

Eastern Newfoundland Regional Appeal Board

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| Appeal # | 15-006-072-015/016 |
| Appellant(s) | Sunset Key Marina/Advocates for the Responsible Development of Long Pond |
| Respondent / Authority | Town of Conception Bay South |
| Date of Hearing | October 20, 2021 |

Board Members

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| Chair | Cliff Johnston |
| Member | Carol Ann Smith |
| Member | Lisa Slaney |

Also in Attendance

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| Solicitors for the Appellants | Geoff Budden/Scott Lynch, Solicitors, Budden & Associates |
| Representatives for the Authority | Alex Templeton, Solicitor, Mc Innes Cooper; Corrie Davis, MCIP; Director of Planning and Development |
| Representatives for the Applicant | Erin Best/Giles Ayres, Solicitors, Stewart Mc Kelvey; |
| Secretary to the Boards | Robert Cotter |
| Technical Advisor to the Boards | Mary Bishop, MCIP, FCIP |
| Interested Parties | |
| Start/End Time | 9: 00 am – 3:00 pm |

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 Regional Appeal Board is to determine if the Town of Conception Bay South in its decision of June 29, 2021, to approve application No. COM-20-064 – with revisions August 6, 2020 and June 3, 2021 - for development of 2.73ha of harbour infill including a 90 m finger pier within Long Pond Harbour at Terminal Road is in accordance with the Town's Municipal Plan and Development Regulations. The applicant is Omni Marine Services Inc. (Omni).

The Board must determine if the Town of Conception Bay South acted in accordance with the *Urban and Rural Planning Act, 2000*, the *Town of Conception Bay South Municipal Plan* and the *Development Regulations* when the decision was made.

Board's Note

Prior to the commencement of the Appeal Hearing, the Solicitors for the Appellants made a request to the Board for postponement of the hearing on the grounds that the Appellant Counsel had insufficient time to appropriately review and respond to the extensive materials filed by Respondent Counsel. In addition, the Appellant Counsel requested time in order to review the Board's recent decision regarding Appeal # 15-006-072-032 which pertains to the repair/reconstruction of the East Breakwater at the mouth of Long Pond by the Long Pond Harbour Authority.

In response to questioning from the Board, Counsel for both the Authority and the Applicant indicated strong objections for the request for a postponement. After a short adjournment by the Board to deliberate on the request, the Board advised that the Appeal Hearing would proceed. It was the Board's determination that the Appellant Counsel had had adequate time to review the submissions filed by the Respondent Counsel and to review the Board's decision of the Long Pond Harbour Authority appeal.

Prior to the commencement of the appeal hearing, the Board advised all in attendance that the two appeals filed would be heard as one appeal hearing, as they were identical appeals.

Presentations During the Hearing

The following is a synopsis/summary of the verbal representations made to the Board during the Appeal Hearing. The Board has also received and reviewed written submissions from the Technical Advisor, as well as representatives for the Appellant, and the Authority.

1. Technical Advisor's Report

This is an appeal of a decision of the Town Council of Conception Bay South made June 29, 2021, to approve application No. COM-20-064 – with revisions August 6, 2020 and June 3, 2021 - for development of 2.73ha of harbour infill including a 90 m finger pier within Long Pond Harbour at Terminal Road. The applicant is Omni Marine Services Inc. (Omni).

On July 6, 2021, Advocates for the Responsible Development of Long Pond filed a third party appeal against the Town's decision.

On July 9, Sunset Key Marina filed a third party appeal against the Town's decision.

These appeals are based on the Section 42(1)(a) of the Urban and Rural Planning Act, 2000 (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 appeals are based on the following grounds:

1. Approval fails to recognize the prior decision of the Appeal Board;
2. Approval does not clarify the zoning gaps of the previous applications;
3. Approval did not comply with regulatory procedures; and
4. Approval is not in conformity with the CBS Development Regulations and Municipal Plan.

The decision of the Eastern Newfoundland Regional Appeal Board (ENRAB) issued on January 29, 2021 on the appeal of the Town's August 20, 2020 Approval in Principle of application No. COM-20-064, was appealed by the Town to the Supreme Court of NL (February 11, 2021).

The appeal is made pursuant to Section 46 of the Urban and Rural Planning Act, 2000:

The appeal on this matter has not yet been heard by the court.

In its January 29, 2021 decision, the ENRAB ordered 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. 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, be reversed."

