

**WEST NEWFOUNDLAND REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**West Newfoundland Regional Appeal Board**

Appeal #	15-006-077-029
Appellant(s)	Tony Young
Respondent / Authority	Digital Government and Service NL (SNL)
Date of Hearing	January 17 <sup>th</sup> , 2023

**Board Members**

Chair	Lloyd Walters
Member	Boyd Noel
Member	Helen Reid

**Also in Attendance**

Solicitor for the Appellant(s)	Bernard Coffey
Representatives for the Appellant(s)	
Representatives for the Authority	Deborah Goosney, Digital Government and Service NL (SNL) Kimberley Perry, Digital Government and Service NL(SNL)
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Sean McGrath, Planner III, Municipal and Provincial Affairs
Interested Parties	
Start/End Time	9:00 AM 10:40 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 Appeal Board is to determine if the Authority acted in accordance with the *Urban and Rural Planning Act, 2000* and the *Protected Road Zoning Regulations* when it

refused Mr. Young's application to build a single dwelling on the north side of Marble Drive adjacent to the east side of the Rapid Power Sports building.

## Presentations during the Hearing

### Planner's Presentation

On June 23, 2022 a preliminary application to develop a dwelling under the Protected Road Zoning Regulations was submitted by Tony Young to Digital Government and Service NL.

On July 19, 2022 the application was referred to relevant government agencies for comments and recommendation.

On September 12, 2022 Digital Government and Service NL issued a refusal letter to the applicant based on the referral response from the Department of Municipal and Provincial Affairs.

In Mr. McGrath's presentation, the Board learned that Schedule B of the Protected Road Zoning Regulations identifies the Trans-Canada Highway, Corner Brook to Baie Verte as a Class 1 protected road and Digital Government and Service NL is designated as the Authority to administer the Regulations.

The Trans Canada Highway (Route 1), as existing or proposed, from the western face of the Kenmount Road Overpass, at St. John's, to the eastern abutment of the Grand Bay Bridge, at Port aux Basques, but excluding that portion of the highway within the Terra Nova National Park. For the purpose of controls, 2 portions of this highway shall be considered a limited access highway, namely, (a) from the western face of the Kenmount Road Overpass to the intersection of the Argentia Access Road (Route 100); and (b) from its intersection with the Nicholsville Road, at Deer Lake, to its intersection with Massey Drive, at Corner Brook.

All development located within the protected road building control lines is subject to the Regulations. According to section 5 of the Protected Road Zoning Regulations, a building control line is established on each side of a protected road.

#### Building control lines established

5. (1) Subject to subsections (2), (3) and (4), there is established on each side of every protected road a building control line which is 400 metres distant, measured perpendicular, from the centre line of the roadway.

(2) Within the municipal boundary of each incorporated municipality the building control line shall be 100 metres distant, measured perpendicular, from the centre line of the roadway.

(3) Outside a municipal boundary, but within a municipal planning area boundary, the building control line shall be 150 metres distant, measured perpendicular, from the centre line of the roadway.

(4) Within each unincorporated community, the building control line shall be 400 metres distant measured perpendicular from the centre line of the roadway or a lesser distance as established by an interim zoning plan or an approved protected road zoning plan.



- (5) In the case of divided highways, the building control lines designated in subsections (1), (2), (3) and (4) shall be measured from the centre lines of the nearest driving lanes.

The 'North side of Marble Drive adjacent to rapid Power Sports building' is not within an incorporated municipality or an established municipal planning area. The subject property is located within the building control lines which extend 400 metres from the highway centerline of the Trans-Canada Highway. As there is no protected road zoning plan in legal effect for this section of the Highway, section 6 of the Protected Road Zoning Regulations applies.

#### Development within building control lines

6. (1) Subject to sections 7, 8 and 10, a permit for development within the building control lines of a protected road shall not be issued outside a community except for signs which shall be erected and displayed in accordance with the Highway Sign Regulations, premises for the purpose of providing services to the travelling public, development related to public, institutional or commercial recreation, including attraction sites, public utilities, waste disposal sites, cemeteries, development associated with forestry, fishing, agriculture or mining, and purposes incidental to or in conjunction with the above.

(2) Where a community fronts along a highway, in areas not covered under sections 7, 8 and 10, uses outlined in the mixed zone table in Schedule A may be permitted within the established infilling limits of that community.

