

West Newfoundland Regional Appeal Board

Appeal #	15-006-067-017
Appellant(s)	Carla Pearce Martin
Respondent / Authority	Town of Kippens
Date of Hearing	April 21, 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)	
Representatives for the Authority	Mark Mills
Secretary for the Boards	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	Daniel Bennett representing 58663 Newfoundland and Labrador Ltd.

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 West Newfoundland Regional Appeal Board is to determine if the Town Council of Kippens acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Kippens Municipal Plan and Development Regulations when it issued an approval in principle on July 16, 2020 for a residential subdivision as an extension to McCarthy's Lane.

The Board clarified that the proposal given approval in principle is shown on the drawing, using green to illustrate the existing road and blue to illustrate the proposed subdivision and does not include a second cul de sac between McCarthy's Lane extension and the coast.

Presentations during the Hearing

1. Planner's Presentation

During the hearing, the Board heard technical details about subdivision development from the Kippens Municipal Plan and Development Regulations. In particular, the Board heard that the Kippens Municipal Plan and Development Regulations came into legal effect on September 14, 2012 and that it is legally binding on Council and anyone undertaking development.

According to the future land use maps, which form part of the Kippens Municipal Plan, most of the subject site is located within the Residential designation with lot 1 and the rear portion of lot 2 located within the Mixed Development designation.

Policy 3.2.1 (1) of the Municipal Plan states that development proposals shall be reviewed to ensure that:

- Municipal water and sewer services are provided;
- Water mains can be looped to maintain water quality standards;
- The road system off Route 460 link existing and new developments, facilitate access to the community centre and other parts of town, and minimize the use of Route 460 as an access;
- Route 460 functions as a safe urban arterial road; and
- Environmental hazards and impacts are minimized.

The Municipal Plan calls for new development to make efficient use of existing roads and infrastructure and, within municipal servicing limits, be connected to municipal water services, at the cost of the developer. The technical advisor noted that no information was provided about the servicing of the proposed subdivision.

The technical advisor indicated that Municipal Plan Policy 3.2.3 states that to ensure that development occurs in an orderly manner, subdivisions will be coordinated with existing and proposed developments and the road system and services. To facilitate this, the Town adopted the Kippens Collector Roads Concept Plan.

In the Residential and Mixed Development designations, permitted uses are mini-homes and single dwellings. All development must be connected to the Town's water system and, when it is installed, the sewer system.

Regulation 7 of the Kippens Development Regulations states that no development shall be carried out except in accordance with the regulations.

Regulation 20 of the Kippens Development Regulations states that the Town may grant approval in principle for a subdivision development if it is satisfied that the proposed development is in compliance with the Development Regulations subject to the approval of detailed plans which must be submitted no later than two years from the granting of the approval in principal.

The technical advisor outlined the requirements for the subdivision of land and, in particular, section 86 (3) which states:

(3) The maximum length of any cul de sac shall be 250 m where no emergency access is provided; or 300 m where emergency access is provided.

The technical advisor noted for the information of the Board that the concept drawing provided shows a cul de sac without an emergency access and that it contained insufficient detail to determine whether the cul de sac exceeds the maximum length of 250 metres specified in Regulation 86 (3).

Detailed engineering drawings must be prepared by or approved by a professional engineer employed by the Town in accordance with Regulation 87 (1).

Regulation 93 specifies that no residential subdivision involving new roads unless the requirement for Part IV of the Regulations are met, there are at least six building lots and, where deemed necessary for long range planning and servicing purposes, provisions is made for a second access to an existing road.

The Board also learnt that procedural fairness and transparent decision making where important considerations related to this appeal.

2. Appellant's Presentation

The Board heard from the Appellant who outlined her grounds of appeal. She noted that she bought her property with her husband and was granted first right of refusal of the property to the rear. She noted that she had not been aware of earlier subdivision applications. She explained that proposed lot 1 impacted her driveway. She also explained that the Town had requested use of her driveway to upgrade McCarthy's Lane but that she believed that the work was construction of an access road that aligned with the proposed subdivision road.

The Board heard from appellant about three principle concerns: road safety at Route 460 as a result of increased traffic from the proposed subdivision; drainage issues because the proposed development is on land which is wet; and the length of the cul de sac exceeded the requirements outlined in the Town's Development Regulation and that the proposal did not include an emergency exit. The Board also heard her concerns about the potential disturbance of an ancestral burial ground.

The Appellant stated that the Town had not completed a proper assessment of the subject property prior to granting the approval in principle.

3. Authority's Presentation

The Authority was represented by Mark Mills, who was retained as the Town's solicitor.

The Board learnt that Council is given discretionary authority under section 11 of the Town's Development Regulations and that, in this case, Council exercised its discretion appropriately.