The Board further ordered 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 URPA. 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 URPA to introduce appropriate land use zoning designations for the application site."

In its submission, the Town's Solicitor outlines how the Town considered the ENRAB's Order and the actions taken to address the Board's determination that the development site was outside the Town's Municipal and Planning Area boundaries, and absence of land use zoning for the site. In its resolution #21- 140 of April 20, 2021, the Town resolved to "initiate an amendment to the Municipal Plan and Development Regulations to implement Municipal Plan policies, future land use designations, and zoning within and adjacent to Long Pond Harbour and also request that the Minister of Municipal and Provincial Affairs amend the Conception Bay South Municipal Planning Area Order, (CNLR 835/96) so that the Town's authority to control and regulate development within and adjacent to Long Pond Harbour is afforded greater certainty."

The applicable legislation comes from Section 10 of the Urban and Rural Planning Act, 2000:

10.(1) A council may by resolution propose to prepare a municipal plan in accordance with this Act.

(2) Where a resolution is passed under subsection (1) the council shall apply to the minister requesting him or her to define the municipal planning area for the proposed municipal plan.

(3) An application made under subsection (2) shall be in the required form and shall be accompanied by a

(a) copy of the resolution proposing to prepare the plan, certified by the mayor or the chairperson as having been passed by the council;

(b) description of the whole of the area in respect of which the application is made; and

(c) statement of the arrangements that the council has made or proposes to make for the preparation of the municipal plan.

(4) After a municipal planning area has been established under section 11, the council responsible for that area shall proceed with the development of a municipal plan and development regulations.

In response to the Town's request, the Minister of Municipal and Provincial Affairs on June 10, 2021, revised the Town's Municipal Planning Area (Regulation 28/21) and implemented Interim Development Regulations to include areas not covered by the Town's Municipal Plan and Development Regulations (Regulation 29/21).

The Town initiated an amendment to the Municipal Plan and Development Regulations. There is no evidence presented that an amendment was prepared and approved for the area added to the Town's Municipal Planning Area by the Minister.

Information provided by the Town does not address how the Town complied with the Board's Order to reverse the decision to issue the Approval in Principle.

Legislation and Regulations

The applicable legislation with respect to this appeal is:

- Urban and Rural Planning Act, 2000
- Town of Conception Bay South Municipal Plan, 2011-2021 and Town of Conception Bay South Development Regulations, 2011-2021
- Conception Bay South Interim Development Regulations

Land Use Planning

The proposal involves infilling of a 2.73 ha area to create land for development, and construction of a 90m finger pier in Long Pond Harbour.

Development is defined in Section 2 (g) of the Act as:

(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the

(i) making of an access onto a highway, road or way,

(ii) erection of an advertisement or sign,

(iii) construction of a building,

(iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,

and excludes the

(v) carrying out of works for the maintenance, improvement or other alteration of a building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building,

(vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,

(vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and

(viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling;

Section 29(i) of the Act defines land as

(i) "land" includes land covered by water and buildings and structures on, over, under the soil and fixtures that form part of those buildings and structures.

In its decision letter of June 30, 2021 to Omni Marine Services, the Town:

1. Accepted the Land Use Impact Assessment Report regarding the proposed harbour infill project at Terminal Road in accordance with Section 4.15 and 5.10 of the Town's Development Regulations, and
2. Approved application No. COM-20-064 submitted on July 13, 2020 with revisions on August 6, 2020 and June 3, 2021 in accordance with Sections 5(3) and 5(6) of the Interim Development Regulations.

Land Use Impact Assessment Report

The Municipal Plan provides policy direction that can be applied to consideration of developments within the Town's Municipal Planning Area. Policies of the Municipal Plan that are relevant to the proposed development in Long Pond include Policy 4.3.14 pertaining to Natural Hazard Areas, and Policy 4.3.8 pertaining to the preparation of Land Use Impact Assessments. Sections 5.10 and 4.15 of the Town's Development Regulations implement these Plan policies.

