

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

BETWEEN Stephen Brent, Kayla Critch **Appellant**

AND Town of Deer Lake **Authority**

RESPECTING Crematorium development at 63 North Main Street, Deer Lake
[15-006-054-022]

BOARD MEMBERS Chair – Lloyd Walters
Member – Helen Reid
Member – Leona Gillette

DATE OF HEARING February 20, 2019

IN ATTENDANCE

Robby Ash, Solicitor appearing for appellant
Giles Ayres, Solicitor for Town of Deer Lake
Damon Clarke, Town of Deer Lake
Nick Avis, Solicitor for applicant

Interested Parties
Jean Young,
David Young,

Robert Cotter, Secretary, West Newfoundland Regional Appeal Board
Christopher Hardy, Technical Advisor to the West Newfoundland Regional Appeal Board

DECISION

Facts/Background

The Applicants, David and Brenda Parsons, were granted approval by the Town of Deer Lake at its regular meeting on October 16th, 2017 to construct a new building adjacent to an existing funeral home and operate a crematorium at the subject property, 63 North Main Street, in Deer Lake.

Correspondence was sent to some residents of the Town who had expressed an interest in the outcome of the decision regarding the subject application; the correspondence outlined that the proposed development had been approved by Council on October 16, 2017, that some decisions of Council can be appealed, the regulations under which that can happen, and how to file an appeal.

The third party appellants are appealing Council's decision to grant the Applicants a permit. On October 24, 2017 the Appellants filed an Appeal package with the Secretary of the Appeal Board. The grounds of appeal are:

1. The Council of the Town of Deer Lake erred in granting the subject permit to the Applicant by failing to properly consider the following when making its decision:
 - a. Possible exposure of residents to harmful material (mercury, for example) given the risk of release of potentially harmful material into the surrounding environment (i.e., possible health hazard)
 - b. Industrial practice in a residential area that could potentially result in odors, dirt, ash or airborne particulate
 - c. Possible fear, anxiety, or mental illness in the Town's residents from exposure to the subject development

In accordance with the Urban and Rural Planning Act, 2000, a public notice of appeal was published in The Western Star newspaper on September 28, 2018; and a notice of the time, date and place of the hearing was provided to the appellant and the authority as required by URPA.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

Municipalities Act, 1999

Town of Deer Lake Development Regulations 2004

Council has the authority to consider accessory uses to a permitted or discretionary use in any zone in accordance with Regulation 29. Regulation 29 states "accessory uses shall be clearly subsidiary to and controlled so as to be compatible with the primary use and the use of nearby properties."

Chronology of Events

The applicants David and Brenda Parsons made an application to the Town of Deer Lake on August 10, 2017 seeking approval to build and operate a Crematorium adjacent to their existing funeral home at 63 North Main Street. The application was referred to the Environment and Housing Committee (E&H) for inclusion on the agenda of its next meeting.

The Town treated the application as a discretionary use under its development regulations and began the process of informing the community. A Public Notice was placed in the Western Star on August 31, 2017 inviting public input.

On August 31, 2017 the E&H committee met and discussed the application for the first time. The committee decided to await public input before making a decision. On September 5, 2017 the Municipal Enforcement Officer delivered notices to 25 homes and establishments in the area including the medical clinic, High School and Elementary School.

By September 7, 2017 several residents had complained that the notice in the Western Star and the one circulated had an incorrect address for the Town Hall.

On September 11, 2017 at the regular meeting of the town council the recommendation of the E&H committee to "await public input before making a decision" was accepted by a vote of 7-0. On September 13, 2017 the town Municipal Enforcement Officer circulated a new notice to all

25 of the previous locations plus an additional 5 locations with the correct address for the town office.

On September 20, 2017 the E&H Committee discussed the application and the related public response.

On October 12, 2017 the E&H Committee met and discussed the application and the public response to date. The committee made a decision to recommend the approval of the application, to council.

At a meeting on October 16, 2017 the Deer Lake Town Council voted to approve the application with a vote of 5-1. To note, the board heard evidence that the town went over and above the minimum requirements for the notification and consideration of this application.

On October 24, 2017 an appeal was registered with the West Newfoundland Regional Appeal Board (WNRAB) which ordered the Town to issue a stop work order.

Matters presented to and considered by the Board

Q. What is the Zoning designation of the subject property?

A: The area the property is located in is zoned Town Centre (TC).

Q: Is the building and operation of a crematorium a permitted use in the Town Centre Zone?

"permitted use" means a use that is listed within the permitted use classes set out in the use zone tables of an authority's development regulations;

A: No. The board reviewed Schedule C-Use Zone Tables of the Town of Deer Lake for the Town Centre (TC) Zone.

Permitted use classes for this Zone include Apartment attached to a business, Apartment Building, Boarding House Residential and Bed and Breakfast, Catering (restaurants), Child Care, Commercial –Residential, Communications, Conservation, Convenience Store, Cultural and Civic, Double Dwelling, Educational, Family and Group Care Centre, Funeral Home, General Service, Indoor Market, Medical and Professional, Medical Treatment and Special Care, Office, Outdoor Market, Passenger Assembly, Personal Service, Place of Worship, Police Station, Public Utility, Recreational Open Space and Trails, Row Dwelling, Shop, Single Dwelling –also Subsidiary Apartment and Subsidiary Dwelling, Taxi Stand, Theatre and Veterinary.

A funeral home is a permitted use in this zone but a crematorium is not listed as a permitted use.

Q. Is the building and operation of a crematorium a discretionary use in the Town Centre (TC) Zone?

"discretionary use" means a use that is listed within the discretionary use classes established in the use zone tables of an authority's development regulations."

The board also reviewed the discretionary use classes for the Town Centre Zone.

Discretionary use classes allowed include:

"Amusement, Antenna, Catering (bars and lounges), Club and Lodge, General Assembly, Light Industry, Service Station, and Take-out Food."

A Crematorium is not listed as a discretionary use within the Town Centre (TC) Zone.

A: No, the building and operation of a Crematorium is not a discretionary use in the Town Centre (TC) Zone.

Conclusion

In arriving at its decision, the Board reviewed the submissions and comments given by all parties present 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 Deer Lake did not exercise its authority appropriately when it approved the permit on October 24, 2017 for building a crematorium at 63 North Main Street, Deer Lake.

Therefore, the Board reverses the Town of Deer Lake decision to issue a permit for the building and operation of a Crematorium at 63 North Main Street, Deer Lake. That is to say the town still has before it an application that requires a decision. The board directs the Town of Deer Lake to consider the proposed application under its current plan, regulations and any other applicable legislation and make a decision in conformance.

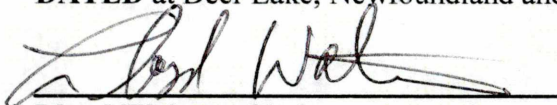
Order

Based on the information presented, the Board orders that the decision of the Town of Deer Lake of October 24, 2017 pertaining to property at 63 North Main Street, Deer Lake is reversed. The Respondent and the Appellant(s) are bound by this decision of the West Newfoundland Regional Appeal Board.

In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of the West Newfoundland Regional Appeal Board may be appealed to the Supreme Court of Newfoundland and Labrador 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(s).

DATED at Deer Lake, Newfoundland and Labrador, this 21st day of February, 2019.



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Helen Reid, Member
West Newfoundland Regional Appeal Board



Leona Gillette, Member
West Newfoundland Regional Appeal Board