

**EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD**  
**URBAN AND RURAL PLANNING ACT, 2000**

Appeal #	15-006-072-057
Appellant(s)	Paul Quigley
Respondent / Authority	Town of Torbay
Date of Hearing	March 7, 2023

**Board Members**

Chair	Cliff Johnston, MCIP
Member	Lisa Slaney
Member	Paul Boundridge, MCIP

**Also in Attendance**

Solicitor for the Appellant(s)	Darren O'Keefe
Appellant	Paul Quigley
Representatives for the Authority	Stephen Penney, Solicitor Julia Schwarz, MCIP Director of Planning and Development Dawn Chaplin, Town CAO and Town Clerk
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Darren Randell, MCIP Planner III, Municipal and Provincial Affairs
Interested Parties	Michael Duffy, Solicitor; Lee Ballett, Solicitor Representing the Bauline Line Concerned Citizens Group
Start/End Time	9:00 am – 2:20 pm

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 Regional Appeal Board (the Board) is to determine if the Authority (Town of Torbay) acted in accordance with the *Urban and Rural Planning Act, 2000* and the Town of Torbay Municipal Plan and Development Regulations when the Town Council made its decision on February 2, 2022 to refuse a development application from Paul Quigley to establish and operate a quarry at 45A Bauline Line, Torbay.

## **Presentation's During the Hearing**

The Board had oral presentations from the following parties at the appeal hearing. The Board also received and reviewed written submissions from the Technical Advisor, the Appellant, the Authority and the Applicant prior to the appeal hearing date. The Board also had access to the digital recording of the appeal hearing made by the recording secretary.

### Planner's Presentation

The appeal is regarding the refusal of a development permit for a proposed quarry at 454A Bauline Line in the Town of Torbay (the Authority). In the recent past, the Board was presented with this development proposal scenario on two separate occasions: the first occasion being in December 2017 when the Board required the Town to revise the conditions of an Approval in Principle (AIP) to give more weight to the impacts of sloping and buffering on the proposed quarry development; and the second occasion in December 2021, when the Board determined the Authority did not carry out a conflict of interest vote appropriately as per the Municipalities Act, 1999, and by extension proceeded inappropriately to then vote and refuse the related development permit application.

On December 2021, the Eastern Newfoundland Regional Appeal Boar (ENRAB) determined the Council of the Town of Torbay (the Authority) erred while conducting a conflict of interest vote on the proposed quarry development and reversed the Authority's decision to refuse the development permit application. The Authority was instructed to undertake another conflict vote, as per the requirements of s. 209(1) the Municipalities Act, 1999, and following that to carry out another formal Council vote on issuing a development permit.

In January 2022, the Authority carried out a new conflict of interest vote as per s. 209(1) the Municipalities Act, 1999, and determined the Mayor and Councillor were not in a conflict of interest.

On February 2, 2022, at a Special Public Council Meeting, a motion is made to conditionally approve the development permit.

On February 11, 2022, the Authority issued a refusal letter to the applicant.

On February 25, 2022, the Applicant filed an appeal with the ENRAB.

## **GROUND OF APPEAL**

This appeal is based on the following provision of the Urban and Rural Planning Act, 2000: Section 42(1)(a) (an application to undertake a development). The Act establishes the types of decisions that may be appealed to the Board:

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 claims four (4) grounds of appeal, as follows:

1. The Town erred in finding that Mayor Scott and Councillor Appleby were not in a Conflict of Interest.
2. The Town erred in finding that the Appellant failed to meet the conditions set out in the AIP within the required time frame.
3. The Town improperly considered matters that were irrelevant to the Application.
4. The Town has violated the Appellants Right to Procedural Fairness.