These sections of the Development Regulations are as follows:

4.15 Land Use Impact Assessment

1. *Assessment Required – The Authority may require a Land Use Impact Assessment to evaluate any proposed land use or development that affects the policies contained in the Municipal Plan.*
2. *Terms of Reference – The Terms of Reference for a Land Use Impact Assessment shall be prepared and approved by the Authority.*
3. *Impact Assessment Report - The report and any supporting studies shall be prepared at the expense of the applicant unless otherwise determined by the Authority.*
4. *Mitigation Plan – The report shall identify significant impacts, evaluate their importance, and recommend measures of control or mitigation, where appropriate.*
5. *Public Review –The Authority shall provide adequate time for public review and comment with regards to the items to be addressed in the Terms of Reference for the Land Use Impact Assessment. The Authority may provide an opportunity for public review and comment on the Land Use Impact Assessment report prior to its approval.*

5.10 Development in Hazard Areas

1. In addition to development complying with the development standards and conditions outlined in the Use Zones set out in Section 10, the following conditions will also apply to development located within areas identified as high and moderate Hazard Vulnerability identified on Map 2 Environmental Overlay Map of the Municipal Plan.

a) New residential development shall be prohibited in areas identified as high hazard;

b) Where proposed residential development is located in any area identified as Moderate Hazard, the Authority shall require a site specific study in the form of a Land Use Impact Assessment, prepared by suitably qualified person(s) to evaluate the level of hazard risk, taking into consideration the susceptibility of the proposed development to storm surges, erosion or flooding. Such studies will consider elevation, topography and geomorphology;

c) For commercial, industrial or other non-residential development located in areas identified as High Hazard, the Authority shall require a site specific study in the form of a Land Use Impact Assessment, prepared by suitably qualified person(s) to evaluate the level of hazard risk, taking into consideration the susceptibility of the proposed development to storm

surges, coastal erosion or flooding. Such studies will consider elevation, topography and geomorphology;

d)Development, where permitted in any area identified as moderate or high hazard may also be required to assess the biophysical impact on the coastal ecosystem including the potential to contaminate (hazardous materials storage), harmful disruption of natural habitats and disruption of natural coastal processes such as littoral drift;

e)The Authority may require additional engineering design or other measures to mitigate identified hazards as a condition of development, or may refuse development where, in the opinion of the Authority, identified hazards cannot be mitigated.

Other Regulations enabled by the Municipal Plan include Regulation 5.28 pertaining to soil removal, deposit and site grading, Regulation 5.34 pertaining to watercourse protection, and Regulation 6.3 pertaining to boat houses, wharves and docks.

In considering the application, the Town required that an LUIAR be prepared for the proposed development. In its submission, the Town outlines how it acted to develop a Terms of Reference for the LUIAR, how it sought and received public input, including revisions to both the Terms of Reference and the report in response to changes in Omni's development plan.

Interim Development Regulations

On June 10, 2021 the Minister of Municipal and Provincial Affairs under Section 11 of the URPA, implemented Regulation 28/21 which restated the Conception Bay South Planning Area to include the Long Pond Harbour. At the same time, under the authority of Section 34 of the URPA, the Minister amended the Interim Development Regulations, 2003, making them applicable to the Conception Bay South Planning Area (Regulation 29/1).

Interim Development Regulations are intended to provide municipalities with the ability to control and manage development within a defined planning area to which no land use zoning applies, until such time as plans and regulations are prepared in accordance with the Act, for the area in question.

As of June 10, 2021, the Conception Bay South Municipal Planning Area includes Long Pond Harbour. Until an amendment to the Town's Municipal Plan and Development Regulations has been prepared and approved, Interim Development Regulations for the area included in the Planning Area revision, apply.

Section 5 and 6 of the Interim Development Regulations deal with the processing of applications for development. Sections relevant to the matter of the Appeal include:

Applications for development

5.(1) An application for a permit to carry out development in an area

(a) shall be submitted to the council or regional authority for the area; and

(b) shall include plans and specifications that may be required by the council or regional authority.

(2) A council or regional authority, when considering an application for a permit to carry out a development, shall not issue a permit for the development of land within an area unless the proposed development conforms with

(a) criteria set out in these regulations; and

(b) where applicable, a plan for the area referred to the council or regional authority by the Director of Urban and Rural Planning for the department.

(3) In considering an application for a permit, the council or regional authority shall take into account the effect of the development on the overall development of the area and shall consider

(a) the topography, physical condition and natural features of the land;

(b) the use or proposed use of the land and the use of the land in the immediate vicinity;

(c) the number, location, safety and convenience of accesses;

(d) the design, location and construction of the proposed development;

(e) the amenity of the surroundings and general appearance;

(f) the adequacy of the method and suitability of the land for the type of water and sewage disposal required;

(g) the adequacy and suitability of the methods proposed for the disposal of waste material;

(h) the shape and size of each lot or parcel of land;

(i) its compliance with the National Building Code of Canada and ancillary codes; and

(j) whether or not the development is contained within limits of established community development.

