

URBAN AND RURAL PLANNING ACT, 2000

Section 40-46

<https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40>

Appeal #: 15-006-091-004

Adjudicator: John R. Whelan Q.Arb

Appellant(s): Raymond Metcalfe

Respondent / Authority: Town of Portugal Cove – St. Phillip's

Decision Dated: September 18, 2024

Date of Hearing: August 22, 2024

Appearances:

Raymond Metcalfe – For the Appellant

Les Spurrell – For the Respondent

Re: Refusal of an application to construct a single dwelling at 115 Dogberry Hill Road Extension.

The decision of the Respondent Authority is confirmed. My reasons follow.

Procedural History

On February 23, 2024, the Authority (Town of Portugal Cove-St. Philip's) received an application to construct a single dwelling at 115 Dogberry Hill Road Ext. (the subject property). The Authority had previously received an application to construct a single dwelling on the subject property in fall 2021 and rejected that application on December 7, 2021.

The Authority referred the development permit application to the City of St. John's for comment on February 23, 2024. The application went before the St. John's City Council on March 19, 2024. City Council rejected the proposed development as the subject property is within the Broad Cove Watershed and no new dwellings are permitted on the lot in accordance with Section 104(4) of the City of St. John's Act.

At a Regular Public Council meeting on April 16, 2024, the Portugal Cove-St. Philip's Town Council rejected the development permit application. The Authority notified the Appellant of the refusal in writing on April 17, 2024, and informed the Appellant the application was rejected as it was not in compliance with the Town's Municipal Plan and Development Regulations.

On April 29, 2024 the Appellant filed the appeal herein.

On August 22, 2024 the Appeal was heard by the undersigned.

Grounds of Appeal

The Appellant relies on the following grounds of appeal:

1. *Misapplication of the Development Regulations 2014-2024;*
2. *Misapplication of the City of St. John's Act;*
3. *Abuse of Process/Authority in deciding, in whole or in part, a building development application that was reviewed, assessed, and defeated by a separate legal entity, the City of St. John's;*
4. *Failure to adopt, follow, or apply the minimum levels or standards for the Broad Cove Watershed;*
5. *Such other grounds as may appear.*

Arguments of the Appellant

At the appeal, the Appellant argued that he had bought the subject property and was aware that a portion of the property encompassed the watershed. The Appellant stated that the City of St. John's had unilaterally moved the watershed line based upon the information he had available to him on the real property survey that he had obtained when he purchased the subject property.

The Appellant stated that the City of St. John's had unilaterally moved the watershed line and that their decision was not appropriate.

Analysis

Quoting from the Technical Report:

The Town of Portugal Cove-St. Philip's Municipal Plan and Development Regulations 2014-2024 came into legal effect on October 17, 2014. The subject property is designated Residential under the Future Land Use Map and Municipal Plan and is zoned Residential Medium Density (RMD) under the Land Use Zoning Map and Development Regulations. Single dwellings are a permitted use class for the RMD zone.

Based on the information provided, the subject property is located within the Broad Cove Watershed (Little Powers Pond Watershed Boundary) and is near the City of St. John's Municipal

Boundary. The general layout policies for development within the Town are set out in Section 3.3.1 of the Municipal Plan. Policy GL-8 states:

Policy GL-8 Where development is proposed on adjacent parcels of land to the Town's municipal boundary and correspondingly on adjacent parcels of land to another municipality's or adjacent parcels of land to another jurisdiction's boundary, and as determined by the Town, such proposed development shall be referred by the Town to the applicable adjacent municipality or jurisdiction for comment.

