

CENTRAL NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN John R. Whelan **Appellant**

AND Town of Grand Falls - Windsor **Respondent**

RESPECTING Revocation

BOARD MEMBERS Sam Gibbons, Chair
Fred Parsons, Member
Wesley Harris, Member

DATE OF HEARING May 24, 2016

IN ATTENDANCE

John Whelan – Appellant

Michael Pinsent – Respondent

Jeff Saunders – Respondent

Robert Cotter - Secretary to the Central Newfoundland Regional Appeal Board

Lindsay Church - Technical Advisor to the Central Newfoundland Regional Appeal Board

DECISION

Facts/Background

This appeal arises from a decision made by the Town of Grand Falls – Windsor to revoke a Business Permit issued to Blue Sky Family Care on May 30, 2014. The Town issued the Business Permit to Blue Sky Family Care for the purpose of operating a residential care home at 115 Lincoln Road. The Business Permit was issued subject to a number of conditions. On October 28, 2014, at a Regular Meeting of Council, the Town of Grand Falls-Windsor resolved to revoke the Business Permit from Blue Sky Family Care. The Town notified Blue Sky Family Care in a letter dated October 29, 2014. The letter referenced Condition No. 4 and Condition No. 6 from the Business Permit and indicated that a number of complaints and concerns were raised by neighbours regarding the residential care use at 115 Lincoln Road. The Town indicated in the letter that due to the “continuous and unresolved disturbance to the neighbourhood especially at night time”, the Town decided to revoke the Business Permit. The letter also provided notice of the right and process to appeal Council’s decision.

In accordance with section 42 of the Urban and Rural Planning Act, 2000 (the “Act”) John Whelan, Director of Operations for Blue Sky Family Care, filed an appeal with the Central Newfoundland Regional Appeal Board against Council’s decision to revoke Blue Sky Family Care’s Business Permit for a residential care use at 115 Lincoln Road. Mr. Whelan initiated the appeals process on November 10, 2014. As required under section 42(5) of the Act, the appellant included: a summary of the decision being appealed; grounds for the appeal; and the appeal filing fee.

In accordance with the *Act*, a public notice of the appeal was published in *The Advertiser* on February 17, 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 31, 2016.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Minister’s Development Regulations, 2000

Town of Grand Falls – Windsor Municipal Integrated Community Sustainability Plan and Development Regulations, 2012 - 2022

Matters presented to and considered by the Board

Does the Board have the jurisdiction to hear the appeal?

Yes. The Board learned at the hearing that the Business Permit issued to Blue Sky Family Care is in fact a type of development permit. The Town informed the Board that the Business Permit was issued under section 3.6.9, Development Permit, of the Town's Development Regulations. The Town also noted that it has the authority to create regulations regarding various types of permits, including business permits, pursuant to section 35(1)(e)(i), which states:

35(1) A council or regional authority shall, to ensure that land is controlled and used only in accordance with the appropriate plan or scheme, make development regulations

(e) respecting development permits including

(i) different types of permits,

The Town further argued that the Board has the authority to hear the appeal in accordance with section 42(1)(b), which states:

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

(b) a revocation of an approval or a permit to undertake a development;

The Appellant also maintained that the Board could hear the appeal pursuant to section 42(1)(b).

Following a brief recess to discuss the matter of jurisdiction, the Board deemed the appeal valid as it accepted the Town's arguments regarding the type of permit issued.

Should the Board grant the request for a subpoena for further information from the Town?

Mr. Whelan requested the Board grant a subpoena for all information in the Town's possession regarding the appeal matter, including but not limited to: internal emails, Council meeting minutes, complaints submitted by residents, police reports, as well as any other information the Town may have on file. The Town stated that it had all the information and material related to the subject appeal at the hearing. The Board deliberated briefly to discuss the subpoena request and determined that the hearing could proceed with the information available. If further information was deemed necessary, the Board would grant the subpoena. However, the Board found sufficient information had been provided by both parties in order to make a decision and therefore, denied Mr. Whelan's request.

