

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-072-038
Appellant(s)	Nicholas Pretty
Respondent / Authority	Town of Portugal Cove – St. Philip's
Date of Hearing	July 7, 2022

Board Members

Chair	Cliff Johnston, MCIP
Member	Carol Ann Smith
Member	Paul Boundridge, MCIP

Also in Attendance

Appellant(s)	Nicholas Pretty
Representatives for the Appellant(s)	
Representatives for the Authority	Les Spurrell, Planning & Development Co-ordinator
Secretary to the Boards	Robert Cotter
Technical Advisor to the Boards	Keith Batstone, MCIP
Start/End Time	10:50 am – 11: 46 am.

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 Portugal Cove-St. Philip (the Authority) September 14, 2021 to grant an Approval in Principle to Murrays Pond Development Limited, for an 8 lot residential subdivision at Civic # 1552-1570A Portugal Cove Road, Portugal Cove-St. Philips was in accordance with the Urban and Rural Planning Act and the Town's Municipal Plan and Development Regulations.

LEGISLATION, MUNICIPAL PLANS AND REGULATIONS CONSIDERED BY THE BOARD

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

Background:

On September 28, 2021, the Appellant filed an appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board with supporting documents.

Presentations 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 and the Authority.

The Board heard from the following:

Technical Advisor:

At its regular Council meeting of September 14, 2021, the Town of Portugal Cove–St. Phillips (the Authority) motioned to approve an Approval in Principle application for the proposed subdivision of 8 residential lots at civic # 1552-1570A Portugal Cove Road (as an extension to Newbury Street) in the Town of Portugal Cove–St. Phillips, NL.

On September 16, 2021, Mr. Nick Pretty (the Appellant) received an email from the Authority as notice of Council's decision to approve the Approval in Principle application for the 8 lot subdivision.

On September 28, 2021, the Appellant filed an appeal with the Secretary of the Eastern Newfoundland Regional Appeal Board.

Grounds of Appeal

This appeal is based on the following section of the Urban and Rural Planning Act, 2000: Section 42.(1)

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 Appellant is appealing the decision of Council to issue an Approval in Principle for the development of an 8 lot subdivision at civic # 1552-1570A Portugal Cove Road in Portugal Cove – St. Phillips, NL, on the following grounds:

- That the decision of the Authority contradicts its own Development Regulations at section 70(3)(b), for considering proposed development in the area of steep slopes. Section 70(3)(b) states:

Land intended for the activity or grading has a slope of less than 25%. Lands with a slope greater than 25% over a distance of five (5) or more metres, shall be protected and shall not be developed except for infill residential single dwelling development proposals as a discretionary use within the Traditional Community zone, and except on the further conditions that such proposals are accompanied and supported by a qualified geotechnical or other engineering certified and stamped report and recommendations, such land is not designated by the St. John's Urban Region Regional Plan as 'Restricted', and all such proposals are approved by Council;

- That storm drainage and flooding will be negatively impacted,
- That local ecology will be negatively impacted,
- That personal viewsapes and privacy will be negatively impacted,
- That the new lots and houses will not approximate the size of existing and will negatively impact property values in the area,
- That increased access to the adjacent hydro power lines will increase hazards in the area,
- That the proposed subdivision does not constitute a plan; and
- That the proposed cul-de-sac constitutes future development which is not considered within the plan.

The Town of Portugal Cove – St. Philip's Municipal Plan and Development Regulations, 2014-2024 came into effect on October 17, 2014.

The subject property is located within the 'Residential' land designation, as established in the Future Land Use Map. The subject property is also located in the 'Residential Medium Density (RMD)' Use Zone, as established in the Land Use Zoning Map.

The Municipal Plan outlines the general policy intent for the 'Residential' land designation at Section 3.4.1:

These areas are designated Residential in order to preserve the amenity of existing residential areas and to accommodate new housing needs in areas with short and medium-term development potential.

The Municipal Plan promotes efficiency in development and land use patterns by encouraging development on lands in proximity to existing services as evidenced in Section 3.4.1, which states:

The highest priority for residential development is given to areas that can be economically connected to existing piped services, including infill along existing roads, expansions of existing serviced subdivisions, and back-land areas that are readily accessible for servicing.