Policy PW-1 of the Municipal Plan establishes the requirement for the Authority to refer all development proposals for land located within and immediately adjacent to the Broad Cove River watershed to the City of St. John's for review and comment:

*Policy PW-1 Within the Protected Watershed designated areas, the sole primary permitted use is for conservation; discretionary uses that may be considered by Council include antenna, forestry and recreational open space. **The Town shall refer all development proposals and proposed new uses for land located within and immediately adjacent to the Windsor Lake (and Broad Cove River) watershed to the City of St. John's, as controlling authority for the watershed, for review and comment** [emphasis added].*

Section 10(1) of the Development Regulations establishes Council's discretionary powers and sets out the criteria or matters that Council must consider when reviewing an application for a permit for development:

10. DISCRETIONARY POWERS OF COUNCIL

(1) In considering an application for a permit or for approval in principle to carry out development, Council shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulations pursuant thereto, shall consider any applicable report and recommendation submissions from a qualified consultant, shall further consider recommendations from the Town Engineer, and shall assess the general appearance of the development of the area, the amenity of the surroundings, potential environmental effects, availability of municipal services and utilities, public safety and convenience, and any other considerations which are, in its opinion, material. Notwithstanding the conformity of the application with the requirements of these Regulations, Council may as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application.

...

The Town's Municipal Plan policies require the Authority to refer an application for development within or adjacent to the Broad Cove Watershed and adjacent to the City's municipal boundary to the City of St. John's. The Authority's submission indicates they referred the application to the City, and City Council rejected the proposed development as per Section 104(4) of the provincial City of St. John's Act. Based on Section 104(4) of this Act, no new dwellings are permitted on the subject property:

Control of water bodies

104. (1) The council shall have possession and control of Windsor Lake, Round Pond, Newfound Pond, George's Pond, Petty Harbour Long Pond, Handy Pond and all lakes and ponds within the catchment area of the Broad Cove River above an elevation of 91.44 metres over mean sea level at the Harbour of St. John's and of the Crown lands within the watershed of those lakes and ponds.

...

(4) **A person shall not erect a building on land within the catchment area of the Broad Cove River above an elevation of 131.92 metres above mean sea level at the Harbour of St. John's [emphasis added] but the council may permit the erection on the land of**

...

Under Section 22(4) of the Town's Development Regulations, Council will not issue a development permit if the development does not comply with a provincial act:

22. COMPLIANCE WITH LEGISLATION

(4) *A development permit will not be issued if Council is aware that the proposed development would not comply with a particular provincial or federal act or regulation.*

When refusing to issue a development permit, Council must state the reasons for doing so as per Section 23 of the Development Regulations:

23. REASONS FOR REFUSING PERMIT

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

The refusal letter dated April 17, 2024, states the application was rejected as the proposal is not in compliance with Development Regulation 22(4) and the City of St. John's rejected the application in accordance with Section 104(4) of the provincial City of St. John's Act.

The refusal letter also included notice of the right to appeal as required under Section 24 of the Town's Development Regulations.

Having considered the above statutory framework and the related provisions of the Respondent's Development Regulations, I can find no basis for the Appellant's position that the refusal to grant the development permit was in error.

The Respondent considered the Appellant's application. The Respondent properly referred the application to the City of St. John's in accordance with its Development Regulations. The City of St. John's considered the application and decided that the application was not in compliance with the *City of St. John's Act* because it was withing the Broad Cove Watershed. The City informed the Respondent of such. The Respondent rejected the application and informed the Appellant of his right to appeal.

I find no technical, analytical, or procedural deficiency with the Respondent's conduct in this instance. I find no misapplication of the Development Regulations or the *City of St. John's Act*. Further I find no abuse of process or authority has been established.

The Respondent followed its policies and relevant statutes by referring the application to the City of St. John's. The Respondent reviewed the decision of the City of St. John's and made its own independent decision that the application should be rejected. The Respondent notified the Appellant in writing of its decision and informed the Appellant of both his right to appeal and the procedure that applied to an appeal.

Order

1. The decision of the Respondent Authority is confirmed
2. The Appellant is unsuccessful in this matter and therefore not entitled to repayment of his appeal fee.

Dated at City of St. John's this 25th day of September, 2024.

John R. Whelan Q.Arbitrator