Section 5 (6) states:

(6) A council or regional authority may

(a) grant a permit, subject to terms and conditions;

(b) grant a permit, without terms and conditions; or

(c)reject an application for a permit, to carry out development made under this section.

Section 6 further states:

Conditions for development

6.(1) A council or regional authority may impose conditions on a permit issued under section 5 in the interest of the proper development of an area or a specific locality within an area.

(2)Developments shall be carried out in accordance with conditions prescribed under subsection (1).

(3)A council or regional authority may cancel a permit for failure by the holder to comply with these regulations or conditions imposed under the permit.

In its submission the Town outlines how its review, consideration and approval of the application meet the requirements of Section 5(3). In issuing the approval, the Town included conditions as provided for in Section 5(6).

2. Appellants' Presentation

- It is the Appellants' position that the Town's Municipal Plan and Development Regulations continue to apply to the Long Pond Harbour Area, which is the site of the proposed development by Omni Marine Services Inc. (Omni). The Appellants agree that the Interim Development Regulations, 2003 also apply to the Long Pond Harbour Area as additional positive requirements to be applied effective until zoning and sub-division regulations can address the Town's modified planning area.
- It is incorrect to state that the Town's Municipal Plan and Development Regulations are no longer in effect throughout the entirety of the Town. The Town is still considering re-zoning amendments to properties in the boundaries of the Town.
- The Appellants submit that the Interim Development Regulations, (2003) do not negate the requirements of the Town's Development Regulations. The Interim Development Regulations, 2003 do not supplant the Town's current Development Regulations.
- The Interim Development Regulations, 2003 as a stand-alone document fail to adequately contemplate the complexity and variety of developments undertaken within the Town of Conception Bay South.
- The Town continues to make amendments to its Development Regulations such as re-zonings, in other areas of the Town which were in the Municipal Planning Area as it existed prior to June 10, 2021.

- Policies of the Town's current Municipal Plan are clear that environment stewardship is a guiding principle and that identification of land use zones plays an important role.
- The regulations pertaining to land use zones must be observed by the Town to ensure a level of consistency across all developments undertaken. If the Town amends and applies the Municipal Plan and Development Regulations for certain developments, then the Town ought to do so for all developments. To suggest otherwise, would represent an untenably inconsistent, arbitrary, and ineffective regulatory scheme, and would, in the result, allow a municipality to opt in or opt out of an entire regulatory scheme at will.

3. Authority's Presentation

- The Town has jurisdiction regarding development planning within the Conception Bay South Municipal Planning Area. The Conception Bay South Municipal Planning Area was redefined by the Minister of Municipal and Provincial Affairs on June 10, 2021 to include the development site at Long Pond Harbour.
- It is the *Interim Development Regulations, 2003* that apply to the Conception Bay South Municipal Planning Area, at the time of the Permit Decision; not the Town's Municipal Plan and Development Regulations.
- The Minister of Municipal and Provincial Affairs chose to include the entire Conception Bay South Municipal Planning Area in the list in the Schedule of the *Interim Development Regulations, 2003*.
- Section 5 of the *Interim Development Regulations, 2003* provides for the submission and consideration of development applications. Under Subsection 5(1)(b) of the *Interim Development Regulations, 2003*, the Town is conferred broad discretion to determine the information required of the proponent for the purpose of the Town's consideration of the proposed development.
- The *Interim Development Regulations, 2003* authorize the Town to approve the Omni development application subject to terms and conditions; approve the development application without terms and conditions; or reject the development application.
- The revised application for the Omni development, including the Land Use Impact Assessment Report prepared by the Applicants, was reviewed by a number of Provincial and Federal agencies who have supported the project.
- The Town's Director of Planning and Development verbally advised the Board that the Town is currently undertaking a review of the Town of Conception Bay South Municipal Plan, 2011-2021 and the Town of Conception Bay South Development Regulations, 2011-2021 with the assistance of planning consultants. This review will also look at applying applicable Municipal Plan designations and Land Use Zoning designations for the Long Pond Harbour Area. A public engagement process will be part of this review.

- The Town submits that the Eastern Newfoundland Regional Appeal Board is required to show the Town a high level of deference in the circumstances of the permit decision.

