

Eastern Newfoundland Regional Appeal Board

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| Appeal # | 15-006-067-035 |
| Appellant(s) | Sunset Key Marina Inc., c/o Jerome Coady |
| Respondent / Authority | Town of Conception Bay South |
| Date of Hearing | January 27, 2021 |

Also in Attendance

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|--------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Solicitor for the Appellant(s) | Geoff Budden |
| Representatives for the Appellant(s) | Jerome Coady |
| Representatives for the Authority | Solicitor, J. Alex Templeton, McInnes Cooper, Corrie Davis, Director of Development Town of Conception Bay South (CBS) |
| Secretary to the Boards | Robert Cotter |
| Technical Advisor to the Boards | Kim Blanchard, MCIP |
| Interested Parties | Erin Best, Giles Ayres – Solicitors with Stewart McKelvey, representing the Proponent, OMNI Marine Services Inc. Andrea Canning, Moya Cahill, Theodore Perrin, Sigrid Keuhamund, Sean Gillespie, Nora Cahill |

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 Eastern Newfoundland Regional Appeal Board is to determine if the Town of Conception Bay South decision of August 19, 2020 to issue an Approval-in-principle to OMNI Marine Services Inc. ("OMNI") for development at Long Pond Harbour including infilling to create developable land and a wharf to accommodate future development of a structure for a cold storage facility for Ocean Choice International ("OCI"), was made in accordance with its Municipal Plan and Development Regulations.

Validity of the Appeal

The Board was advised by the Technical Advisor that there was a question of the validity of the appeal in terms of the timelines of the filing of the appeal. This was required to be addressed by the Board prior to hearing the appeal.

In determining its jurisdiction, the Board must consider the timing of when the 14 day legislative timeframe begins for public notification, and the subsequent registration date for the filing of the appeal.

Presentations on the Matter of Validity

Planner's Presentation on Validity

As per section 42(1)(a) of the Urban and Rural Planning Act ("URPA"), those aggrieved by a decision respecting an application to undertake a development may appeal that decision.

Section 42 (4) and (5) of the Act state:

42. (4) An appeal made under this section shall be filed with the appropriate board not more than 14 days after the person who made the original application appealed from has received the decision being appealed.

42. (5) An appeal shall be made in writing and shall include

- (a) a summary of the decision appealed from;*
- (b) the grounds for the appeal; and*
- (c) the required fee.*

The Appellant's submission included the grounds of appeal, an appeal summary form and the required fee. According to the documents provided, the appeal was filed on October 2, 2020 against a decision made on August 19, 2020. The appeal summary form indicates that the Appellant was not directly advised of the Town's decision; he became aware of it on the Town's website.

In accordance with section 42(4) of URPA, a person may appeal a decision "not more than 14 days after the person who made the original application appealed from has received the decision being appealed."

The Board can take guidance from case law. In *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*, 2012 NLTD(G) 59, The Honourable Madam Justice Deborah J. Paquette states that an appropriate interpretation of section 42(4) of URPA with respect to the commencement of a third party appeal period is when the public can be reasonably considered notified of the decision being appealed. In determining whether this appeal is valid to be heard within the jurisdiction of the Board, the Board must contemplate the appropriate notification to the public with respect to the decision in question. Judge Paquette notes that there is no obligation for the Town to directly notify a particular third party, but speaks to appropriate public notification requirements for the purposes of engaging the appeals process.

Appellant's Presentation on Validity

The solicitor for the Appellant maintained that the trigger for commencement of the appeal process should be the date that the public became reasonably aware of the Town's decision of August 19, 2020 to grant an Approval in Principle for the project, subject to a series of conditions. The solicitor indicated that the appeal period should commence on the date property owners/residents in the vicinity of the application site received the Town's written notice dated September 18, 2020, advising of the application, and were referred to the town's website for additional information. The Appellant received a copy of the Town's notice on September 24, 2020. The solicitor maintains that the appeal was filed within the prescribed timelines.

