

Community Care and Assisted Living Appeal Board
Community Care and Assisted Living Act,
SBC 2002, c. 75

Appellant: Casa Del Vida

Respondent: Greg Ritchey
Community Care Facilities Coordinator
Richmond Health Services
Vancouver Coastal Health Authority

Panel: Susan E. Ross, Chair
Marcia McNeil, Vice Chair
David Rushworth, Member

Decision

Introduction

[1] The appellant, Casa Del Vida, appeals to the Community Care and Assisted Living Appeal Board (Board) from a decision of Greg Ritchey, the Community Care Facilities Coordinator, Richmond Health Services, Vancouver Coastal Health Authority (CCF Licensing). The CCF Licensing decision was a refusal to amend Casa Del Vida's licence to operate an adult complex care/extended care community care facility from a seven to a ten bed maximum capacity. The reason given was that the requested increase in licensed capacity did not meet requirements of the *Sewage Disposal Regulation*, BC Reg 411/85, made under the *Health Act*, RSBC 1996, c. 179, and therefore it did not meet s. 4(1)(c) of the *Community Care Facility Act*, RSBC 1996, c. 60 (CCF Act).

[2] Section 4(1)(c) of the CCF Act required an applicant for a licence to operate a community care facility that was not a dwelling house to comply with "all applicable Provincial and municipal enactments relating to fire and health". In concluding that an increase of the licensed capacity for Casa Del Vida from seven to ten beds would not comply with the *Sewage Disposal Regulation*, CCF Licensing relied on the decision to that effect of Dalton Cross, Environmental Health Officer, Richmond Health Services, Vancouver Coastal Health Authority (EHO).

[3] This appeal of the CCF Licensing decision was initiated with the former board, the Community Care Facility Appeal Board, under s. 15(2) of the CCF Act. The former board became this Board, the Community Care and Assisted Living Appeal Board, when the CCF Act was repealed and replaced by the *Community Care and Assisted Living Act*, SBC 2002, c. 75 (CCAL Act), on May 14, 2004.

[4] Anar Alidina, who initiated this appeal on behalf of Casa Del Vida, is a director and officer of the company that owns and operates the facility. Around the same time, she brought a parallel appeal to the Environmental Appeal Board, under the *Environment Management Act* and the *Health Act*, challenging the EHO's decision to refuse reclassification of Casa Del Vida's sewage disposal system under the *Sewage Disposal Regulation* for purposes of increasing the maximum capacity of the facility from seven to ten beds.

Issues

[5] The issue in this decision is whether there was no right of appeal under s. 15(2) of the CCF Act from CCF Licensing's decision to refuse to amend Casa Del Vida's community care facility licence to increase its maximum capacity because that decision rested on compliance with the *Sewage Disposal Regulation* under the *Health Act*, about which the EHO makes permit decisions and those decisions are subject to appeal to the Environmental Appeal Board under s. 8(4) of the *Health Act*.

[6] In a decision dated December 1, 2004, the Environmental Appeal Board has now allowed the parallel appeal of the EHO's decision. It found that the sewage disposal system at Casa Del Vida does not fit within the list of facility types listed in Schedule 2, Appendix 1, of the *Sewage Disposal Regulation* and that, provided certain terms and conditions are met, the system at Casa Del Vida has the capacity to effectively treat effluent from a ten bed complex care facility. Accordingly, the Environmental Appeal Board varied the EHO's decision by directing the EHO to issue Ms. Alidina a permit for a sewage disposal system for a ten bed complex care facility, subject to the terms and conditions described by the Environmental Appeal Board. Whether the Environmental Appeal Board's recent decision has implications for this appeal is now a further issue to consider.

Facts

[7] The former board heard appeals relating to licenses, and applications for licenses, to operate community care facilities under the CCF Act, as does this Board under the CCAL Act. Under the CCF Act, most community care facility licensing decisions were made by a medical health officer (MHO). This continues under the CCAL Act.

[8] Casa Del Vida has suggested that CCF Licensing may have lacked underlying authority to act on behalf of the MHO. The CCF Licensing decision under appeal, though signed by Mr. Ritchey, referred expressly to the right of appeal under s. 15(2) of the CCF Act and hence was obviously issued as a decision of the MHO and, for present purposes, it is not necessary or appropriate to go behind the authority of CCF Licensing to act on behalf of the MHO.

[9] The mandate of the Environmental Appeal Board includes hearing appeals from decisions, made by EHOs, respecting permits for sewage disposal systems under the *Sewage Disposal Regulation*.