Board's Analysis

- Q. Is the site of the proposed Omni development in the Town's Municipal Planning Area?
- A. Yes. The Technical Advisor has advised the Board that the Town's Municipal Planning Area was expanded by the Minister of Municipal and Provincial Affairs on June 10, 2021. At that time, the Town gained the authority to control land use at Long Pond Harbour, including the site of the proposed Omni development.
- Q. What planning regulations apply to the site of the proposed Omni development?
- A. The Technical Advisor has indicated when the Long Pond Harbour Area became part of the Town's Municipal Planning Area in June 2021, the land use in the newly added planning area became subject to the *Province's Interim Development Regulations, 2003*.
- Q. Do the Town of Conception Bay South Municipal Plan, 2011-2021 and the Town of Conception Bay South Development Regulations, 2011-2021 still apply to the newly added area of Town's Municipal Planning Area – i.e. Long Pond Harbour area?
- A. The Board heard representations from the Technical Advisor and the Solicitor for the Appellants that in their respective views, the policies of the Town of Conception Bay South Municipal Plan, 2011-2021 and the key regulatory requirements of the Town of Conception Bay South Development Regulations 2011-2021, (in the current absence of zoning boundaries for the Long Pond Harbour area) do apply to the newly added Municipal Planning Area along with the Interim Development Regulations, 2003.

The Board then heard representations from the representatives for the Authority, that it is the position of the Town that, in adding the Long Pond Harbour area to the Town's Municipal Planning Area, that the Minister of Municipal and Provincial Affairs repealed the Town's former Municipal Planning Area as it existed prior to June 10, 2021. Thereby, the Town of Conception Bay South Municipal Plan, 2011-2021 and the Town of Conception Bay South Development Regulations, 2011-2021, are no longer in effect for any portion of the Town's new overall Municipal Planning Area as established by the Minister on June 10, 2021. The applicable

regulatory planning document now in effect for all areas of the Town, is the Interim Development Regulations, 2003. The Town's position on this matter is based on its review of the applicable provisions of the Urban and Rural Planning Act, 2000, including Section 34-Interim Development Regulations and the Interim Development Regulations, 2003.

The Town's Director of Planning and Development advised the Board that he has had verbal communication with senior staff at the Department of Municipal and Provincial Affairs on the matter of the applicable planning legislation in effect for the Town and it is his understanding that the Department is aware that it is the Town's position that only the Interim Development Regulation, 2003 apply to the Town's overall new Municipal Planning Area. The Director advised the Board that the Department of Municipal and Provincial Affairs has not directed the Town to refer to any other plan in its review of development applications.

Based on its review of the information/representations provided by the Technical Advisor, the Solicitors for the Appellant and the representatives for the Authority, and its review of the Urban and Rural Planning Act, 2000, (including Section 34 – Interim Development Regulations), and the provisions of the Interim Development Regulations, 2003, the Board has determined that as the site of the Omni development was only added to the Town's Municipal Planning Area by the Minister of Municipal and Provincial Affairs on June 10, 2021, that the site of the Omni development is not subject to the provisions of the Town of Conception Bay South Municipal Plan 2011-2021 and the Town of Conception Bay South Development Regulations, 2011-2021 but is subject to the Province's *Interim Development Regulations, 2003*.

Whether the geographic area of the Town included in the Town's Municipal Planning Area as it existed prior to June 10, 2021 is still subject to the provisions of the Town of Conception Bay South Municipal Plan, 2011-2021 and the Town of Conception Bay South Development Regulations, 2011-2021, in the Board's view, remains unclear. However, that is not a matter for the Board to rule on. The Board's sole concern is the status of the site of the proposed Omni development and as noted above, the Board has determined that it is solely the *Interim Development Regulations, 2003* that apply to the site.

Q. Did the *Interim Development Regulations, 2003*, authorize the Town to approve the Omni Development on September 29, 2021?

A. Yes. Sections 5 and 6 of the *Interim Development Regulations, 2003*, provides for submission and consideration of development applications. Under the Regulations, the Town is conferred discretion to determine the information required of a proponent for the purpose of the Town's consideration of a proposed development. Section 5(6) of the Regulations authorize the Town to approve a development application subject to terms and conditions; approve a development application without terms and conditions; or to reject a development application. Section 6(1) of these Regulations further details that the Town has discretion to impose conditions "*in the interest of the proper development of an area or a specific locality within an area*".

