

# Eastern Newfoundland Regional Appeal Board

Appeal #	15-006-067-030
Appellant(s)	Mike Melnychuk
Respondent / Authority	Town of Conception Bay South
Date of Hearing	November 16, 2021

## Board Members

Chair	Cliff Johnston
Member	Carol Ann Smith
Member	Lisa Slaney

## Also in Attendance

Representatives for the Appellant(s)	Jennifer Melnychuk Mike Melnychuk
Representatives for the Authority	Corrie Davis, MCIP, Director of Planning and Development Daniel Hillier, Development Control Coordinator
Secretary to the Board	Robert Cotter
Technical Advisor to the Board	Elaine Mitchell, MCIP

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 whether the decision of the Town of Conception Bay South (the Authority) to issue a permit for a fence on a right of way at 7 Roberts Road North was in accordance with the *Urban and Rural Planning Act, 2000* and the Conception Bay South Municipal Plan and Development Regulations, and the Municipalities Act, 1999.

## Presentations During the Hearing

### 1. Planner's Presentation

Elaine Mitchell, MCIP, presented the technical report. She noted that at the time the report was prepared, the Authority had not submitted any background information. She explained that there was insufficient time between the submission of the material and the hearing to update the technical report.

Ms. Mitchell noted that section 4.1 of the Conception Bay South Development Regulations states that no person shall carry out any development unless development approval has been issued by the Authority.

She also explained that section 5.9 of the Conception Bay South Development Regulations requires compliance with the Town's fence and road reservation regulations.

### 2. Appellant's Presentation

The Appellants indicated that the proposed fence will block access to their property. They currently use the right of way to access the rear portion of their property. The Town has not been able to clearly identify the owners of the right of way and as such, the Appellants feel that the Town should not be issuing a permit which will block the right of way. The proposed fence will narrow the right of way, thereby restricting emergency access to 7 Roberts Road North.

### 3. Authority's Presentation

Corrie Davis, MCIP, represented the Authority. He clarified that the appeal was with respect to a fence permit issued for 7 Robert Road North. He stated that the right of way is not owned by the Town and the Town does not snow clear or maintain it. He noted that the application was accompanied by a letter from the owner of the right of way which gave the applicant permission to construct the fence on the right of way. The Town issued a permit on August 31, 2020. Mr. Davis stated that the Town is not the arbitrator of property rights and the onus is on the applicant to construct a fence in accordance with the Town's Fence Regulations.

Mr. Davis provided the Board with the conveyance which gives the property owner of 7 Roberts Road North the unrestricted right to pass over the right of way identified as Parcel A. He also provided the conveyance for Mr. Melnychuk which does not include the right of use the right of way.

Mr. Davis argued that Appellant's do not have a legal right to use the right of way.

## Board's Analysis

- Q. How are fences regulated by the Town of Conception Bay South?
- A. Fences are regulated under the Authority of the Town of Conception Bay South Fence Regulations which are enacted under the authority of Subsection 414(2) (hh) of the Municipalities Act, 1999, Chapter M-24.
- Q. Does the proposed fence meet the requirements of the Town's Fence Regulations?
- A. Based on the evidence provided, the Board has determined that the proposed fence does meet the Town's Fence Regulations.
- Q. Is the right of way a public road where the fence is proposed to be located?
- A. The Town has advised the Board that the right of way is a private lane; it is not a public road. The Town does not snow clear or maintain the right of way.
- Q. Do the Appellants have authority to use the right of way where the fence is proposed to be constructed?
- A. The Town's representatives advised the Board that the conveyance for the Appellants does not include the right of use of the right of way. The Town's representatives also advised the Board that the property owner of 7 Robert's Road North (the Applicant) through their conveyance, has the unrestricted right to pass over the right of way. The Town's representatives advised the Board, that the application for the fence was accompanied by a letter from the owner of the right of way which gave the applicant permission to construct the fence on the right of way. The Town advised that the Town is not the arbitrator of property rights and the onus is on the applicant to construct a fence in accordance with the Town's Fence Regulations.

## Board's Conclusion

The Board concludes that the Town of Conception Bay South had the authority under the Town's Fence Regulations to issue Permit # 20-F-139 to fence a portion of the right of way adjacent to the property Civic # 7 Robert' Road North. The Board also has concluded that the Town correctly processed the Application for the fence.



## Board's Order

The Board orders that the decision made by the Town of Conception Bay South on August 31, 2020 to issue a development permit (20-F-139) to fence a portion of the right of way adjacent to 7 Robert's Road North, 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 16<sup>th</sup> day of November, 2021.



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Cliff Johnston, Chair  
Eastern Newfoundland Regional Appeal  
Board



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Carol Ann Smith, Member  
Eastern Newfoundland Regional Appeal  
Board



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Lisa Slaney, Member  
Eastern Newfoundland Regional Appeal  
Board