## LAND USE PLANNING

### The St. John's Urban Region Regional Plan

The site is situated with the Rural designation of the St. John's Urban Region Regional Plan where quarrying operations are permitted. The Rural policy includes a policy related to permitted uses, which states:

#### 6. Rural Uses – Policy

The Uses permitted in the rural areas designated on the regional Plan Map shall be limited to include:

1. Agricultural, forestry, mineral working and conservation uses...

### The Town of Torbay Municipal Plan and Development Regulations 2015-2025

The Town of Torbay Municipal Plan and Development Regulations 2015-2025 came into effect in February, 2017. The future land use designation and land use zoning are 'Rural' where quarry operations (mineral working) can be permitted on a discretionary basis. The Town followed the requirements of the Development Regulations for advertising and considering a discretionary use proposal and in June 2017 issued an Approval in Principle subject to 14 conditions. Processing of the application was postponed from June 2017 to May 2018 due to a third party appeal and



resulting hearing of the NL Supreme Court (NLSC). The NLSC clarified the ENRAB decision for the Authority and the AIP was amended on May 17, 2018, to give more weight to Condition #4 pertaining to sloping and buffering. Given the revised date of issuance, the date of expiration based on Development Regulation s.20 should be May 17, 2019 but may be extended to May 17, 2020 if the applicant were to request an extension. Based on the Authority's Planning & Development Department Report of June 10, 2020 to its Planning, Land Use & Development Committee, the Authority resolved that, in accordance with the Interpretation Act, the expiration of the AIP actually was May 19, 2020 due to the 17th being a Sunday and the 18th falling on a statutory holiday. The June 10, 2020 report also states; "From a permitting perspective, Council exercised its discretion to approve and issue a conditional permit for the quarry in 2017, revised in 2018."

#### The Municipalities Act, 1999

Prior to voting to conditionally approve a development permit, Council undertook a Conflict of Interest vote since a Councillor believed they held a monetary interest relating to the proposal. The Councillor did not remove themselves from the voting procedure as required by s.207 of the Municipalities Act, 1999. Section 207 states that a Councillor shall not vote on or speak to a matter where a councillor or a relative has a monetary interest in the matter. Under subsection (4) that interest must be distinct from an interest held in common with other citizens.

#### *Conflict of interest*

207. (1) A councillor shall not vote on or speak to a matter before the council or a committee of the council where

- (a) the councillor has a monetary interest in the matter distinct from an interest arising from his or her functions as a councillor;
- 2. the councillor has a monetary interest directly or indirectly in the matter;
- (c) a relative of the councillor has a monetary interest in the matter; or
- (d) the councillor is an officer, employee or agent of an incorporated or unincorporated company, or other association of persons, that has a monetary interest in the matter.

(4) In order for an interest to be considered as one falling within the prohibition set out in subsection (1) it shall be an interest distinct from an interest held in common with the other citizens or classes of citizens of the municipality.

On June 17, 2020 the Authority tabled a Committee motion to conditionally approve a Development Permit. Based on the Planners Technical report, the motion resulted in a tie vote by Council and was therefore defeated as per s.212 (5) the Municipalities Act, 1999.

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### *Voting*

212 (5) Where there is a tie vote on a motion or resolution, that motion or resolution shall be considered to be defeated.

On June 26, 2020, the Authority issued a refusal letter and on July 10, 2020, the applicant filed an appeal with ENRAB within the 14 day deadline. In December 2021, ENRAB heard the appeal and ruled that the Authority erred in undertaking the conflict of interest vote. The Board instructed the Authority to revisit the vote and following that to revisit the decision on the Development Permit application. In January, 2022, the Authority completed the conflict of interest voting according to the requirements of s.209 of the Municipalities Act, 1999, and concluded the Council members were not in a conflict of interest in relation to the development proposal.

### *Decision of council*

209. (1) Where a councillor is in doubt as to whether or not he or she has a monetary interest that is a conflict of interest under section 207, he or she shall make a disclosure and the council may decide the question by majority vote and its decision on the matter is final.

(2) A councillor whose possible conflict of interest is being voted on is not entitled to vote.

On February 2, 2022, at a Special Public Meeting of Council, the Authority again tabled a motion to approve the development permit. The Planning Committee recommendation to Council to conditionally approve the development permit was defeated in a 3-4 vote of Council. The Authority's refusal letter advised the decision was made in accordance with s.10 (Discretionary Powers of Council), s.21 (Development Permit), and s.22 (Reasons for Refusing a Permit) of the Towns Development Regulations. In this regard, the Authority advised the applicant that Council acted within its discretion in determining to refuse the application and stated the reasons for doing so in writing.

### *10. Discretionary Powers of Council*

(1) In considering an application for a permit or for approval in principle to carry out development, the Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) The Council may, in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed in the Council's regulations as discretionary, permitted or prohibited uses for that area.