Development Regulations, 2014-2024 provide that the single dwelling type is the dominant type of residential dwelling in the RMD zone as a Permitted Use.

Discretionary residential uses may also be considered for development in the form of double dwellings, apartment buildings, town houses, and subsidiary apartments. The proposed development for single dwelling types appears compliant with the zoning.

The Development Regulations allow for an Approval in Principle permitting process, which is a preliminary approval that can be issued when the general intent of a proposal complies with the Municipal Plan and Development Regulations but requires additional information to be supplied to enable Council to make an informed decision.

Development Regulations, 2014-2024, Section 20 – Approval in Principle, provides that;

- (1) Council may grant approval in principle for the erection, alteration or conversion of a building if, after considering an application for approval in principle made under these Regulations, it is satisfied that the proposed development is, subject to the approval of detailed plans, in compliance with these Regulations.
- (2) Where approval in principle is granted under this Regulation, it shall be subject to the subsequent approval by Council of such details as may be listed in the approval in principle, which shall also specify that further application for approval of these details shall be received not later than two years from the grant of approval in principle.

St. John's Urban Region Regional Plan

The subject property is situated in the 'Urban Development' land use designation of the St. John's Urban Region Regional Plan where the Town of Portugal Cove-St. Philip's is identified as a local centre where the extent of present development is such that essential public services must be supplied. In these areas first priority must be given to the provision of piped water supply and sewage collection facilities.

Decision of Council

The Authority's appeal package outlines that the Town received an Approval in Principle application for consideration of an 8 lot residential subdivision as an extension to Newbury Street. The Town indicates that the Planning & Development Committee reviewed the application, the relevant Municipal Plan and Development Regulation standards, and forwarded a recommendation to Council.

Procedural Compliance

The Development Regulations, 2014-2024 provide the authority for the Council to approve, with conditions, or refuse a Development Permit application for a proposed use of land which is listed as either a permitted or discretionary use:

8. PERMIT TO BE ISSUED - Subject to Regulations 9 and 10, a permit shall be issued for development within the Planning Area that conforms to: (1) the General Development Standards outlined in Part II of these Regulations, the requirements of Part V of these Regulations, and the use classes, standards, requirements, and conditions prescribed in Schedule C of these Regulations for the use zone in which the proposed development is located; (2) the applicable standards specified within the Building Code and/or other ancillary codes, and any Building Regulations, Waste Disposal Regulations, and/or any other municipal regulation in force in the Planning Area regulating or controlling development, conservation and use of land and buildings;... (4) the standards contained in Part IV of these Regulations in the case of subdivision.

The Development Regulations also establish that Council may issue an Approval in Principle permit that requires additional information from the proponent to render an informed Council decision, and may apply conditions necessary to bring an application into conformity with the municipal plan policies and development standards, prior to Development Permit issuance:

20. APPROVAL IN PRINCIPLE

(1) Council may grant approval in principle for the erection, alteration or conversion of a building if, after considering an application for approval in principle made under these Regulations, it is satisfied that the proposed development is, subject to the approval of detailed plans, in compliance with these Regulations.

(2) Where approval in principle is granted under this Regulation, it shall be subject to the subsequent approval by Council of such details as may be listed in the approval in principle, which shall also specify that further application for approval of these details shall be received not later than two years from the grant of approval in principle.

The Authority contends that the Approval in Principle application was reviewed in consideration of the broad purpose and intent of the existing Municipal Plan and Development Regulations, prior to rendering a decision. The Authority's appeal submission package indicates that consideration of the permit application involved:

- The Planning and Development Committee's evaluation of the proposal and recommendation to approve.
- Issuance of a letter as confirmation of Council's decision to issue Approval in Principle.
- Notice of the right of appeal and the associated appeal application process for the Eastern Newfoundland Regional Appeal Board.

The Appellant contends that the Authority did not comply with the Act and the Development Regulations because:

- It issued an Approval in Principle application in an area of steep slope(s) and potential drainage issues, which are noted by Council to be assessed in an upcoming phase of development review.
- Development impacts may alter ecological functions, property values, views, privacy of residents, and create opportunities for hazards relating to power lines.
- The proposed subdivision does not constitute a plan or contemplate future development on adjacent lands.

