July 17, 2015

Dear [Redacted]

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act [File #: MIGA/32/2015]

On July 8, 2015, the Department of Municipal and Intergovernmental Affairs received your request for access to the following records/information:

"Copy of Eastern Regional Appeal Board's report/decision re appeal against the Town of Bay Bulls by resident Doug Chafe concerning business at 135 Northside Road, Bay Bulls around June."

I am pleased to provide you access to the requested information.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed.

Please be advised that you may ask the Information and Privacy Commissioner to review the processing of your access request, as set out in section 42 of the Access to Information and Protection of Privacy Act (the Act). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner.

The address and contact information of the Information and Privacy Commissioner is as follows:

Office of the Information and Privacy Commissioner
2 Canada Drive
P. O. Box 13004, Stn. A
St. John's, NL A1B 3V8

Telephone: (709) 729-6309
Toll-Free: 1-877-729-6309
Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act.
Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Office of Public Engagement’s website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please feel free to contact me by telephone at 709-729-5846 or by e-mail at aliaskary@gov.nl.ca.

Sincerely,

Ali Askary
Manager / ATIPP Coordinator

Enclosure
DEcision Of Appeal By THE Eastern Newfoundland Regional Appeal Board

April 2, 2015

BETWEEN:

APPELLANT: Douglas Chafe

AND:

RESPONDENT: Town of Bay Bulls

Re: Conditional Approval

Dear Participants:

I have received the Board's decision for distribution. Please find the attached document concerning the above noted appeal. Any action specified in the order must be taken within the time period prescribed by the Board.

According to section 46 of the Urban and Rural Planning Act, 2000, the decision of the Eastern Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador Trial Division on a question of law or jurisdiction (of the Board). If this action is contemplated, the appeal must be filed no later than ten (10) days of the date of the Board's decision has been received by the appellant. If the above action is taken, please provide a paper copy of your application only to the Secretary of the Appeal Board. Any subsequent submissions regarding Supreme Court action should be made in electronic form to the Secretary of the Appeal Board.

Yours truly,

Robert Cotter, Secretary
Eastern Newfoundland Regional Appeal Board
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. Lundigan’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.

VConnolly
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