Did the Town have the authority to attached conditions to the Business Permit?

The Appellant acknowledged at the hearing that the Town had the authority to attached conditions to the Business Permit. It is evident to the Board as well that the Town had the authority to attached conditions

to the Business Permit in accordance with section 3.6.9.2 of the Town's Development Regulations, which states:

The Authority may attach to a Development Permit or to an approval in principle such conditions as it deems necessary in order to ensure that the proposed development will be in accordance with the purposes and intend of these Regulations.

Did the Town have the authority to revoke the Business Permit?

Yes. The Board reviewed the Town's Development Regulations and found that the Town has the authority to revoke a development permit under section 3.6.9.6, which states:

The Authority may revoke a Development Permit for failure by the holder of it to comply with these Regulations or any condition attached to the Permit or where the Permit was issued in error or was issued on the basis of incorrect information.

The October 29, 2014 notice of revocation issued by the Town to Blue Sky Family Care states that Condition 4 and Condition 6 of their Business Permit had been violated. The Board accepts that pursuant to section 3.6.9.6 of the Town's Development Regulations, when the holder of a permit does not comply with the permit conditions, the Town may revoke the permit.

Did the Town revoke the Business Permit in a procedurally fair manner?

After the Board reviewed section 3.3 of the Town's Development Regulations, which outlines how the Town may issue a notice, the Board learned that the procedure to revoke a permit is not defined in the Town's Development Regulations. While Mr. Whelan argued that in the absence of prescribed steps in how a permit may be revoked, it is incumbent on the Authority to establish a process that protects those involved. The Appellant supplied the Board with case law to demonstrate that the process should reflect the seriousness of the outcome, suggesting that in this situation, since the revocation means the displacement of five (5) children or youth, the result is highly significant. Therefore, the Appellant maintained that Blue Sky Family Care deserved to know that the Town was considering revoking their Business Permit prior to receiving the revocation notice on October 28, 2014. In other words, the procedure the Town applied to revoke the Business Permit was procedurally unfair considering the gravity of the outcome of Council's decision.

Since the Development Regulations do not prescribe how a permit may be revoked, the Board determined that the Town exercised its discretion when it determined how to proceed with revoking the subject Business Permit. While the board acknowledges that the Town could have been more transparent

throughout the process leading to the revoking of the Business Permit, the Board is bound by section 42 of the *Urban and Rural Planning Act, 2000* and thus, must make a decision that complies with the applicable legislation, policy and regulations and shall not insert its discretion for that of Council's. The Board therefore finds that the Town notified the Appellant that their Business Permit was revoked in accordance with the Town's Development Regulations and in a manner prescribed by the Authority.

As per section 5 of the *Minister's Development Regulations, NLR 3/01* the Authority is required to notify the Appellant, in writing, of the right and process to appeal its decision. The Board reviewed the revocation letter and confirmed that the right and process to appeal was included.

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.

Based on its findings, the Board determined that the Town of Grand Falls – Windsor had the authority to revoke the Business Permit issued to Blue Sky Family Care, under Caregivers Inc., and did so in accordance with the Town's Municipal Integrated Community Sustainability Plan and Development Regulations.

Order

Based on the information presented, the Board orders that the decision to revoke the Business Permit issued to Blue Sky Family Care for the purpose of operating a residential care home at 115 Lincoln Road, be confirmed.


The Town of Grand Falls - Windsor and the Appellant are bound by this decision of the Central Newfoundland Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the Central Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division 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.

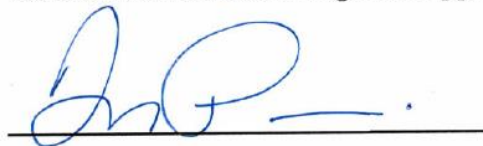
DATED at Grand Falls - Windsor, Newfoundland and Labrador, this 24th day of May, 2016.



Samuel Gibbons, Chair
Central Newfoundland Regional Appeal Board



Wesley Harris, Member
Central Newfoundland Regional Appeal Board



Fred Parsons, Member
Central Newfoundland Regional Appeal Board