

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD
URBAN AND RURAL PLANNING ACT, 2000

West Newfoundland Regional Appeal Board

Appeal #	15-006-077-038
Appellant(s)	Cathy Peddle, Kelly Hiscock
Respondent / Authority	City of Corner Brook
Date of Hearing	January 19 th , 2023

BoardMembers

Chair	Lloyd Walters
Member	Boyd Noel
Member	Helen Reid

Also in Attendance

Solicitor for the Appellant(s)	Daniel Bennett
Representatives for the Appellant(s)	
Representatives for the Authority	Ms. Lorilee Sharpe, Solicitor
Secretary to the Boards	Robert Cotter, Departmental Program Coordinator, Municipal and Provincial Affairs
Technical Advisor to the Boards	Sean McGrath, Planner III, Municipal and Provincial Affairs
Interested Parties	
Start/End Time	11:00 AM – 1:15 PM

The authority for appeals comes from section 42 of the *Urban and Rural Planning Act, 2000* (The Act).

Board's Role

The role of the Regional Appeal Board(the Board) is to determine if the Authority acted in accordance with the Urban and Rural Planning Act, 2000 and the City of Corner Brook's Integrated Municipal Sustainability Plan and Development Regulations, 2012 when Building Permit #BP2022-0318 was issued from the City of Corner Brook for phase #1 development (site services and rock pad) pursuant to Councils approval

under Motion 21-79 for the discretionary development of a Crematorium as an accessory use to an established funeral home at 167 Country Road, Corner Brook

Presentations During the Hearing

The Board reviewed all documentation submitted from both parties prior to the hearing. As a result of this review the Board became aware that it may be requested to review the appeal through the lens of res judicata at the hearing.

At the initial stage of the hearing counsel for the City of Corner Brook requested that the Board receive a presentation supporting the premise that the subject of this appeal had already been decided by the Board on a previous occasion and therefore the doctrine of res judicata applies.

The Board agreed to receive presentations from both parties as to whether the doctrine of res judicata should be applied before hearing this appeal.

Authority's Presentation

Counsel for the City of Corner Brook, Lorilee Sharpe, introduced a copy of the decision by the West Newfoundland and Labrador Appeal Board dated October 13, 2021 regarding appeal #15-006-072-011, Ian and Pauline Hutchinson vs. City of Corner Brook. (Exhibit A).

That appeal concerned an application for a development permit to construct a Crematorium on the same property which is the subject of the current appeal. In that case the appeal Board confirmed the decision of the City of Corner Brook to approve that development. The current appeal arises out of the decision of the City of Corner Brook to issue a permit for phase 1 of that development.

Ms. Sharpe presented to the Board that the grounds for the current appeal and the arguments included in the appellants notice of appeal and documents submitted since

are focused on the original decision made by the City of Corner Brook when it approved the initial application.

She contended that no new information had been submitted to the Board that had not been previously submitted or was not available to the appellants for submission at the previous hearing.

She submitted the transcript of *Guardian Insurance Company of Canada v. Roman Catholic Episcopal Corp. of St. John's*, 2013 NLCA 62. (exhibit b) and reiterated that the Board should review it with regard to its determination of whether *res judicata* applies to this appeal.

Appellant's Presentation

Counsel for the Appellant, Mr. Bennett, presented a detailed written brief (exhibit c), and outlined in detail the grounds for the current appeal and why the appellants submit it would be an error of law to bar this hearing by *res judicata*.

In support of this contention, Mr. Bennett referred the Board to the case of 58663 Newfoundland and Labrador Inc. and the Town of Kippens and outlined the relevance of that case to the current appeal.

He argued that the position of the appellant's is that upon a valid appeal to the Board, the Board can hear evidence and can confirm, reverse or vary the decision appealed from. Therefore, the Board should hear this appeal and consider all evidence before it and make a decision it considers appropriate.

Board's Analysis

After hearing presentations from both parties, the Board recessed to make a determination.

The Board reviewed all documents submitted by the appellant, appellant's counsel and the respondent and respondent's counsel prior to the day of the hearing. It also reviewed the presentation and documents received on the day of the hearing from counsel for both

the appellant and respondent regarding the application of the doctrine of res judicata as it applies to this appeal.

The Board then reviewed the documentation received on the day of the hearing and previously to determine whether any new information had been received that would cause it to review its decision on Appeal # 15-006-072-011, Ian and Pauline Hutchinson v. City of Corner Brook. The Board found no new information that would cause it to review its previous decision. Therefore, after due consideration of the printed documentation submitted and the oral presentations on the day of the hearing the Board determined that the doctrine of res judicata should be applied to this appeal.

Board's Conclusion

After reviewing the information presented to this Board, the Board concludes that the doctrine of res judicata should be applied in this appeal.

The Urban and Rural Planning Act, 2000 states

42. (10) In determining an appeal, a Board may confirm, reverse or vary the decision appealed from and may impose those conditions that the Board considers appropriate in the circumstances and may direct the council, regional authority or authorized administrator to carry out its decision or make the necessary order to have its decision implemented.

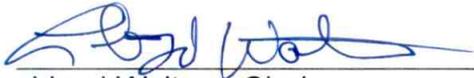
Order

The Board orders that the appeal be denied according to the doctrine of res judicata and all parties are estopped in this matter at this appeal Board level.

The Authority and the Appellant(s) are bound by the decision of this Regional Appeal Board.

According to section 46 of the *Urban and Rural Planning Act, 2000*, the decision of this 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 20th day of January 2023.



Lloyd Walters, Chair
West Newfoundland Regional Appeal
Board



Boyd Noel, Member
West Newfoundland Regional Appeal
Board



Helen Reid, Member
West Newfoundland Regional Appeal
Board