Legal references: *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*, 2012 NLTD(G) 59

Authority's Presentation on Validity

The solicitor for the Authority noted that the Urban Rural and Planning Act (URPA) does not make specific mention of third party appeals. The solicitor indicated that the trigger for commencement of third party appeals should be the date that the public became reasonably aware of the Town's decision of August 19, 2020 to grant an Approval in Principle for the project, subject to a series of conditions. As heard from the solicitor, local media reported on the application in late August, and early September 2020. The solicitor stated that the appellant was aware of the subject application in advance of the Town's notice of development dated September 18, 2020. The solicitor maintains that the appeal was not filed within the prescribed timelines.

Legal references: *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*, 2012 NLTD(G) 59

Proponent's Presentation on Validity

The solicitor for the Proponent also agreed that the trigger for commencement of third party appeals should be the date that the public became reasonably aware of the Town's decision of August 19, 2020 to grant an Approval in Principle for the project, subject to a series of conditions. The solicitor stated that the date the public were made aware of would be September 3, 2020, when a news article appeared in the local newspaper, The Shoreline. The solicitor for the proponent of the development (OMNI; Ocean Choice International, "OCI") contends that the Appellant, Mr. Coady, became aware of Council's decision by no later than September 17, 2020, the date on which he made a media appearance. The solicitor argued this proves that the timeframe for the filing of the appeal exceeded 14 days from the Appellant becoming aware of the decision. For this reason, the Proponent's solicitor asserts that the appeal was not filed within the prescribed timelines, and is therefore outside the Board's jurisdiction.

Board's Analysis/Conclusion on the matter of Validity of the Appeal

In determining its jurisdiction, the Board must consider the timing of when the 14 day legislative timeframe begins for public notification, and the subsequent registration date for the filing of the appeal

During the discussion on the matter of the validity of the appeal, the Board was advised by the Director of Planning and Development for the Authority that the Town keeps a register of development applications submitted to the Town along with information on the status of these applications. Information in this register is made available to the public upon request. The Board does not view this register as being adequate for the purposes of determining the appeal period, particularly for third party appeals in light of the decision of Justice Paquette in the case of *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*. Further the Board is of the opinion that the existence of media articles on status of a development in a municipality, does not constitute fulfillment of the

requirements of Section 42(4) of the Urban Rural Planning Act given that the timing/accuracy of content of such articles is not controlled by the municipality. The Board was also advised by the Director of Planning and Development that a record of development applications processed/approved/rejected by Town staff is not regularly sent to public meetings of Council for the information of Council members and the general public.

The Board takes guidance from case law. In *Gillespie v. Newfoundland and Labrador (Eastern Newfoundland Regional Appeal Board)*, 2012 NLTD(G) 59, The Honorable Madam Justice Deborah J. Paquette states that an appropriate interpretation of section 42(4) of the *Urban and Rural Planning Act* with respect to the commencement of a third party appeal period is when the public can be reasonably considered notified of the decision being appealed. In determining whether this appeal is valid to be heard within the jurisdiction of the Board, the Board must contemplate the appropriate notification to the public with respect to the decision in question. Judge Paquette notes that there is no obligation for the Town to directly notify a particular third party, but speaks to appropriate public notification requirements for the purposes of engaging the appeals process.

The Appellant advised that he only became aware on September 24, 2020 of the Town's August 19, 2020 decision to grant an Approval in Principle to the proposed development after he visited / reviewed the Town's website. The Town had posted a notice on its website on September 18, 2020 regarding the application. This notice also included a link to additional detailed information on the application, including the notice that the application had received an Approval in Principle from the Town.

Based on the timeline detailed above, the Board has determined that the appeal period to file an appeal against the Town's decision of August 19, 2020, began on September 19, 2020, the day after the Town posted its notice of September 18, 2020 on their website. Thereby, the Board has determined that the appeal was filed within the period prescribed under the Urban Rural Planning Act and the Town's Development Regulations. The Board thereby agreed to hear the Appeal.

The Matter Under Appeal

Planner's Presentation

This appeal is based on the following section of the Act: Section 42(1)(a) (an application to undertake a development).

