



Nova Scotia Utility and Review Board

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November 18, 2009

By Electronic and Regular Mail

Richard Melvin, President
Nova Scotia Federation of Agriculture
332 Willow Street, Suite 201
Truro, NS B2N 5A5

Dear Mr. Melvin:

Nova Scotia Federation of Agriculture - Appeal to the amendment of Part 23 Section 5(c) of the Land Use By-Law to increase the required minimum setback from 328 to 500 feet from any off-site waterwell or any watercourse or waterbody (Municipality of the District of Yarmouth) - Planning Appeal - PL-09-19

I acknowledge receipt of the Notice of Planning Appeal, filed on behalf of the Nova Scotia Federation of Agriculture, on November 17, 2009, by fax, in the above-noted matter.

A copy of this letter and your Notice of Planning Appeal are being sent to the Provincial Director of Planning, and the Chief Administrative Officer and Solicitor for the Municipality of the District of Yarmouth.

The purpose of this letter is to set out the responsibilities of the respective parties in the conduct of this appeal and to propose a time line leading to the public hearing on the merits.

Jurisdiction

The *Municipal Government Act* ("MGA") sets out the Board's powers in each type of planning case. Your right to bring an appeal in each type of case is also limited (s. 250 of the MGA).

If Yarmouth Municipal Council approved an amendment to a land use by-law, the Board may only grant the appeal if Yarmouth Municipal Council did not reasonably carry out the intent of the municipal planning strategy.

All evidence and argument in this appeal is limited to this issue.

Preliminary Hearing

The Board will hold a preliminary hearing to resolve any preliminary issues and set the dates for the hearing, and filing of evidence and documents. This preliminary hearing will be conducted by toll free telephone conference call on **Monday, November 30, 2009 at 11:00 a.m.** We ask you to telephone **1-888-241-3855**, and enter the password **6988584#** at this time. If this time is not available, please contact the Clerk immediately.

There are two other appeals in relation to the amendment of the Land Use By-Law in the Municipality of the District of Yarmouth. Therefore, this preliminary will be a joint hearing of all three appeals. The Board will determine at the preliminary hearing on November 30, 2009, whether these three matters should be consolidated.

Proposed Dates

The MGA was recently amended to provide specific time lines for the conduct of planning appeals. Under s. 250A(1), the Municipality of the District of Yarmouth must file a complete Appeal Record within 14 business days of the Municipality being notified by the Board of the filing of the Notice of Appeal, being in this case **Tuesday, December 8, 2009**. The appeal is then to be heard within 45 days of the Appeal Record being filed. Consequently, the Board proposes the following dates, which conform with the time line outlined by s. 250A of the MGA:

- Date of preliminary hearing at 11:00 a.m. **Monday, November 30, 2009**
- Filing of Appeal Record by Municipality **Tuesday, December 8, 2009**
- Appellants Filing Written and Visual Evidence
including Experts' Reports, Qualification Statements **Tuesday, December 22, 2009**
- Municipality Filing any objections to
Qualification Statements Filed by the Appellants **Tuesday, December 29, 2009**
- Municipality Filing Written and Visual Evidence
including Experts' Reports, Qualification Statements **Tuesday, December 29, 2009**
- Appellants Filing any objections to Qualification Statements
filed by the Municipality **Wednesday, January 6, 2010**
- Appellants Filing Written and Visual Evidence
in response to the evidence filed by the Municipality **Wednesday, January 6, 2010**
- Appellants Filing List of Witnesses **Wednesday, January 6, 2010**
- Municipality Filing List of Witnesses **Wednesday, January 6, 2010**
- Public Hearing commences at 9:30 a.m. **Wednesday, January 13, 2010**
- Evening Session commences at 6:30 p.m. **Wednesday, January 13, 2010**

Once these dates have been set at the preliminary hearing, the Board will issue a Hearing Order setting the dates and giving directions on disclosure and procedure.

Filings with the Board

All filings are required to be received by the Board at **4:00 p.m.** on the date they are due.

For each filing a complete paper copy must be provided to the opposing party and **three (3)** copies provided to the Board, excluding correspondence.

It is helpful to the Board to receive documents electronically, and searchable, if possible. These may be forwarded to the Board at board@gov.ns.ca.

Delivery or filing of any document required pursuant to the Hearing Order may be by hard copy, CD, fax, or e-mail. If e-mail is used, parties must obtain confirmation of receipt.

Evidence

The Appeal Record to be submitted by the Municipality is to contain all documents relevant to the appeal. These will include either or both of the Municipal Planning Strategy and Land Use By-law as well as all applications, correspondence, and expert reports relating to the decision. At a minimum, the Board requires an electronic filing or CD of either or both of the Municipal Planning Strategy and Land Use By-law. If the other documents are able to be scanned and provided either electronically or on CD, this is helpful to the Board. The Board still requires the **three (3)** paper copies as noted above.

The types of documents that are included in the written and visual evidence are defined in the Board's *Municipal Government Act Rules*. For ease of reference these are restated: "Written evidence" includes any reports, such as experts' reports, documents, letters, hard copies of overhead projection sheets, and other data. "Visual evidence" includes any photographs, maps, audio tapes, videos, charts, models, overlays, and computer generated images.

Experts

Anyone wishing to have an expert appear on their behalf at the hearing must provide either a full expert's report (or a complete summary of the opinions to be expressed by the expert, including the factual basis for such opinions), a curriculum vitae, and a qualification statement outlining the area or areas of expertise for which the witness is sought to be qualified ("qualification statement").

If a party does not consider the individual to be qualified as an expert as outlined in the qualification statement, the person must give notice of their disagreement within seven (7) days of having received the qualifications. If this notice is not provided, then the person shall be deemed to have accepted the qualifications of the expert. Merely because a person accepts the individual as an expert does not prevent the party from cross-examining the expert or to argue at the hearing that the Board should give less or no weight to the expert's opinion.

Hearing

The Notice of Hearing provides an opportunity for the public to attend both the Public Hearing and an Evening Session. Consequently, should only one member of the public write to the Board expressing an interest in speaking, then the evening session will begin at 6:30 p.m. If no one asks to be heard, no evening session will be held.

If you have any questions, do not hesitate to contact the undersigned.

Yours very truly,



for Elaine Wagner
Chief Clerk of the Board

- cc: Kevin Hamilton, et al.
- cc: Earl Prime, President
The Nova Scotia Mink Breeders Association
- cc: Raymond Jacquard, Nickerson Jacquard
Solicitor for the Respondent
- cc: Ken Moses, Chief Administrative Officer
Municipality of the District of Yarmouth
- cc: Brant Wishart, Provincial Director of Planning
Service Nova Scotia and Municipal Relations