## 21. *Development Permit*

- (1) A written Permit to Develop, including a temporary Permit to Develop, issued by the Council shall be permission to develop. This permission shall not relieve the applicant from full responsibility of obtaining all other approvals, prior to the commencement of development, and complying with the requirements of all other regulations and statutes during development.
- (2) The Council may attach conditions to a Permit to Develop to ensure compliance with the Municipal Plan and these Regulations, and the permit holder shall be responsible for full compliance with the permit conditions.
- (3) A Permit to Develop is valid for a period of 1 year and may be extended twice up to a total maximum period of 3 years.
- (4) The issuance of a Permit to Develop shall not prevent the Council from requiring the correction of errors, or ordering the cessation, removal of, or remedial work on any development being carried out that is in violation of the Municipal Plan and these Regulations.
- (5) The Council may revoke a Permit to Develop for failure by the developer to comply with the Municipal Plan and these Regulations, or any condition attached to the Permit to Develop, or where it was issued in error or was issued on the basis of incorrect information.
- (6) No person shall change the application for which a Permit to Develop has been issued unless the change has been approved by a resolution of the Council, and written approval has been issued.
- (7) A copy of the Permit to Develop, and the plans and specifications, shall be kept on the site until completion of the development.

## 22. *Reasons for Refusing Permit*

The Council shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.



## PROCEDURAL COMPLIANCE

On January 24, 2022, the Authority adhered to instructions from ENRAB to revisit and carry out a new conflict of interest vote as specified by the Municipalities Act, 1999, and to then undertake a new vote to conditionally approve or refuse the issuance of a development permit. Councillors questioning a potential conflict of interest removed themselves from Council chambers and did not vote on the decision as required by s.207 of the Municipalities Act, 1999, and the Council determined no conflict. Subsection 207 (4) states that for an interest to qualify under subsection (1), it must be distinct from an interest held in common with the other citizens of the municipality. In this regard, if impacts to property value (and by extension monetary value) will be experienced by the Council members, then the impact will also extend to other adjacent residents as opposed to only impacting the Council members. In this regard, a conflict of interest on a monetary basis cannot be declared. The appellant also claims that a Councillor was in conflict due to the Councillors association with a Citizens Group, however, this situation also does not qualify as a conflict of interest under s. 207 of the Municipalities Act, 1999, as previously described.

On February 2, 2022, Council revisited its vote on the development permit as instructed by ENRAB. The vote was defeated in a 3-4 vote. On February 11, 2022, the Authority issued a refusal letter. On February 25, 2022, the applicant filed this appeal with ENRAB, adhering to the requirements of the Urban and Rural Planning Act, 2000, in making an appeal submission prior to the 14 day deadline.

The appellant claims to have satisfied all 14 conditions of the AIP within the required deadline. The deadline was confirmed by the Town and Appellant to be May 19, 2020. In its Planning and Development Department Report of June 10, 2020, to its Planning Committee, the Department states that engineering information was received on May 14 and 15, 2020 which was subsequently reviewed by the Town's engineering consultant, the provincial Department of Natural Resources (Mineral Land Division), and the provincial Environmental Assessment and Water Resources Management Departments. Final approval was received from the Water Resources Management Department on June 3, 2020, which is 15 calendar days beyond the May 19, 2020, confirmed deadline for the AIP permit.

The appellant purports that the 'Town improperly considered matter that were irrelevant, biased, and unreliable to the application and that the Town's exercise of discretion was unreasonable. Upon receipt of the initial application for AIP back in 2016, the Town advertised a Notice of Application in accordance with Development Regulation s.33. This regulation allows for a 7 day response period for the Town to receive public comments. The Town states in its refusal letter of February 11, 2022, that approximately 15 pieces of correspondence were received in opposition to the proposal since the time the Appeal Board issued its Order on December 10, 2021 and the time which the report was tabled for decision on February 2, 2022. While the matters may or may not be relevant, biased, or unreliable as stipulated by the appellant, the public commenting period expired 7 days following the Notice of Application publication date of February 15, 2016.



Based on the refusal letter of February, 11, 2022, it appears that Council considered these comments while exercising its discretion to refuse the application.

The appellant claims the Town has violated their Right to Procedural Fairness with regard to claiming that the conditions of the AIP were not satisfied. As discussed above in part 3 of this section, the AIP conditions were satisfied 15 days later than the expiration date of the AIP.