[10] After the construction of Casa Del Vida completed in 2002, Richmond Health Services contracted for Casa Del Vida to provide care services. The nature of those services

shifted over time. Ms. Alidina and her husband had ongoing dealings with CCF Licensing and the EHO about obtaining approvals for increased resident capacity. Changes in the nature of the services contracted for by Richmond Health Services, and the characterization of those services, had a direct bearing on the dealings with CCF Licensing and the EHO and on the maximum number of residents they allowed from time to time for community care licensing and sewage disposal permitting purposes, respectively.

[11] The most recent licence in the appeal record for Casa Del Vida under the CCF Act, is effective June 3, 2003, for Complex Care/Extended Care service to a maximum of seven residents.

[12] The Alidina's efforts to increase the maximum licensed capacity of the facility culminated, for purposes of this appeal, in what is described in the January 13, 2004, CCF Licensing decision as a December 18, 2003, re-application for licence to increase Casa Del Vida's licensed capacity from seven to ten complex care residents. The CCF Licensing decision went on as follows:

Section 4(1)(c) of the *Community Care Facility Act* requires that a "...building or structure to be used by the community care facility...complies with this Act and the regulations and all applicable Provincial and municipal enactments relating to fire and health." This means Casa del Vida must be in compliance with *Provincial Sewage Disposal Regulations* in order for your application for an increase in the licensed capacity to be approved. As you have been advised by the Environmental Health Division of Richmond Health Services, the design and installation of the sewage disposal system at Casa del Vida allows for a maximum of seven residents under the *Provincial Sewage Disposal Regulations*. Community Care Facilities Licensing cannot approve a capacity greater than seven residents until this issue has been resolved.

You are advised that pursuant to Section 15(2) of the *Community Care Facility Act*, you are entitled to appeal this decision to the Community Care Facility Appeal Board. An information sheet on the Community Care Facility Appeal Board process has previously been forwarded to you. I would continue to recommend that you first consider your avenues of appeal to the Environmental Appeal Board to resolve the sewage disposal issues, as outlined to you in October 22, 2003 correspondence from Mr. Art Hamade, Assistant Chief Public Health Inspector.

[13] The appeal route indicated in the CCF Licensing decision was pursued, resulting in this appeal. Around the same time, Ms. Alidina brought the parallel appeal to the Environmental Appeal Board respecting the EHO's decision under the *Sewage Disposal Regulation*.

[14] After Casa Del Vida brought this appeal, CCF Licensing altered its view of s. 15(2) of the CCF Act and maintained that there was no right of appeal respecting a decision to refuse to amend Casa Del Vida's licensed capacity under the CCF Act. In the alternative, CCF Licensing argued that consideration of this appeal should await a decision from the Environmental Appeal Board on whether Casa Del Vida had been properly classified by the EHO under the *Sewage Disposal Regulation*, on the reasoning that if the Environmental

Appeal Board ruled in favour of Ms. Alidina, CCF Licensing could be able to amend the community care facility licence accordingly.

[15] Casa Del Vida argued there was no lack of jurisdiction for this appeal, stating as follows:

...the reasoning of Mr. Ritchey on relying on Section 15 of the Community Care Facility Act for disputing the jurisdiction of the Community Care Facility Appeal Board is flawed because our application for 10 bed capacity was indeed denied. To clarify a point that Richmond Health Services continues to press but is not in dispute, we are not requesting the Community Care Facility Appeal Board to second guess the adequacy or appropriateness of the criteria in the Sewage Disposal Regulations but we are in fact disputing our classification by Richmond Health Services as a nursing home that assumes the utilization of 150 gallons per patient bed sewage treatment capacity.

In summary, the submission of Richmond Health Services disputing the jurisdiction of the Community Care Facility Appeal Board to hear our appeal is without foundation and should be dismissed. It is wholly proper for the Community Care Facility Appeal Board to determine whether Richmond Health Services has improperly or unreasonably designated our facility as a nursing home. Further, it is submitted that based on the information available to Richmond Health Services its designation of our facility as a nursing home is incorrect as our current licence is for a complex care/extended care facility.

[16] We also carefully considered further submissions, not necessary to elaborate on here, which Casa Del Vida made on the jurisdiction for this appeal.

Analysis and Conclusion

[17] The CCF Act was repealed and replaced on May 14, 2004, when the CCAL Act came into force. Until that time, s. 4(1)(c) of the CCF Act read as follows:

4(1) Subject to this Act and the regulations, a medical health officer may issue to an applicant a licence to operate a community care facility if the medical health officer is of the opinion that

- (c) the building or structure to be used by the community care facility, if it is not a dwelling house under paragraph (b), complies with this Act and the regulations and all applicable Provincial and municipal enactments relating to fire and health.

[18] The *Sewage Disposal Regulation* is an enactment relating to health that applies to Casa Del Vida within the meaning of s. 4(1)(c).