- 42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to*
- (a) an application to undertake a development;*
 - (b) a revocation of an approval or a permit to undertake a development;*
 - (c) the issuance of a stop work order; and*
 - (d) a decision permitted under this or another Act to be appealed to the board.*

The Appellant is appealing the written decision of August 19, 2020 by the Town's Development Control Coordinator to issue an approval-in-principle (based on 22 conditions) to OMNI for the construction of a

wharf and the infilling of a waterbody to create land for the “Long Pond Wharf Development”, based on the following grounds:

1. Adverse Impact on Marine Habitat
2. Acceleration of Shoreline Erosion
3. Negative impacts on the Environment
4. Negative Impact on the existing Sunset Key Marina recreational boats and infrastructure caused by the development’s impact on the direction of the water currents, flow, and ice

The proposal involves the infill of a portion of Long Pond Harbour to create land and a wharf to accommodate a future structure for a cold storage facility.

As per section 2 (10) of the CBS Development Regulations, Approval in Principle is defined as:

10. Approval in Principle means a preliminary approval of a development conditional upon the submission of additional plans and details before a development approval is issued .It is noted that the approval-in-principle under appeal was issued in accordance with Regulation 4.10 of the CBS Development Regulations, which state:

4.10 Approval in Principle

1. *An application for a proposed development shall include;*
 - a) *a description of the proposed development;*
 - b) *a description of the limits of the land to be used with the proposed development, and may include a survey description of the subject lands;*
 - c) *submission of detailed plans; and*
 - d) *any additional information that may be required by the Authority.*
2. *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.*
3. *An Approval in Principle shall be valid for 2 years.*
4. *No development shall be carried out under an Approval in Principle.*
5. *The Authority may revoke an Approval in Principle if it determines the applicant has changed the proposed development in a way that significantly alters the original intent of the application.*

Regulation 4.10.2 enables that “the Authority may issue an Approval in Principle if it determines the application conforms to the Municipal Plan and these Regulations.” In the approval-in-principle document, no statements are made related to the way in which the Town staff and/or the Council interpret the development control of this application, or the conformity to the Plan and Regulations. In the review of information submitted for this appeal, there was no other evidence provided to the Board related to the land use planning assessment or considerations of the proposal in accordance with the

Town's Municipal Plan and Development Regulations by Town officials prior to the issuance of the approval-in-principle.

The proposed location, inside Long Pond Harbour, has no zoning on the Town of CBS zoning map. No amendment has been submitted to the Department of Environment, Climate Change, and Municipalities to create zoning for the proposed land to be created by the proposed infilling initiative.

Subsection 3.4 (1)(w) of the Minister's Development Regulations provides interpretation of "zone" or "use zone", which states:

w) "use zone" or "zone" means an area of land including buildings and water designated on the zoning map to which the uses, standards and conditions of a particular use zone table apply;

Section 10 of the CBS Development Regulations outlines "Use Zones", 10.1 Identification of zones, 10.2 Zoning Plan, 10.3 Interpretation of Zone Boundaries, and 10.4 Use Zones.

10.1 Identification of Zones

For the purpose of these Regulations, the Planning Area is divided into Use Zones which are illustrated on the Zoning Map attached to and forming part of these Regulations.

10.3 Interpretation of Zone Boundaries

Where possible the boundaries of the use zones follow identified features such as streets, fences, watercourses, transmission lines, or lot lines. Where there is any uncertainty, contradiction, or conflict concerning the intended location of a zoning boundary, the Authority shall interpret the exact location of the zoning boundary in a manner that is consistent with the intent and policies of the Municipal Plan without amendment to the Land Use Zoning Map.

10.4 Use Zones

For the purpose of these Regulations, the Planning Area is divided into the following Use Zones and their extent, location, and boundaries are show on the Conception Bay South Land Use Zoning Map. The abbreviations in this section have been used to identify individual Use Zones on the Zoning Map. Provisions for development in each use zone as set out in tables showing the use or classes of uses which may be permitted, or which may be considered as discretionary or prohibited uses. The tables also indicate the required standards and conditions of development.

Zoning for the land would direct the control of development through a list of permitted or discretionary uses, development standards, and conditions. The development control requirements are thus determined and guided by the interpretation of the use classification and the zoning of a subject property. On the basis of the information provided, it is unknown how the Town considered the land proposed to be created by filling in a portion of Long Harbour in accordance with the Plan, Regulations, and interpreted zoning and public consultation requirements.