The appellant also claims the Town is being unfair with stating it has a development prohibition pertaining to slopes greater than 15% and purports the subject Rural does not apply. An overriding Environment policy from the Municipal Plan simply states that one objective of the Environment policy is 'to discourage development in areas with slopes greater than 15%.' The policy does not distinctly prohibit development in such areas.

## 2.7 Environment

- To discourage development in areas with slopes greater than 15 percent, recognizing that development in such areas can result in environmental damage and higher costs for servicing and maintenance.

### Solicitor for the Appellant

Mr. O'Keefe, solicitor for the Appellant undertook detailed questioning of the Technical Advisor and the Town's Chief Administrative Officer/Town Clerk and the Town's Director of Planning and Development. Mr. O'Keefe also highlighted for the Board's information the key points of the Town's written brief. As earlier noted, the Appellant's written submissions were filed with Secretary to the Board and provided to Board Members prior to the appeal hearing of March 7, 2023.

### The Authority

Mr. Penney, solicitor for the Town of Torbay, highlighted for the Board's information the key points of the Town's written brief. As earlier noted, the Appellant's written submissions were filed with Secretary to the Board and provided to Board Members prior to the appeal hearing of March 7, 2023. Mr. Penney did stress to the Board that it had no jurisdiction under any legislation to consider the matter of potential Conflict of Interest for any member of the Torbay Town Council.

### Interested Parties

Mr. Duffy is the solicitor for the Bauline Line Concerned Citizens Group. He resides on Bauline Line and is also a member of this group. Mr. Duffy, highlighted for the Board's information the key points of the Citizens Group written brief. As earlier noted, Mr. Duffy's written submission was filed with Secretary to the Board and provided to Board Members prior to the appeal hearing of March 7, 2023.

Like the solicitor for the Town of Torbay, Mr. Duffy indicated that the Eastern Newfoundland Regional Appeal Board cannot be involved in determining if a member of the Torbay Town Council is in a Conflict of Interest on a certain matter before Council. Mr. Duffy summarized for the Board that there is nothing in the public interest to be gained by approval of the proposed quarry project on Bauline Line.

### **Appeal Board Analysis**

Q. The Appellant states that one of the grounds for appeal is that the Town of Torbay erred in finding that Mayor Scott and Councillor Appleby were not in a Conflict of Interest regarding the proposed quarry operation. Does the Appeal Board have jurisdiction to consider and make an Order with respect to Conflict of Interest matters?

A. Sections 207 and 209 207. [Rep. by 2021 cM-20.01 s27], 209. [Rep. by 2021 cM-20.01 s27] of the Municipalities Act, 1999 deal with the matter of Conflict of Interest. The following sections are taken from the Municipal Conduct Act, 2021.

5. (1) A municipal official has a conflict of interest where in the making, or involvement in the making, of a decision
  - (a) the municipal official's private interests are affected; or
  - (b) the municipal official is unable to act impartially on behalf of the municipality due to the municipal official's personal relationships.
- (2) For the purposes of paragraph (1)(a)
  - (a) a decision may affect, directly or indirectly, a private interest, where the decision may result in a gain or loss to the municipal official's private interests or the private interests of a relative; and
  - (b) a decision does not affect, directly or indirectly, a private interest where the decision affects the municipal official or a relative of a municipal official as one of a broad class of the public.
- (3) For the purposes of paragraph (1)(b) a municipal official is unable to act impartially where a reasonable person may conclude that the municipal official's personal relationship would result in favoritism or prejudice to the person to whom the municipal official has a personal relationship.

Conflict of interest re: councillors

6. (1) Where a councillor knows or ought reasonably to know that the councillor has a conflict of interest in a matter before council, the councillor shall, where present,

- (a) declare the conflict of interest before any consideration or discussion of the matter;
- (b) disclose the general nature of the conflict of interest;
- (c) refrain from participating in any discussion relating to the matter;
- (d) refrain from voting on any question, decision, recommendation or other action to be taken relating to the matter; and
- (e) leave the room in which the meeting is held for the duration of the consideration of the matter.

(2) Notwithstanding paragraph (1)(e), where the meeting referred to in subsection (1) is open to the public, the councillor may remain in the part of the room set aside for the general public.