The appellant indicated that the recommendation did not consider section 6(2). However, section 6 (2) specifically states that 'mixed zone' uses may be permitted within the established infilling limit of a community. Subject site is not within an established community boundary or infilling limits. Infill limits are established by Crown Lands and the Local Governance and Land Use Planning Division and do not include the subject site. More so, the subject site is located outside of the developed portion of Little Rapids with limited urban development nearby.

#### Appellant's Presentation

Appellant's council Mr. Coffey reviewed the grounds for the appeal as outlined in the notice of appeal. He stated:

"Subsection 6(2) of the *Protected Road Zoning Regulations* says that in areas "where a community fronts along a highway" and where sections 7, 8 and 10 do not apply, as is so in relation to Young's application, then uses outlined in the mixed zone table in Schedule A of the *Protected Road Zoning Regulations* may be permitted within the established infill limits of the community.

While the word "community" is not defined, there are references to "community" and "unincorporated community" in the *Protected Road Zoning*

*Regulations.* See, for example, subsections 5(4) and 6(1) and 6(2) of the *Protected Road Zoning Regulations*. In relation to Young's application, Little Rapids is - for purposes of subsection 6(2) - a community, albeit unincorporated, that fronts along a highway (i.e. Marble Drive / TransCanada Highway) and is an area not covered under sections 7, 8 or 10 of the *Protected Road Zoning Regulations*.

During the past 25 years, there have been numerous residences built nearby within the building control lines of Marble Drive / TransCanada Highway in Little Rapids ("nearby recently built residences"). The nearby recently built residences were, presumably, permitted under subsection 6(2) as being residences in the mixed zone table in Schedule A of the *Protected Road Zoning Regulations*.

The residence proposed by Young, which is the subject of Young's application, should likewise have been permitted under subsection 6(2) as the residence proposed by Young would be a residence in the mixed zone table in Schedule A, like the nearby recently built residences, and it would, like the nearby recently built residences, not contravene any established infilling limits of the community of Little Rapids.

#### Authority's Presentation

Ms. Goosney outlined for the board the process followed by Digital Government and Services NL after receipt of this application. She provided the board with the responses received from each government department including the fact no response was received from one government department, all other government departments had approved the application except the Department of Municipal and Provincial Affairs.

Ms. Goosney further outlined the reasons for refusing the application.

“(a) The subject site lies within the protected road building control line which extends 400 metres from the Trans-Canada Highway.

This section of the Trans-Canada Highway does not have a protected road zoning plan in effect. Section 6 of the Protected Road Zoning Regulations applies. This sections states that a permit for development outside a community shall not be issued except for a limited number of rural uses which does not include dwellings. There are no community infilling limits in the subject area.



## Board's Analysis

### **Q. What is the zoning of subject property?**

Based on evidence presented to the Board, the Department of Municipal and Provincial Affairs interprets the subject property as lying in the Protected Road Zone while the appellant's interpretation is that, based on past practise the subject property has been treated as a mixed zone and residential development allowed. The Board reviewed the location of the property and determined that it does fall under the Protected Road Zone and is therefore covered under the Protected Road Zoning Regulations, 996/96.

### **Q. Did Digital Government and Service NL process this application in an appropriate manner?**

Based on evidence presented to the board that the application was forwarded by SNL to all applicable government departments and a decision rendered after replies were received the board concludes that this application was processed appropriately.

## Board's Conclusion

After reviewing the information presented, the Board concludes that the Authority refused the application correctly. That is to say, the property is within the Protected Road Zone. In making its decision the Board must adhere to the current regulations in place with respect to the matter 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.

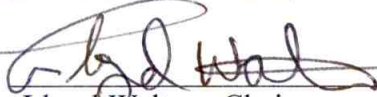
## Order

The Board orders that the decision of Digital Government and Service NL to deny an application by Mr. Young to build a single dwelling on Marble Drive 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).

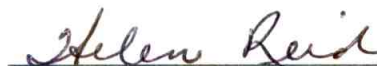
DATED at Deer Lake, Newfoundland and Labrador, this 18, January 2023.



Lloyd Walters, Chair  
West Newfoundland Regional Appeal Board



Boyd Noel, Member  
West Newfoundland Regional Appeal Board



Helen Reid, Member  
West Newfoundland Regional Appeal Board