The document of August 19, 2020 states the Town's decision, and the conditions attached to the approval-in-principle, but makes no reference to the assessment of land use designations or zoning. The appeal submission on behalf of the Town from its solicitor notes that the Town considered the application and found that it conformed to the Municipal Plan and Development Regulations, and outlined ways in which the application meets the policies and objectives of the Industrial designation. No further documentation was provided to the Board from the municipality or its solicitor respecting the planning and development analysis undertaken by Town Council or staff to inform its decision.

Background information about the Long Harbour proposal and the terms of reference and public notices for the Land Use Impact Assessment Report can be found on the Town's website, and many of the aforementioned approvals and permits are referenced: <https://www.conceptionbaysouth.ca/long-pond-harbour-proposal/>.

It should be noted that much of the information found online is subsequent to the decision date in question for this appeal and not relevant to context of the August 19, 2020 decision.

In the approval-in-principle document, there is no explanation or commentary as to how the infill land, that is proposed to be created and developed, was interpreted from a land use zoning and development control perspective. In order for the Board to contemplate whether the Town's decision was compliant with the procedural requirements, it would need to know what the applicable requirements are. In response to the appeal, there were no Minutes of Council, reports of the planning and development committee, or supplemental municipal file documents submitted to the Board to assist in understanding how the Town interpreted this development in the context of its plan policy and regulatory framework for development control.

The approval-in-principle was issued at a staff level by the Development Control Coordinator. In the legal submission on behalf of the Town, an excerpt from the CBS policy manual (policy # 066) is included, relating to "Delegation of Planning Authority", in which the Development Control Coordinator is one of the designated employees authorized to fulfill planning responsibilities related to "Development Approval (Approval in Principle)".

It is stated in the approval-in-principle document that a prior approval-in-principle is thereby revoked. The documents pertaining to the prior approval or the process for the revocation are not included in the submission. The Town is authorized under Regulation 4.10.5 and by 4.12 to revoke an approval under certain circumstances. In this instance, the reasons for the revocation and re-issuance of the approval were not included in the material submitted to the Board.

4.12 Revoke Development Approval and Permit

The Authority may revoke an approval and any subsequent permits for failure by the applicant or developer to comply with these Regulations or any condition attached to the permit or where the permit was issued in error or was issued contrary to the applicable regulations, or was issued on the basis of incorrect information.

Upon completion of the Technical Advisor's technical report to the Board, the solicitors for the Appellant, the Authority and the Proponent, all undertook extensive cross-examination of the technical advisor. Many aspects of the report were examined and questioned.

Appellant's Presentation

This appeal is based on the following section of the URPA: Section 42(1)(a) (an application to undertake a development).

42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to

- (a) an application to undertake a development;*
- (b) a revocation of an approval or a permit to undertake a development;*
- (c) the issuance of a stop work order; and*
- (d) a decision permitted under this or another Act to be appealed to the board.*

The Appellant is appealing the written decision of August 19, 2020 by the Town's Development Control Coordinator to issue an approval-in-principle (based on 22 conditions) to OMNI for the construction of a wharf and the infilling of a waterbody to create land for the "Long Pond Wharf Development", based on the following grounds:

1. Adverse Impact on Marine Habitat
2. Acceleration of Shoreline Erosion
3. Negative impacts on the Environment
4. Negative Impact on the existing Sunset Key Marina recreational boats and infrastructure caused by the development's impact on the direction of the water currents, flow, and ice.

The solicitor for the Appellant did not speak to the filed grounds of the appeal during his presentation to the Board at the appeal hearing. Rather, he focused on matters of procedural compliance, and conformity of the application under appeal to the Town's Municipal Plan and Development Regulations.