The Authority stated that there are three issues that the Board must consider: road standard, length of the cul de sac and access to services. He stated that the road standards and length of the cul de sac complied with the Town's Development Regulations and noted that Regulation 86 (4) states that the length of the cul de sac is measured from the intersection to the cul de sac bulb. He stated that water drainage must be assessed and is subject to approval from the Department of Environment and Climate Change. It was also confirmed that the subdivision would be serviced with Town water and on-site individual septic systems.

The Authority outlined conditions in the approval in principle which required assessment of the Provincial Archeological Office before final approval will be issued by the Town. Further, the development must abide by the conditions within the approval in principle before final approval is granted by the Town.

He noted that debate by Council on this proposal was extensive and the decision was made appropriately. Residents had submitted concerns prior to Council's decision. Therefore, the proposed development was common knowledge to residents of the area.

4. Developer's Presentation

The developer, 58663 Newfoundland and Labrador Ltd., was represented by Daniel Bennett. He outlined the development proposal for the information of the Board. He contended that the measurement of the cul de sac should be from the end of the existing road and that the cul de sac was less than 250 metres in length. He referenced a letter from the developer's engineer, Don Dicesare, affirming that the cul de sac meets the Town's development standards. He indicated that storm sewer upgrades will mitigate any water run-off issues. Mr. Bennett advised that a 30 metre buffer was built into the proposal to address coastal erosion issues. He concluded that all six grounds of appeal had been dealt with by the Town and the developer.

Board's Analysis

What is the matter under consideration by the Board?

The matter under consideration by the Board is whether the approval in principle granted to 58663 Newfoundland and Labrador Ltd. for a cul de sac extending from McCarthy's Lane complies with the Kippens Municipal Plan and Development Regulations.

Does the Town have the authority to issue an approval in principle?

Regulation 20 of the Kippens Development Regulations states that the Town may grant approval in principle for a subdivision development if it is satisfied that the proposed development is in compliance with the Development Regulations, subject to the

approval of detailed plans which must be submitted no later than two years from the granting of the permit.

Does the proposed subdivision comply with the Kippens Development Regulations?

The Board determined that the proposed subdivision will be serviced with town water and on-site septic systems in compliance with the Kippens Development Regulations.

Section 86 (3) and (4) of the Kippens Development Regulations states the maximum length of a cul de sac with and without an emergency exit and the start point for the measurement of the length of a cul de sac. Section 87 (1) of the Kippens Development Regulations requires that detailed engineering drawings be prepared or approved by a professional engineer employed by the Town.

The Board heard evidence from the developer that its engineer had reviewed the proposed subdivision and had given a professional opinion that it complied with the Development Regulations. The Board, however, notes that no such opinion was provided by the Town's engineer. This raises the question about whether the proposed development is in full compliance with the Town's Development Regulations.

Was the decision made by the Town in a transparent manner?

The Board heard that residents submitted written concerns to Council on May 26, 2020. The Board also learnt that Council passed a motion at a public meeting on July 9, 2020 to issue the approval in principle. Upon review of the minutes of that meeting, the Board finds that the motion was debated before the vote was taken. The Board is satisfied that the process fulfills requirements of procedural fairness.

Board's Decision

Section 12 of the *Urban and Rural Planning Act, 2000* states:

- 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.*

After reviewing all information presented to this Board, the Board concludes that the Town of Kippens has the authority to issue an approval in principle for a subdivision as an extension to McCarthy's Lane provided that it complies with all the applicable requirements of the Kippens Development Regulations including those pertaining to subdivision standards. The Board was not provided with evidence that the Town's engineer had reviewed the subdivision plan and, as a result, the length of the cul de sac remains in question. The Board does not have the technical expertise to determine cul de sac length or appropriate engineering standards in this particular set of circumstances as the proposed cul de sac is an extension of an existing dead end

street. The Board finds that this is the role of Town and its engineer as required by Regulations 20 and 87 (1).

For these reasons, the Board varies the approval in principle to require review by the Town's engineer for compliance with the Kippens Development Regulations and accepted engineering principles and, that if compliance cannot be achieved, the approval in principle be rescinded.

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.

Board's Order

Based on the information presented, the Board orders that the decision by the Town of Kippens on July 9, 2020 to grant approval in principle, with conditions, for a subdivision development off McCarthy Lane, be varied.

In varying the decision, the Board orders that the approval in principle be amended to include a condition requiring that the concept plan be reviewed by the Town's engineer to ensure full compliance with the Kippens Development Regulations and accepted engineering principles with respect to the length of the proposed cul de sac. The Board further orders that if it is determined upon review of the Town's engineer that the proposed cul de sac does not comply with the Kippens Development Regulations that the approval in principle be rescinded.

In addition, the Board orders the approval in principle be amended to include a condition that the Town's engineer approve the detailed engineering drawings prior to issuance of a final approval and permit for the development.

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 21st day of April, 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