

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Juliana Dawe **Appellant**

AND Town of Conception Bay South **Respondent**

RESPECTING Approval in Principle

BOARD MEMBERS Michelle Downey – Acting Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING November 23, 2015

IN ATTENDANCE

Elaine Mitchell – Authority
William Dawe – Appellant’s Representative
Holly Walker – Developer
Daniel Bennett – Solicitor for Developer
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 issuing an approval in principle, subject to conditions, to Walker Enterprises Inc. for the purpose of constructing Phase I of 126-unit seniors development at 27-39 Pocket Road. The Town reviewed this application as a discretionary use within the Residential Medium Density (R-2) zone. The Town considered and approved in principle Phase I of the proposed development at the September 15, 2015 Regular Meeting of Council. The Town notified the developer in a letter dated September 21, 2015 which included twenty-five (25) conditions attached to the approval in principle and provided notice of the right and process to appeal Council's decision.

In accordance with section 42(4) of the *Urban and Rural Planning Act, 2000*, Juliana Dawe, an interested third party, filed an appeal with the Eastern Newfoundland Regional Appeal Board against Council's decision to approve in principle Phase I of the residential development located off Pocket Road. Ms. Dawe initiated the appeals process on September 28, 2015 and as required under section 42(5) of the *Urban and Rural Planning Act, 2000*, 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 October 28, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority on October 21, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister's Development Regulations, N.L.R. 3/01

Town of Conception Bay South Municipal Plan and Development Regulations, 2011

Matters presented to and considered by the Board

Did the Board grant Ms. Dawe's deferral request?

The Board learned from the Secretary of the Appeal Board that Ms. Dawe requested to defer the appeal hearing via email at 8:18AM on Monday, November 23, 2015. The Board considered the request and consulted with the Town, the Developer and Ms. Dawe's representative, Mr. William Dawe at the hearing. Both the Town and the Developer objected to the deferral and stated they were prepared to proceed with the hearing.

The Board deliberated to consider the deferral request. The Board determined to proceed with the hearing after considering the fact that this was a third party appeal and the appellant's arguments were thoroughly made in writing and were carefully reviewed by the Board prior to the hearing.

Did the Town have the authority to issue an approval in principle to Walker Enterprises Inc. on September 21, 2015?

The Town indicated at the hearing that the application was considered a discretionary use due to the proposed five (5) unit row dwelling. The Board found that row dwellings with five – ten (5-10) units are considered discretionary uses within the Residential Medium Density (R-2) zone of the Town of Conception Bay South.

The Board accepts that the Town reviewed the subject application for a 126-unit residential development at 27-39 Pocket Road in accordance with the discretionary use application procedure as outlined in section 4.14.1 (b) of the Town's Development Regulations. Section 4.14.1 states:

- 1. The Authority shall provide public notice for a period of not less than:
 - a) 7 days - when considering a variance in accordance with Regulation 3.12 and*
 - b) 14 days - when considering a change in a non-conforming use in accordance with Regulation 3.15 or development which is listed as a Discretionary use in Section 10 of these Regulations.**

The Board learned at the hearing that the Town went above and beyond the minimum requirement when it provided public notification of the proposed development. In addition to circulating notices to residents within the immediate vicinity and publishing notices in the Shoreline Newspaper, the Town held two public sessions. The Board is satisfied that the Town met the public notification requirements as prescribed by section 4.14.1 of the Town's Development Regulations prior to approving the subject application. Additionally, the Town and the developer demonstrated to the Board that concerns and objections raised in response to the public consultation were taken into consideration and aided the developer in shaping Phase I, which was ultimately approved by Council. The Town indicated that as a result of the public consultation and discussions with various experts, Walker Enterprises Inc. altered the proposal to exclude the five (5) unit row dwelling thus making the proposal a permitted use in accordance with the Rural zone. However, the Town proceeded to review the application as if it was a discretionary use.

The Board understands that the Town derives its authority to issue approval in principles and attach conditions to an approval in principle under section 4.10 of the Town's Development Regulations.

Section 4.10.2 states:

The Authority may issue an Approval in Principle if it determines the application conforms to the Municipal Plan and these Regulations, and attach conditions that are

a) required to be met prior to the issuance of a development approval; and

b) necessary to ensure the development occurs in a manner consistent with the policies of the Plan and these Regulations.

The Board concluded that the conditions attached to the Approval in Principle issued to Walker Enterprises Inc. are in place to ensure the development complies with the Town's Municipal Plan and Development Regulations. The Approval in Principle also noted that all conditions must be met prior to the issuance of a development approval in accordance with section 4.10.2 (a) of the Town's Development Regulations. Therefore, the Board found that the Town had the authority to issue the Approval in Principle to Walker Enterprises Inc. and did so in accordance with the Town's Municipal Plan and Development Regulations.

Did the Town have the authority to request a Land use Assessment Report from the Walker Enterprises Inc.?

Yes. The Board reviewed section 4.3.8 of the Town's Municipal Plan and found that the Town has the discretionary authority to require the developer prepare a Land Use Assessment Report in order to aid Council in making a decision on the proposed development. The Board found that many of the concerns raised by the appellant were addressed in the Land Use Assessment Report, such as concerns regarding traffic, potential for flooding and drainage issues in the area.

Did the Town properly notify Walker Enterprises Inc. of Council's decision?

Yes. The Board found that in accordance with section 4.3 of the Town's Development Regulations, when conditions are attached to a development approval, Council must outline why it is attaching those conditions. The Board determined that the Town satisfied section 4.3 of the Town's Development Regulations.

Additionally, the Board concluded that the Town accurately notified the developer of their right and process to appeal Council's decision as per section 3.5 of the Town's Development Regulations and section 5 of the *Minister's Development Regulations, NLR 3/01*.

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.

Based on its findings, the Board determined that the Town of Conception Bay South had the authority to approve in principle Phase I of the residential development submitted by Walker Enterprises Inc. and did so in accordance with the Town's Municipal Plan and Development Regulations.

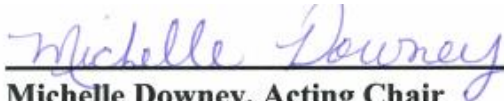
Order

Based on the information presented, the Board orders that the decision made on September 15, 2015 by the Town of Conception Bay South to approve in principle, subject to conditions, Phase I (27 lots) of a residential development located off Pocket Road submitted by Walker Enterprises Inc., be confirmed.

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

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division 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.

DATED at St. John's, Newfoundland Labrador, this 23rd day of November, 2015.



Michelle Downey, Acting Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board