(3) A councillor referred to in subsection (1) shall not attempt, in any way, before, during or after the meeting, to influence

- (a) the vote of other councillors; or
- (b) any policy advice provided to council regarding the matter.

(4) A declaration of conflict of interest under subsection (1) and the general nature of the conflict of interest shall be recorded in the minutes of council or a committee of council, where the declaration was made at a committee meeting.

(5) Where a councillor is uncertain as to whether or not the councillor has a conflict of interest, the councillor shall disclose the nature of the possible conflict of interest to the council and the council may decide by a majority vote.

(6) A councillor whose possible conflict of interest is being voted on is not entitled to vote.

(7) Where the vote referred to in subsection (5) is a tied vote, the councillor shall be considered to have a conflict of interest.

(8) Where the council determines by a majority vote under subsection (5) that a councillor does not have a conflict of interest and a complaint is subsequently filed under this Act and it is determined that a councillor did have a conflict of interest, the council may invalidate the decision of council in which the councillor acted in a conflict of interest but shall not impose any other penalties under this Act against the councillor.

Reduced quorum

7. (1) Where one or more councillors have declared a conflict of interest under subsection 6(1) and the number of councillors remaining at the meeting is not sufficient to constitute a quorum then, notwithstanding any other Act, regulations or a regulation of council, the number of councillors remaining, where not less than 2, shall be considered to constitute a quorum for purposes of discussion and voting on the matter being considered by the council.

(2) Where in the circumstances referred to in subsection (1) there would be less than 2 councillors remaining at a meeting, council shall request direction from the minister and the minister may order that

- (a) the one remaining councillor vote on the matter as if the councillor constituted a quorum; or



(b) the councillors are exempted from subsection 6(1) in the matter and allow the councillors to vote on the matter.

(3) The minister may impose terms and conditions on an order issued under subsection (2).

Complaint of conflict of interest re: councillors and former councillors

8. (1) Where a person is of the opinion that a councillor or former councillor has acted in a conflict of interest, the person may file a complaint with the chief administrative officer within 6 months of the person becoming aware of the potential conflict of interest.

(2) A complaint shall be in writing and shall include the following information:

(a) the nature of the conflict of interest;

(b) the councillor's or former councillor's actions in relation to the conflict of interest; and

(c) any other information the chief administrative officer determines necessary.

(3) The chief administrative officer shall send a copy of the complaint to the respondent no later than 5 business days after receipt of the complaint.

(4) The respondent may provide a written response respecting the complaint to the chief administrative officer no later than 20 business days after receipt of a copy of the complaint.

(5) Where the respondent provides a written response under subsection (4), the chief administrative officer shall send a copy of the written response to the complainant within one business day after receipt of the written response.

(6) The chief administrative officer shall review the complaint and the respondent's written response no later than 10 business days after receipt of the written response, or where a written response is not filed the chief administrative officer shall review the complaint no later than 10 business days after the time period to file the written response has expired, and shall

(a) prepare a written report regarding the complaint;

(b) refer the complaint to council;

(c) provide a copy of the report referred to in paragraph (a) to the council at the time the complaint is referred to council; and

(d) give written notice of the referral to the complainant and the respondent.

(7) No later than 15 business days after receiving the report referred to in subsection (6), the council shall consider both the complaint and the report provided under subsection (6) and may, by resolution,

(a) dismiss the complaint;

(b) make a determination that the councillor or former councillor acted in a conflict of interest; or

(c) order any investigation to determine whether the councillor or former councillor acted in a conflict of interest.

(8) A person shall not hinder, obstruct, attempt to obstruct, interfere with, threaten, harass or fail to cooperate with a person conducting an investigation under paragraph (7)(c) in the exercise of that person's duties or functions under this Act or the regulations.

(9) A person conducting an investigation under paragraph (7)(c) shall prepare a report regarding the investigation and submit it to the council.

(10) Following review of the report referred to in subsection (9) the council may, by resolution,

- (a) dismiss the complaint; or
- (b) make a determination that the councillor or former councillor acted in a conflict of interest.

(11) A report referred to in subsection (9) shall be tabled at a public meeting.