The solicitor's presentation touched on many of the points in the Planner's Technical Report with particular emphasis on:

- The municipal boundary extends to the high water mark of the shoreline of Long Pond Harbour. The area proposed to be infilled and developed is not presently with the Town's municipal boundary as the area is currently under water.
- The area proposed to be infilled and developed does not currently have Town zoning designations – "there is a zoning gap".
- The legislation clearly contemplates a municipality having the authority to grant a development permit with respect to "docks, quays, wharves and structures" extending from the boundaries of a municipality into the water of a Harbour. The appellant submits that the proposed development goes beyond this scope. The present proposal is for the infill of a significant portion of Long Pond Harbour. This is the creation of new land, a major project which will obviously dramatically change the nature and character of the Harbour well beyond the present boundary of the Authority. Such infill is not contemplated by Section 5.2(2) of the Municipalities Act. It is apparent that the proposed development goes far

beyond the development of a wharf or other extension of a present land-based facility and is thereby outside the scope of what is contemplated by Section 2(2) of the Municipality Act. The Authority thus lacked the jurisdiction to grant this development permit.

- It is not logical to consider that the existing Industrial Zone designation of the land within the Town boundary would extend to the land currently under water, proposed to be infilled.
- There is a process in place for the Town Council to introduce appropriate zoning designations for the land proposed to be infilled and this process would involve public consultation.

Authority's Presentation

The Authority's presentation focused on the Sworn Affidavit of the Town's Director of Planning and Development dated January 11, 2021. The Solicitor for the Authority through a series of questions to the Director took the Board through the process which had been used by the Town to issue an Approval in Principle for the application on August 19, 2020. In the absence of other documentation from the Authority, it is the Board's understanding that the Affidavit was prepared to respond to the contents of the Planner's technical report.

In summary, the Solicitor for the Authority argued to the Board that the application site is in fact within the Town's municipal and planning boundaries and that the site is within the jurisdiction of the municipality to issue approval development. Furthermore, the Affidavit is meant to convey that there was a determination of general conformity with municipal planning and regulatory requirements, including procedural compliance and that there is no limits established by the Town Council on the authority of delegated staff to make discretionary decisions. The Director of Planning and Development indicated to the Board that there were many discussions with the Proponent regarding the project, prior to the submission of their formal development application.

The Solicitor indicated to the Board that there must be a rational and logical interpretation of municipal and planning boundaries. It is not reasonable to interpret that the application site is outside the Town's boundary; if that was the case, no development approval by the Town would be required for this proposed development. It is the intent of the Municipalities Act that there be no limitation on the magnitude of a proposed dock, quay, wharf, structure, etc. which would require expansion of an existing municipal and planning boundaries and associated changes to municipal land use planning maps to accommodate such developments.

The Solicitor for the Appellant and the Solicitor for the Developer both posed questions to the Director of Planning and Development in terms of the process of the reviewing and granting an Approval in Principle to the application.

The Solicitor for the Authority did not speak to the original grounds of Appeal, as filed by the Appellant.

Proponent's Presentation

The Solicitor for the Proponent indicated that the Proponent agrees with/supports the Town's submissions to the Appeal Board. The Proponent asserted that the Appellant should not have been allowed to expand the grounds for their appeal subsequent to the official filing of the appeal. The

Proponent understands that both federal and provincial governments are aware of the proposed infilling and development. Section 2.2 of the Municipalities Act provides development control authority to the Town of CBS for this proposed development which involves infilling to create land and accommodate new construction, without the necessity of introducing expanded municipal and planning boundaries as well as appropriate zoning designations.

The Solicitor for the Proponent did not speak to the original grounds of Appeal, as filed by the Appellant.

Board's Analysis

Q. Does the Town of CBS have authority to grant an Approval in Principle to a development application?

A. Yes, the Board acknowledges that the Town has the authority to grant an Approval in Principle subject to specified conditions.

As per section 2 (10) of the CBS Development Regulations, Approval in Principle is defined as:

10. Approval in Principle means a preliminary approval of a development conditional upon the submission of additional plans and details before a development approval is issued. It is noted that the approval-in-principle under appeal was issued in accordance with Regulation 4.10 of the CBS Development Regulations, which state:

4.10 Approval in Principle

1. An application for a proposed development shall include;

a) a description of the proposed development;

b) a description of the limits of the land to be used with the proposed development, and may include a survey description of the subject lands;

c) submission of detailed plans; and

d) any additional information that may be required by the Authority.

