

EASTERN NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Douglas Chafe **Appellants**

AND Town of Bay Bulls **Respondent**

RESPECTING Approval

BOARD MEMBERS Vicki Connolly – Chair
Harold Porter
Mary Thorne-Gosse

DATE OF HEARING March 27, 2015

IN ATTENDANCE

Douglas Chafe – Appellant

Michael Chafe – Support for the Appellant

Les Thistle – Solicitor for the Appellant

Russell Lundrigan – Applicant

Jonathan Dale – Solicitor for the Authority

Michael O’Rielly – Student with Steward McKelvey

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 Bay Bulls permitting Russell Lundrigan to operate a commercial business at 133-135 Northside Road, Bay Bulls. The Town considered Mr. Lundrigan's application at the February 9, 2015 Regular Meeting of Council. Council approved Mr. Lundrigan's application subject to conditions. The Town notified Mr. Lundrigan of its decision in a letter dated February 10, 2015.

Mr. Douglas Chafe, an interested third party, filed an appeal with the Eastern Newfoundland Regional Appeal Board against the Town's decision to approve Mr. Lundrigan's commercial business. The appeal was filed within the fourteen (14) day requirement as outlined in section 42(4) of the *URPA* and included the required information as per section 42(5) of the *URPA*.

In accordance with the *Urban and Rural Planning Act, 2000* a public notice of the appeal was published in *The Telegram* on March 7, 2015 and a notice of the time, date, and place of the Hearing was provided to the appellant and authority by registered mail sent on March 11, 2015.

Legislation, Municipal Plans and Regulations considered by the Board

Town of Bay Bulls Municipal Plan and Development Regulations, 2014

Urban and Rural Planning Act, 2000

Matters presented to and considered by the Board

Did the Town of Bay Bulls have the authority to approve Mr. Lundrigan's application for a commercial business at 133-135 Northside Road?

The Board confirmed that the subject site is designated Mixed Use and zoned Mixed Development as per the Town of Bay Bulls Municipal Plan and Development Regulations. The Board heard from the Town's lawyer during the hearing that light industrial uses are listed as discretionary in the Mixed Development Use Zone Table in Schedule "C" of the Town's Development Regulations.

The Board accepts that the Town has the discretionary authority to approve a discretionary use. The Board confirmed that the Town provided public notice of Mr. Lundrigan's application by advertising it in a local paper on January 10, 2015 as required under section 32 of the Town's Development Regulations.

Were the conditions attached to the permit in accordance with the Town's Municipal Plan and Development Regulations?

The Board accepts that the Town has the authority to attach conditions to an approval under section 21(2) of the Town's Development Regulations. The Board sought clarification on how the conditions attached to Mr. Lundrigan's application complied with the Town's Municipal Plan and Development Regulations. The Town's lawyer argued that the conditions attached to Mr. Lundrigan's application are consistent with the Mixed Use policies outlined in section 3.2.2 of the Town's Municipal Plan and were carefully crafted to ensure minimal adverse effects on adjacent residential uses. The Town's lawyer noted that the conditions allow Mr. Lundrigan to store tires outside, but only in the side and rear yards, which is consistent with section 3.2.2.12 of the Town's Plan, which states:

General services uses and light industrial uses shall be small scale uses such as small workshops and warehouses. The use shall be carried out in a separate building from any residence. Outdoor storage of equipment or materials may be permitted in sideyards or rear yards. Activities associated with the use are not hazardous and do not create a nuisance by reason of noticeable noise, odour, dust or flames, or result in electrical interference. Light Industrial uses that are primarily associated with the manufacture and retail of crafts and traditional goods may be permitted provided it is complementary to a permitted use. Council shall review any application for light industrial use to ensure that it fits into the overall development scheme for the site, is complimentary to the site, and is of a scale and nature that would not detract from the area or cause any negative impacts on the adjoining lands or the Town.

The Board also reviewed condition 15, General and Light Industrial Uses, of the Mixed Development Use Zone Table in Schedule "C" of the Town's Development Regulations. Condition 15(b) states that "[a]ctivities associated with the use shall be carried on in [a] building

separate from the residential dwelling”. The Board acknowledges that this condition is contrary to section 3.2.2.12 of the Town’s Municipal Plan and accepts that the Municipal Plan supersedes the Town’s Development Regulations when there is a contradiction. Therefore, the Board accepts that the Town acted in good faith and in accordance with the Town’s Municipal Plan when it attached conditions to Mr. Lundrigan’s permit.

Did the Town of Bay Bulls accurately classify the proposed use as light industry?

The Town reviewed the following definitions as defined in the Schedule “A” of the Town of Bay Bulls Development Regulations:

GENERAL INDUSTRY means the use of land or buildings for the purpose of storing, assembling, altering, repairing, manufacturing, fabricating, preparing, processing, testing, salvaging, breaking up, demolishing, or treating any article, commodity or substance, and “Industry” shall be construed accordingly.

LIGHT INDUSTRY means the use of land or buildings for industrial use that can be carried out without hazard or intrusion and without detriment to the amenity of the surrounding area by reason of noise, vibration, smell, fumes, smoke, grit, soot, ash, dust, glare or appearance.

The Board acknowledges that it must determine whether Council correctly classified the proposed tire repair service as light industry based on the information accessible to the Town at the time the application was submitted. The appellant’s lawyer argued and presented evidence illustrating that the existing operation does not meet the requirements of the light industry definition. The Board heard arguments during the hearing suggesting the subject business was operating at 133-135 Northside Road for at least two years prior to Council issuing its approval. The Board considered the historical use of the property, the existing use, and the definitions of light and general industry, and determined that the Town did not correctly classify the tire repair service as a light industrial use.

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.

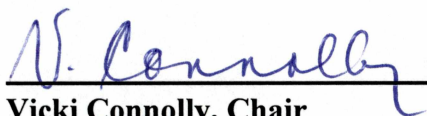
Based on its findings, the Board determined that the Town of Bay Bulls incorrectly classified the Mr. Lundrigan's proposed tire repair service as a light industrial use. Therefore, the Board concluded that the Town did not use its discretionary authority appropriately. That is to say, that the Town of Bay Bulls must reconsider Mr. Lundrigan's application for a tire repair service and make a decision in accordance with the Town's Municipal Plan and Development Regulations.

Order

Based on the information presented, the Board orders that the conditional approval issued by the Town of Bay Bulls on February 9, 2015 to Mr. Lundrigan to operate a commercial business at 133-135 Northside Road, be vacated.

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


DATED at St. John's, Newfoundland and Labrador, this 27th day of March, 2015.



Vicki Connolly, Chair
Eastern Newfoundland Regional Appeal Board



Harold Porter, Member
Eastern Newfoundland Regional Appeal Board



Mary Thorne-Gosse, Member
Eastern Newfoundland Regional Appeal Board