Penalties for conflict of interest re: councillors and former councillors

9. (1) Where a council determines that a councillor has acted in a conflict of interest, the council

- (a) shall, by resolution, require the councillor to vacate the councillor's seat on council and declare that the councillor is not eligible to be nominated as a candidate until the nomination period for the next general election; and
- (b) may, by resolution, invalidate the decision of the council in which the councillor acted in a conflict of interest.

(2) Notwithstanding subsection (1), where the council determines that a councillor acted in a conflict of interest through inadvertence or a genuine error in judgment, the council may, by resolution, allow the councillor to keep the councillor's seat on council and may do one or more of the following:

- (a) reprimand the councillor;
- (b) invalidate the decision of the council in which the councillor acted in a conflict of interest;
- (c) require the councillor to attend training as determined by the council;
- (d) suspend the councillor from council committees or other additional activities or duties for a period of no more than 3 months; and
- (e) suspend the councillor from council, without remuneration, for a period of no more than 3 months.

(3) Where the council determines that a former councillor has acted in a conflict of interest, the council may do one or more of the following:

- (a) reprimand the former councillor;
- (b) invalidate the decision of council in which the former councillor acted in a conflict of interest; and
- (c) declare that the former councillor is not eligible to be nominated as a candidate until the nomination period for the next general election.

(4) Where a councillor is unable to attend regular public meetings of the council for 3 successive months because of a suspension under paragraph (2)(e), the councillor's absence from the public meetings is considered to be with leave of the council for the purposes of subparagraph 20(2)(e)(ii) of the *City of Corner Brook Act*, subparagraph

20(2)(e)(ii) of the *City of Mount Pearl Act*, subparagraph 206(1)(f)(ii) of the *Municipalities Act, 1999* and a regulation made under subparagraph 340.5(4)(i) of the *City of St. John's Act*.

The Eastern Newfoundland Regional Appeal Board receives its mandate under Section 42 of the Urban and Rural Planning Act, 2000

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 Board has determined based on its review of the Municipalities Act, 1999, the Municipal Conduct Act, 2021 and the Urban and Rural Planning Act, 2000, that it has no jurisdiction to determine if a member of the Torbay Town Council was in a Conflict of Interest position respecting the proposed quarry project at 45A Bauline Line, Torbay.

Q. What is the zoning of the proposed quarry site and does this current zoning allow a quarry operation?

A. The zoning of the subject property is "Rural" under the Town of Torbay Development Regulations, 2015-2025. The Rural Zone allows quarry operations (mineral workings) as a Discretionary Use.

Q. The Appellant states as one of its grounds of appeal that the Town of Torbay erred in finding that the Appellant failed to meet the conditions set out in the Approval in Principle for the proposed quarry project within the required timeframe. What are the Town of Torbay's requirements respecting an Approval in Principle?

A. Section 20 of the Town of Torbay Development Regulations deals with an Approval in Principle.

#### 20. Approval in Principle

- (1) An application for Approval in Principle shall include;
  - a) a description of the proposed development,
  - b) a description of the limits of the land to be used with the proposed development, and may include a survey description of the subject lands,

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c) submission of detailed plans,

d) any additional information that may be required by the Council.

(2) The Council may issue an Approval in Principle if it determines the application conforms to the Municipal Plan and these Regulations.

(3) An Approval in Principle shall be valid for a period of 1 year, and may be extended 1 year (must be requested by applicant), up to a total maximum period of 2 years.

(4) No development shall be carried out under an Approval in Principle.

(5) Council may revoke an Approval in Principle if it determines the applicant has changed the proposed development in a way that significantly alters the original intent of the applications.

The Board has been advised that on June 19, 2017, the Torbay Town Council voted to issue an Approval in Principle for the application subject to 14 conditions. On May 17, 2018, the Town issued a revised Approval in Principle. The solicitor for the Appellant advised in his written brief to the Board that the Town and the Appellant agreed that the Approval in Principle was set to expire on May 19, 2020. The Appellant contends that he was able to submit all substantive items on or prior to the expiry of the Approval in Principle on May 19, 2020 and understood that the conditions were met as of that date.

The Board has reviewed Section 20 of the Town of Torbay's Development Regulations and has determined that the Approval in Principle granted for the quarry project clearly expires two years from the date of its issuance and that the Town Council of Torbay has no authority under the Town's Development Regulations to extend that period. It is the Board's determination that the onus is on an Applicant/Developer to submit all information required under an Approval in Principle in such a manner of submission that the Town has adequate time to review and process the information to enable an application to be referred to the Town Council for consideration of Final Approval and issuance of a Development Permit prior to the expiration of an Approval in Principle.