The Board must contemplate whether Council, in carrying out its decision to issue the Approval in Principle for an 8 lot subdivision in the Residential Medium Density Use Zone – did so in accordance with the provisions of the legislative, policy, and regulatory framework.

The Appellant:

- The Appellant advised the Board that the site of the proposed sub-division has a severe slope greater than 40 degrees which is contrary to the Town's Development Regulations.
- The proposed development will destroy the ecology of the application site and will exacerbate existing storm water runoff problems being experienced by the Appellant and some other existing homes in the area.
- The proposed new building lots and houses will be smaller than those existing buildings lots and houses nearby and thereby could lower the assessment value of existing homes.

The Authority:

- The site of the proposed subdivision is designated and zoned residential to allow the proposed development of single detached houses in compliance with municipal standards.
- The Town sent out approximately 70 notices by Canada Post to properties in the area to advise residents/property owners of the proposed development. Only two (2) written submissions of concern were received by the Town.
- The site of the proposed development was previously cleared and grubbed for an earlier proposed residential development which ultimately did not proceed.
- Under the conditions of the Approval in Principle granted by the Town Council for this project, the developer must provide detailed engineering drawings to establish and verify full compliance with all applicable municipal requirements. These detailed engineering drawings can be made available for public review upon request to the Town.
- This particular application has been processed by the Town as per standard Town practices for approval of a residential sub-division development.

BOARD ANALYSIS

Q. What is the zoning of the property which is the subject of the appeal?

A. The property is zoned Residential Medium Density (RMD) under the Town's Development Regulations. This zone allows single detached dwellings as a permitted use.

Q. Did the Town of Portugal Cove-St. Philips have the authority to issue an Approval in Principle for the proposed sub-division?

A. The Development Regulations establish that Council may issue an Approval in Principle permit that requires additional information from the proponent to render an informed Council decision, and may apply conditions necessary to bring an application into conformity with the municipal plan policies and development standards, prior to Development Permit issuance:

20. APPROVAL IN PRINCIPLE

(1) Council may grant approval in principle for the erection, alteration or conversion of a building if, after considering an application for approval in principle made under

these Regulations, it is satisfied that the proposed development is, subject to the approval of detailed plans, in compliance with these Regulations.

(2) Where approval in principle is granted under this Regulation, it shall be subject to the subsequent approval by Council of such details as may be listed in the approval in principle, which shall also specify that further application for approval of these details shall be received not later than two years from the grant of approval in principle.

- Q. Did the Authority adequately demonstrate that it gave due consideration to the policies of the Town's Municipal Plan and the requirements of the Town's Development Regulations prior to issuing the Approval in Principle?
- A. The correspondence dated September 20, 2021 from the Town's Director of Public Works, Planning and Development to the Developer, Murray's Pond Development Ltd. advised of Council's decision of September 14, 2021 to grant Approval in Principle for the proposed 8-lot residential subdivision. This letter set out a detailed set of conditions which would have to be satisfied by the Developer to the Town's stipulations before the Town will consider granting Final Approval to the project. These detailed conditions demonstrate to the Board's satisfaction the Town correctly reviewed and processed the application prior to granting the Approval in Principle.

BOARD'S CONCLUSION AND DETERMINATIONS

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.

The Board has determined that the Town Council of Portugal Cove-St. Philips acted in accordance with its authority when it made its decision on September 14, 2021 to grant an Approval in Principle to Murray's Pond Development Limited, for an 8 – lot residential sub-division proposed to be developed on property located at Civic # 1552-1570A Portugal Cove Road.

BOARD'S ORDER

The Board orders that the decision made by the Town Council of Portugal Cove St. Philips to grant an Approval in Principle on September 14, 2021 to Murray's Development Pond Ltd. for a proposed 8 lot residential subdivision on property located at 1552-1570A Portugal Cove Road, 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 7th of July, 2022.



Clifford Johnston, MCIP, Chair
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board



Paul Boudridge, MCIP, Member
Eastern Newfoundland Regional Appeal Board