

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Jim Ford **Appellant**
(Karwood Contracting Ltd.)

AND Town of Conception Bay South (CBS) **Authority**

RESPECTING Council's Refusal of Application to subdivide residential building lots at Civic Numbers 6-24 Lucston Ave., Topsail, Conception Bay South
[MAE File: 15-006-057-013]

BOARD MEMBERS Chair – Cliff Johnston
Member – Damian Ryan
Member – Carol Ann Smith

DATE OF HEARING March 27, 2019
LOCATION Mount Pearl City Hall Council Chamber

IN ATTENDANCE

Appellant: Greg Hussey, President Karwood Contracting
Danielle Somerton, Solicitor for Karwood Contracting

Respondent: Corrie Davis, Director of Planning and Development
John McKeever, Manager of Engineering

Interested Parties: Sterling Parsons, Area Resident

Robert Cotter, Secretary to the Eastern Newfoundland Regional Appeal Board
Kim Blanchard, Technical Advisor to the Eastern Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from the Town of Conception Bay South decision of July 10, 2018 to reject the application from Karwood Contracting to sub-divide building lots located at Civic Numbers 6-24 Lucston Ave., Topsail, CBS in order to develop 10 double dwelling structures (20 lots/residential units). The reason for refusal stated that “the proposed development is inconsistent with the character of the neighbourhood, the intent of the original plan of the subdivision, and the proposals contrary to the CBS Water & Sewer Regulations.

The Appellant appealed the Order on the following grounds, summarized as follows:

The Appellant’s grounds for appeal include:

- Council’s rejection was based on the proposal being inconsistent with the character of the neighbourhood. The appellant argues that ‘character’ is not defined; the Town failed to demonstrate how it is inconsistent; takes the position that the development is in fact consistent with the character of the neighbourhood and permitted uses in the zone; and there is no evidence that the revised plan is contrary to the intent of the zoning or the Development Regulations.
- Council’s rejection was also on the basis of a contravention with the CBS Water and Sewer Regulations, but did not provide detailed explanation or opportunity to alter the proposal.
- There was no insight provided respecting public input or concerns about the proposal that may have informed Council’s decision.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000 (URPA);

Town of Conception Bay South Municipal Plan 2011

Town of Conception Bay South Development Regulations 2011

Matters presented to and considered by the Board

The role of the Eastern Newfoundland Regional Appeal Board is to determine if the Town of Conception Bay South acted in accordance with the applicable legislation, policy and regulations when, on July 10, 2018, Council made a decision to refuse the application from Karwood Contracting Ltd. to subdivide the residential building lots at civic Numbers 6-24 Lucston Ave., Topsail, CBS.

Q: What is the zoning of the subject property?

A: The property is in the "Residential Medium Density Zone (R-2).

Q: Does the R2 Zone allow double dwellings as proposed by the Appellant?

A: Yes, the Town's Director of Planning confirmed that double dwellings are allowed as a Permitted Use in the R2 Zone.

Q: What authority/latitude is given the Town under its Development Regulations when reviewing and deciding upon development applications?

A: Section 4.6 (Discretionary Powers) of the Development Regulations require that Council:

"4.6 Discretionary Powers

In considering an application to carry out development, the Authority 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 Authority 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." [emphasis added]

Q: Did the town provide reasons for rejection?

A: Yes. In the July 11, 2018 letter to the Appellant from the Town's Director of Planning and Development, it is stated that "it was the decision of the Council to refuse the request, per its author under section 4.6 of the Town's Development Regulations, to alter approved sub-division lots at Lucston Ave. for development as 10 double dwelling structures for a total of 20 lots/units, as the proposed development is inconsistent with the character of the neighbourhood, the intent of the original plan of the subdivision, and that the proposal is contrary to the CBS Water & Sewer Regulations."

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.

The Board has concluded that the Council's decision of July 10, 2018 to reject the Appellant's application to subdivide the residential building lots at 6-24 Lucston Ave. in order to develop 10 double dwellings (20 lots/units) was in accordance with the applicable legislation, policy and regulations when considering Section 4.6 of the Town's Development Regulations, which states:

"In considering an application for a permit or for approval in principle to carry out development, the Authority shall take into account the policies expressed in the Municipal Plan and any further scheme, plan or regulation 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 Authority may, in its discretion, as a result of its consideration of the matters set out in this Regulation, conditionally approve or refuse the application."

The Board is aware that Section 42(11) of the Urban and Rural Planning Act 2000 provides that:

"Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision."

The Board thereby confirms the Council decision of July 10, 2018 to reject the application to subdivide the buildings lots at Civic Numbers 6-24 Lucston Ave., Topsail, CBS.

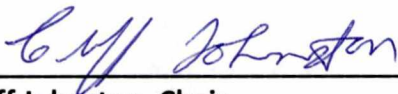
ORDER

Based on the information presented, the Board orders that the Council decision of July 10, 2018 to reject the application from Karwood Contracting Ltd. to subdivide the residential building lots at Civic Numbers 6-24 Lucston Ave, Topsail, CBS, to allow construction of double dwellings, be confirmed.

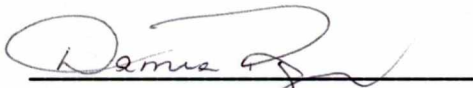
The Respondent and the Appellant(s) are bound by this decision of the Eastern Newfoundland Regional Appeal Board.

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 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 St. John's, Newfoundland and Labrador, this 28th day of March, 2019.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Damian Ryan, Member
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board