66 and 94 must be considered by the town when reviewing this application.

What is the intent of regulation 41 of the town's development regulation?

Regulation 41 requires that the Agrifoods Development Branch must approve this application prior to any permit being approved. The board heard from the town clerk that no such approval was applied for or received.

What is the intent of regulation 66 of the town's development regulation?

Regulation 66 outlines conditions for development within the Wellhead Protected Water Supply Area, notwithstanding the underlying use zone, including the requirement that any development shall be referred to the Department of Environment and Climate Change. The board determined a "Permit for Activities in a Protected Public Groundwater Supply" was received by the town dated May 22, 2020 as per regulation 2.4 regarding the Well Head Water Protection Area. Therefore the town is in compliance with that regulation.

What is the intent of regulation 23 of the town's development regulation?

Regulation 23 outlines notice requirements to citizens when the town is considering applications for discretionary uses. The board received evidence from both parties indicating that the town was in compliance with this regulation.

What is the intent of regulation 94 of the town's development regulations?

Regulation 94 states that a discretionary use may be permitted if the town is satisfied that the development complies with the intent of the regulations and municipal plan, public interest, that the Town has given notice in accordance with Regulation 23 and that any objections or representations have been considered.

Board's Decision

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.

In particular, Section 42 (10) of the *Urban and Rural Planning Act, 2000* specifies that the Board may only confirm, reserve or vary the decision under appeal.

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 determined that the town erred in processing this application in these two aspects;

1. While the proposed development is a discretionary use in the Residential Future Land Use Zone, council erred in their interpretation of their discretionary power. That is to say that this is a fully serviced lot and therefore not subject to a decision by the council to regard a portion of the lot as semi-serviced and therefore subject to a discretionary decision.
2. Council did not refer the application to the Agrifood's division for approval as required under regulation 41 of the town's development regulations.

Therefore the decision of council is reversed and the developer does not have approval to proceed with development on 7 Farm Road.

Board's Order

Based on the information presented, the Board orders that the decision by the Town of St. George's on June 15, 2020 to approve a chicken coop and pig enclosure at 7 Farm Road, St. George's be reversed.

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

The Respondent 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 Deer Lake, Newfoundland and Labrador, this 20th day of Apr, 2021



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Helen Reid, Member
West Newfoundland Regional Appeal Board



Leona Gillette, Member
West Newfoundland Regional Appeal Board