Q. The Appellant maintains that the Town of Torbay considered matters irrelevant to the development application. Has the Appellant adequately demonstrated this?

A. The Board has determined that insufficient evidence has been presented to the Board substantiate the Appellants claim.

Section 10 of the Town of Torbay Development Regulations specifies the scope of what the Town Council must consider when reviewing an application for a permit or for Approval in Principle

#### 10. Discretionary Powers of Council

(1) In considering an application for a permit or for approval in principle to carry out development, the Council shall take into account the policies expressed in the Municipal Plan and any further

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scheme, plan or regulations pursuant thereto, and shall assess the general appearance of the development of the area, the amenity of the surroundings, availability of utilities, public safety and convenience, and any other considerations which are, in its opinion, material, and notwithstanding the conformity of the application with the requirements of these Regulations, the Council may, in its discretion, and as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

(2) The Council may, in its discretion, determine the uses that may or may not be developed in a use zone and those uses shall be listed in the Council's regulations as discretionary, permitted or prohibited uses for that area

Under the requirements of Section 10 of the Town of Torbay's Development Regulations noted above, Council was empowered/obligated to give consideration to the issue of development prohibition pertaining to slopes greater than 15% and to written communications received from the public.

Q. The Appellant's fourth and final grounds for appeal pertain to a perceived violation of the Appellants right to procedural fairness. The Appellant submits that, given the amount of time and money invested by the Appellant into his quarry application to date, and the financial consequences of the Council vote to reject it, a high duty of procedural fairness should be applied in this situation. Has the Appellant demonstrated to the Boards satisfaction that procedural fairness has not been applied by the Town of Torbay in regards to this application?

A. The Board has determined that the Appellant has not demonstrated an absence of procedural fairness. Based on the provisions/requirements of Sections 10 (Discretionary Powers of Council) and 20 (Approval in Principle) of the Town's Development Regulations and Section 12 (Application of Plan) of the Urban and Rural Planning Act, 2000, the Board has determined that this application has been processed in statutory compliance with applicable planning legislation and regulations.

The Board understands that the opportunity remains with the Appellant, under the provisions of the Town's Development Regulations, for him to submit a new application for a quarry development on the subject property utilizing his development proposal materials that have been prepared in consultation with the Town of Torbay to date.

**Appeal Boards' Conclusion**

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 of Torbay was within its authority under the Town's Municipal Plan and Development Regulations to make its decision on February 2, 2022 to reject the application from Paul Quigley to establish and operate a quarry at 45A Bauline Line, Torbay.

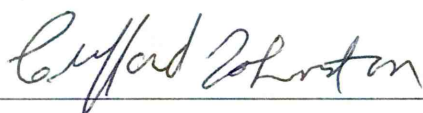


## BOARD'S ORDER

The Board orders that the decision made by the Town of Torbay on February 2, 2022 to refuse the application from Paul Quigley to develop and operate a quarry (mineral work) at 45A Bauline Line, Torbay, **be confirmed**. The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

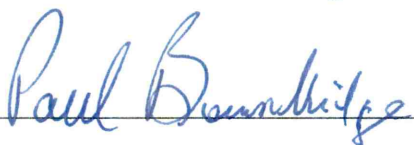
According to section 46 of the Urban and Rural Planning Act, 2000, the decision of this Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador on a question of law or jurisdiction. If this action is contemplated, the appeal must be filed no later than ten (10) days after the Appellant have received the Board's decision.

DATED at St. John's, Newfoundland and Labrador, this 9 of March, 2023.



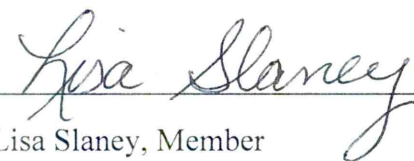
Clifford Johnston, MCIP, Chair

Eastern Newfoundland Regional Appeal Board



Paul Boundridge, MCIP, Member

Eastern Newfoundland Regional Appeal Board



Lisa Slaney, Member

Eastern Newfoundland Regional Appeal Board