2. 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.

3. An Approval in Principle shall be valid for 2 years.

4. No development shall be carried out under an Approval in Principle.

5. The Authority may revoke an Approval in Principle if it determines the applicant has changed the proposed development in a way that significantly alters the original intent of the application.

- Q. Did the Town correctly apply its authority under Section 4.10 of the Town's Development Regulations in granting an Approval in Principle to the application on August 19, 2020?
- A. Section 4.10.2 of the Town's Development Regulations enables that "the Authority may issue an Approval in Principle if it determines the application conforms to the Municipal Plan and these Regulations." The Board agrees with the Planner's Technical Report which notes that in the Town's approval-in-principle document, no statements are made related to the way in which the Town staff and/or the Council interpret the development control of this application, or the conformity to the Plan and Regulations. In the review of information submitted for this appeal, the Board notes that there was no other evidence provided to the Board related to the land use planning assessment or considerations of the proposal in accordance with the Town's Municipal Plan and Development Regulations by Town officials prior to the issuance of the approval-in-principle.

As an observation, the Board finds it interesting that the Town chose to give an Approval in Principle for a project of this magnitude, involving the infilling of approximately 1.7 hectares of Long Pond Harbour, prior to completion of the land use assessment report required by the Town for the project being completed by the Proponent and being made available for public review and comment. The Board does acknowledge that the Town's Director of Planning and Development indicated that it is the Town's standard practice to require a land use assessment for certain projects as part of issuing an Approval in Principle.

Further, while the Board acknowledges the authority of Town Council to delegate certain development control authorities to Town staff, this does not limit Council's authority to be involved in any development application. The Board also finds it interesting that a project of this magnitude involving the proposed infilling of a portion of Long Pond Harbour and the requirement for a land use assessment report, was not referred by Town staff with appropriate reports to Council for Council's information and possible involvement in the decision making process.

- Q. How is the application site currently zoned? Does the application site currently have land use zoning in place to enable the Town to have granted an Approval in Principle?
- A. The Board has determined that the application site currently has no zoning designations. The proposed location, inside Long Pond Harbour, has no zoning on the Town of CBS zoning map. The Technical Advisor (Planner) to the Appeal Board has advised that no amendment has been submitted to the Department of Environment, Climate Change, and Municipalities to create zoning for the proposed land to be created by the proposed infilling initiative.

Subsection 3.4 (1)(w) of the Minister's Development Regulations provides interpretation of "zone" or "use zone", which states:

w) "use zone" or "zone" means an area of land including buildings and water designated on the zoning map to which the uses, standards and conditions of a particular use zone table apply;

Section 10 of the CBS Development Regulations outlines “Use Zones”, 10.1 Identification of zones, 10.2 Zoning Plan, 10.3 Interpretation of Zone Boundaries, and 10.4 Use Zones.

10.1 Identification of Zones

For the purpose of these Regulations, the Planning Area is divided into Use Zones which are illustrated on the Zoning Map attached to and forming part of these Regulations.

10.3 Interpretation of Zone Boundaries

Where possible the boundaries of the use zones follow identified features such as streets, fences, watercourses, transmission lines, or lot lines. Where there is any uncertainty, contradiction, or conflict concerning the intended location of a zoning boundary, the Authority shall interpret the exact location of the zoning boundary in a manner that is consistent with the intent and policies of the Municipal Plan without amendment to the Land Use Zoning Map.

10.4 Use Zones

For the purpose of these Regulations, the Planning Area is divided into the following Use Zones and their extent, location, and boundaries are show on the Conception Bay South Land Use Zoning Map. The abbreviations in this section have been used to identify individual Use Zones on the Zoning Map. Provisions for development in each use zone as set out in tables showing the use or classes of uses which may be permitted, or which may be considered as discretionary or prohibited uses. The tables also indicate the required standards and conditions of development.