[19] Section 15(2)(b)(ii) and (2)(c) of the CCF Act read as follows:

15(2) An applicant for a licence, interim permit or certificate or a licensee, a permittee or a certificate holder may appeal to the board under this section if

- (b) the director has

- (ii) attached terms or conditions to, suspended or cancelled a licence or an interim permit under section 6 or 7 or a certificate under section 9(2),
- (c) a medical health officer has refused to issue a licence or interim permit under section 4, or

[20] Casa Del Vida's applications to CCF Licensing for an amendment to its licence increasing the maximum capacity from seven to ten (September 29 and December 18, 2003) were applications for a licence under the CCF Act. The CCF Licensing decisions refusing to issue the amended licence (October 23 and December 12, 2003, and January 13, 2004) were refusals to issue a licence under s. 15(2)(c) of the CCF Act.

[21] CCF Licensing maintains, quite simply, that it does not have authority to determine the adequacy of the sewage disposal system at Casa Del Vida or the applicability of criteria in the *Sewage Disposal Regulation* to Casa Del Vida. According to CCF Licensing, those matters fall under the authority of the EHO, whose decisions may be appealed to the Environmental Appeal Board. Because those matters do not fall under the authority of CCF Licensing, decisions about them cannot be appealed under the CCF Act.

[22] There is no question that the decision of the EHO under the *Sewage Disposal Regulation* was subject to appeal under s. 8(4) of the *Health Act* to the Environmental Appeal Board and that it was not subject to appeal under the CCF Act. Ms. Alidina was well aware of the appeal route to the Environmental Appeal Board and she pursued it.

[23] That is not the end of the matter because of the wording of s. 4(1)(c) of the CCF Act, which speaks to the MHO's opinion that the building or structure to be used as a community care facility complies with not only the CCF Act but also with "all applicable provincial and municipal enactments relating to fire and health". Common sense dictates that an EHO determination about compliance with the *Sewage Disposal Regulation* would be highly pertinent to the formation of the MHO's opinion under s. 4(1)(c). The focus of that provision on the MHO forming an opinion as to compliance with other applicable laws would lack meaning, however, if the MHO was invariably bound by the EHO's decision so that the MHO had no authority to form a contrary opinion—the position of CCF Licensing on this appeal—even when it was manifest that the EHO decision was incorrect or that it had been reached as a result of a materially unfair process or on materially incomplete information.

[24] It is also possible that the MHO could be called upon to form an opinion under s. 4(1)(c) as to compliance with the *Sewage Disposal Regulation* before or in the absence of an EHO decision. If the MHO formed an opinion about a community care facility's compliance with the *Sewage Disposal Regulation* upon which the EHO then put reliance to make a sewage disposal permit decision, the opinion of the MHO under s. 4(1)(c) of the CCF Act would not be insulated from appellate review by the former board, and now this Board, because the MHO's opinion had been relied upon by the EHO. And the EHO's reliance on the opinion of the MHO would not insulate the EHO's permit decision from appellate review by the Environmental Appeal Board.

[25] We reject, on the basis of the specific wording of s. 4(1)(c) of the CCF Act, CCF Licensing's restrictive view of its authority under that provision, and find that the CCF Licensing decision to refuse to amend the maximum capacity on Casa Del Vida's licence because of non-compliance with the *Sewage Disposal Regulation* was subject to appeal under s. 15(2)(c) of the CCF Act.

[26] Turning to the recent decision of the Environmental Appeal Board respecting the EHO permit decision, we note that the EHO's position on the Casa Del Vida sewage disposal system's compliance with the *Sewage Disposal Regulation*, which CCF Licensing says it essentially followed or adopted, has been overturned and the EHO has been directed to issue Ms. Alidina a varied permit for a sewage disposal system to serve a 10 bed complex care facility. Therefore, even if CCF Licensing's view that it was bound by the EHO's decision had prevailed before us in this decision, which it has not, CCF Licensing would have been left to reconsider its refusal to amend the maximum capacity on Casa Del Vida's licence, in light of the decision of the Environmental Appeal Board in favour of Ms. Alidina.

[27] It seems possible this appeal could now be moot, in as much as it would serve no practical purpose if the licence amendment sought by Casa Del Vida is at hand. In all of the circumstances therefore, but subject to considering any representations to the contrary that may be submitted to the Board by the parties to this appeal within 14 days of the date of this decision, we direct CCF Licensing to reconsider its decision under appeal in this case in light of the decision of the Environmental Appeal Board and to inform the Registrar of this Board of the result within 30 days of the date of this decision.

January 13, 2005

Susan E. Ross, Chair

Marcia McNeil, Vice Chair

David Rushworth, Member