

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Chris Butler **Appellant**

AND Town of Conception Bay South **Respondent**

RESPECTING Refusal

BOARD MEMBERS Vicki Connolly, Chair
Michelle Downey, Member
Mary Thorne- Gosse, Member

DATE OF HEARING June 16, 2015

IN ATTENDANCE

Elaine Mitchell – Authority
Cheryl Lane – Authority
Chris Butler – Appellant
Paul Edwards – Support for Appellant
Robert Cotter - Secretary to the Eastern Newfoundland Regional Appeal Board
Lindsay Church - Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Conception Bay South refusing to issue a permit to Chris Butler. On October 8, 2014 Mr. Butler applied to the Town of Conception Bay South for approval to develop a single dwelling at 449-455 Conception Bay Highway. The Planning and Development Committee discussed Mr. Butler's application on October 27, 2014 and recommended the application be refused. Council accepted the Planning and Development Committee's recommendation to refuse Mr. Butler's application at the November 4, 2014 Regular Meeting of Council. The Town notified Mr. Butler of Council's decision in a letter dated November 12, 2014. The letter stated that Council refused Mr. Butler's application because single dwellings are not permitted in the Open Space Conservation zone. The Town notified Mr. Butler of his right and process to appeal Council's decision.

In accordance with section 42 of the *Urban and Rural Planning Act, 2000*, Mr. Butler filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to refuse his application to develop a single dwelling. Mr. Butler initiated the appeals process on November 21, 2014 and as required filed: a summary of the decision being appealed; grounds for the appeal; and the appeal filing fee.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on December 13, 2014 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on May 11, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Conception Bay South Municipal Plan and Development Regulations, 2012
Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Are single dwellings allowed within the Open Space Conservation zone?

No. The Board reviewed the mapping for the Town of Conception Bay South and determined

that the subject property is zoned Open Space Conservation (OSC). The Board found that single dwelling uses are neither permitted nor discretionary in the OSC zone. In accordance with section 10.8 of the Town's Development Regulations, uses not listed as permitted or discretionary, are prohibited.

Did the Town have the authority to refuse Mr. Butler's application?

Yes. The Board accepts that all development must be carried out in accordance with the Town's policies and regulations, as per section 4.2 of the Town's Development Regulations. Section 4.2 states:

Development shall be carried out and maintained within the Planning Area in accordance with the Municipal Plan, these Regulations, conditions stated in a Development Approval, and any other by-law or regulation enacted by the Authority.

Since the proposed use of a single dwelling is considered a prohibited use in the OSC zone, the Board found that the Town had the authority to refuse Mr. Butler's application.

Did the Town follow proper procedure when it refused Mr. Butler's application?

The Board reviewed section 4.3 of the Town's Development Regulations which requires the Town to notify an applicant of Council's decision in writing. The Board reviewed the Town's refusal letter dated November 12, 2014 and determined that the Town satisfied section 4.3 by including its reasons for refusal. The refusal letter also indicated the appellant's right and process to appeal Council's decision as per section 5 of the *Minister's Development Regulations, 2000*.

Are amendments to a Town's Municipal Plan or Development Regulations subject to appeal?

The Board heard arguments from all parties pertaining to the municipal plan review process that occurred in and around 2001. The appellant argued at the hearing that he was not afforded the opportunity to express his interests and concerns in a public forum regarding the rezoning of his property from Residential to Open Space Conservation (OSC) that took place in 2001. The Town described the public process that occurs when a Town reviews its Municipal Plan and Development Regulations which is prescribed in the *Urban and Rural Planning Act, 2000*. However, in accordance with section 42(2) of the *Urban and Rural Planning Act, 2000*, the Board does not have the jurisdiction to hear appeals regarding an amendment or revision of the

Town's Municipal Plan or Development Regulation. Section 42(2) states:

A decision of a council, regional authority or authorized administrator to adopt, approve or proceed with a plan, scheme, development regulations and amendments and revisions of them is final and not subject to an appeal.

Additionally, the Board does not have the authority under section 42(10) of the *Urban and Rural Planning Act, 2000* to approve, or recommend to Council, land be rezoned. The Board's role is to confirm, reverse or vary the decision being appealed, as per section 42(10), which states:

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.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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.

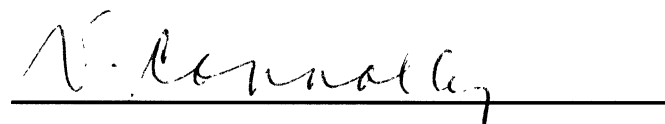
Based on its findings, the Board determined that the Town of Conception Bay South had the authority to refuse the subject application and did so in accordance with the Town's Municipal Mr. Butler's application to develop a single dwelling at 449-455 Conception Bay Highway.

Order

Based on the information presented, the Board orders that the decision made by the Town of Conception Bay South on November 4, 2014 to refuse Chris Butler's application to develop a single dwelling at 449-455 Conception Bay Highway, be confirmed.

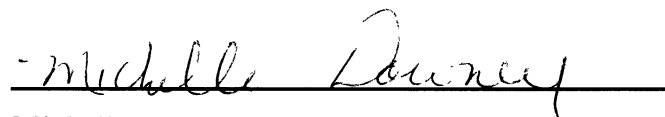
The Town of Conception Bay South and the appellant are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

DATED at St. John's, Newfoundland and Labrador, this 17th day of June, 2015.



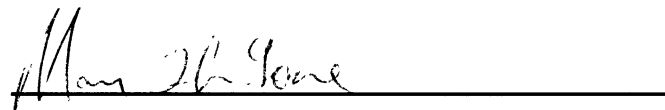
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