Zoning for the land would direct the control of development through a list of permitted or discretionary uses, development standards, and conditions. The development control requirements are thus determined and guided by the interpretation of the use classification and the zoning of a subject property. On the basis of the information provided by the Authority, it remains unclear to the Board how the Town considered the land proposed to be created by filling in a portion of Long Pond Harbour to be in accordance with the Plan, Regulations, and interpreted zoning and public consultation requirements without requiring an amendment to the Town’s zoning map (CBS Development Regulation, 10.3).

Section 10.3 of the Town’s Development Regulations provides that where there is any uncertainty, contradiction, or conflict concerning the intended location of a zoning boundary, the Authority shall interpret the exact location of the zoning boundary in a manner that is consistent with the intent and policies of the Municipal Plan without amendment to the Land Use Zoning Map. Section 1.3 of the Town’s Development Regulations indicates that in these Regulations, ‘Authority’ means the municipal council of the Town of CBS, hereby authorized to administer the Municipal Plan and the Development Regulations. There was no evidence brought to the Board to show that the matter of the interpretation of the zoning lines for the application site had been brought forward by Town Staff to Council for their consideration and decision.

Board's Decision

In arriving at its decision, the Board reviewed the submissions and comments given by parties present at the hearing along with the technical information. 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's decision is based on three considerations, namely jurisdiction, procedural compliance and conformity to the Town's Municipal Plan and Development Regulations.

Jurisdiction: As the application location is below the high water mark of Long Pond Harbour, the property is outside the Town's current municipal boundary and municipal planning area. Therefore, the Town has limited authority to approve development applications for the property, until such time as the Town has undertaken measures to extend its municipal boundary and municipal plan boundary. This would include a formal amendment process to introduce appropriate municipal plan and zoning designations to allow the development of the property.

Procedural Compliance:

Section 4.10(2) of the Town's Development Regulations provides that an Approval in Principle can be granted by the Authority for an application, if the Authority determines the application conforms to the Town's Municipal Plan and Development Regulations.

The Board has not seen evidence to indicate the way in which Council or staff determined that the application conformed to the Town's Municipal Plan and Development Regulations prior to the Town's decision of August 19, 2020 to grant an Approval in Principle to the project. There were apparently no Town staff reports prepared on the application, prior to staff's decision of August 19, 2020.

Section 10.3 of the Town's Development Regulations authorizes the Authority to interpret zoning boundaries under certain specified circumstances. Section 1.03 of the Town's Development Regulations defines "Authority" to mean the Town Council. Town staff interpreted the zoning boundaries for this application, when in fact this matter should have been the responsibility of Council.

Conformity to the Town's Municipal Plan and Development Regulations:

In consideration of the Board's conclusions regarding jurisdiction and procedural compliance noted above, the Board has determined that the Town's decision of August 19, 2020 to grant an Approval in Principle to the project, is not in conformity with the Town's Municipal Plan and Development Regulations.

Board's Order

Based on the information presented, the Board orders that the decision of the Town of Conception Bay South made on August 19, 2020 to grant an Approval in Principle to OMNI Marine Services Inc. ("OMNI") to infill a portion of Long Pond Harbour to create land and a wharf to accommodate a future structure for a cold storage facility for Ocean Choice International ("OCI"), be reversed.

The Board further orders that the application be referred back to the Town for review and processing in accordance with the full requirements of the Town's Municipal Plan and Development Regulations and the Urban & Rural Planning Act. The review and processing of the application shall take into account the current absence of land use zoning designations for the application site and the Town can seek to amend its Municipal Plan and Development Regulations in accordance with the requirements of the Urban & Rural Planning Act to introduce appropriate land use zoning designations for the application site.

The Board further orders that the Authority shall pay an amount equal to the value of the appeal filing fee to the Appellant (\$230.00).

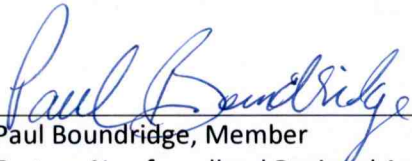
The Respondent and the Appellant(s) are bound by the decision of this Regional Appeal Board.

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 St. John's, Newfoundland and Labrador, this 29 of January, 2021.



Cliff Johnston, Chair
Eastern Newfoundland Regional Appeal Board



Paul Boundridge, Member
Eastern Newfoundland Regional Appeal Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal Board