"Applications for development

5. (1) An application for a permit to carry out development in an area

(a) shall be submitted to the council or regional authority for the area; and

(b) shall include plans and specifications that may be required by the council or regional authority.

(2) A council or regional authority, when considering an application for a permit to carry out a development, shall not issue a permit for the development of land within an area unless the proposed development conforms with

(a) criteria set out in these regulations; and

(b) where applicable, a plan for the area referred to the council or regional authority by the Director of Urban and Rural Planning for the department.

(3) In considering an application for a permit, the council or regional authority shall take into account the effect of the development on the overall development of the area and shall consider

(a) the topography, physical condition and natural features of the land;

(b) the use or proposed use of the land and the use of the land in the immediate vicinity;

(c) the number, location, safety and convenience of accesses;

(d) the design, location and construction of the proposed development;

(e) the amenity of the surroundings and general appearance;

(f) the adequacy of the method and suitability of the land for the type of water and sewage disposal required;

(g) the adequacy and suitability of the methods proposed for the disposal of waste material;

(h) the shape and size of each lot or parcel of land;

(i) its compliance with the National Building Code of Canada and ancillary codes; and

(j) whether or not the development is contained within limits of established community development.

(4) Notwithstanding subsections (1), (2), and (3) and subject to section 108 of the Act, these regulations shall not

(a) prevent the completion of a structure or the use of land prohibited by a plan authorized under the Act where that development was lawfully commenced before the area was defined under section 11 of the Act, and where that development is completed within a reasonable time after the coming into force of that plan;

(b) prevent the rebuilding or repair of a building or development prohibited by a plan or a plan referred to a council or regional authority by the department if the building or development suffers damage to an extent less than 50% of its replacement value provided the owner of the structure within one year of the damage taking place, submits an application for a permit to reconstruct for the same purpose as its original use at the date the area was defined under section 11 of the Act and initiates construction of the building not later than one year after receiving that permit; or

(c) prevent the extension of a non-conforming use by an amount not exceeding 50% of the existing floor area provided the council or regional authority is satisfied that appropriate setback will be maintained and that there will be no adverse effect on adjoining properties.

(5) An application for a permit that is properly submitted in accordance with the regulations that has not been determined by the council or regional authority within 8 weeks after receipt by the council or regional authority shall be considered to be refused unless an extension of time has been requested by the council or regional authority and agreed upon in writing by the applicant for the permit.

(6) A council or regional authority may

(a) grant a permit, subject to terms and conditions;

(b) grant a permit, without terms and conditions; or

(c) reject an application for a permit,

to carry out development made under this section.

(7) Where a permit is rejected or granted under subsection (6), the council or regional authority shall inform the applicant, in writing and with reasons, for the rejection or terms and conditions of that permit.

(8) A council or regional authority shall, where it decides to reject a permit or to impose terms and conditions under subsection (6), inform the applicant of his or her right to appeal that decision.

Conditions for development

6. (1) A council or regional authority may impose conditions on a permit issued under section 5 in the interest of the proper development of an area or a specific locality within an area.

(2) Developments shall be carried out in accordance with conditions prescribed under subsection (1).

(3) A council or regional authority may cancel a permit for failure by the holder to comply with these regulations or conditions imposed under the permit.”

Board's Conclusion

In arriving at its decision, the Board reviewed the submissions and comments, given by the 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 has determined that the site of the proposed Omni development in Long Pond Harbour is in the Town's current Municipal Planning Area and is subject to the provisions of the Province's *Interim Development Regulations, 2003*. These Regulations authorized the Town to approve the application on June 29, 2021.

The Board has also determined that the application from Omni has been properly processed by the Town in accordance with the requirements of the *Interim Development Regulations, 2003*.

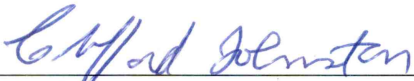
Board's Order

The Board orders that the decision made by the Town of Conception Bay South on June 29, 2021, to approve the application from Omni Marine Services Inc. (Omni) for the development of 2.73ha of harbour infill, including a 90m finger pier within Long Pond Harbour at Terminal Road, be confirmed.

The Authority 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 October 21, 2021.



Clifford Johnston, Chair
Eastern Newfoundland Regional Appeal
Board



Lisa Slaney, Member
Eastern Newfoundland Regional Appeal
Board



Carol Ann Smith, Member
Eastern Newfoundland Regional Appeal
Board