

# West Newfoundland Regional Appeal Board

Appeal #	15-006-072-006
Appellant(s)	D. Jean Young
Respondent / Authority	Town of Deer Lake
Date of Hearing	June 24, 2021

## Board Members in Attendance

Chair	Lloyd Walters
Member	Helen Reid
Member	Derrick House

## In Attendance

Appellant(s)	Jean Young
Solicitor for the Appellant(s)	
Representatives for the Appellant(s)	
Representatives for the Authority	Jason Young, Director of Operations and Communications
Solicitor for the Authority	David Constantine, Stewart McKelvey
Secretary to the Board	Robert Cotter
Technical Advisor to the Boards	Elaine Mitchell, MCIP
Interested Parties	Sheina Lerman

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 Town of Deer Lake (the Authority) made a decision which is subject to appeal when it resolved to amend a lease for the Deer Lake RV Park. D. Jean Young (the Appellant) filed a third party appeal alleging this decision was contrary to the Deer Lake Municipal Plan and Development Regulations.

## Presentations during the Hearing

### 1. Planner's Presentation

The Board heard from the Technical Advisor who outlined questions of jurisdiction related to the grounds of appeal and the time limits in relation to section 42 of the *Urban and Rural Planning Act, 2000* (the Act). The Technical Advisor noted that decisions by the Authority to enter into or amend a lease for the Deer Lake RV Park are not a development decision with respect to approving or refusing an application, a decision to revoke a permit or a decision to issue a stop work order and, as such, are not subject to appeal under section 42 of the Act.

Section 2 (g) of the Act defines "development" as carrying out of building, engineering, mining or other activities in, on, over or under land.

#### *2. In this Act,*

*(g) "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use, or the intensity of use of land, buildings or premises and the*

*(i) making of an access onto a highway, road or way,*

*(ii) erection of an advertisement or sign,*

*(iii) construction of a building,*

*(iv) parking of a trailer, or vehicle used for the sale of refreshments or merchandise, or as an office, or for living accommodation,*

*and excludes the*

*(v) carrying out of works for the maintenance, improvement or other alteration of a building, being works which affect only the interior of the building or which do not materially affect the external appearance or use of the building,*

*(vi) carrying out by a highway authority of works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road reservation,*

*(vii) carrying out by a local authority or statutory undertakers of works for the purpose of inspecting, repairing or renewing sewers, mains, pipes, cables or other apparatus, including the breaking open of street or other land for that purpose, and*

*(viii) use of a building or land within the courtyard of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as a dwelling;*

In addition, the Technical Advisor indicated that the appeal was filed on May 3, 2021 and the decision being appealed was made by Council on April 5, 2021 with approximately one month between Council's decision and the appeal being filed. The Technical Advisor also noted that there is a question with respect to when the development was approved as written documents by the Appellant indicated that work on the site had been underway for some time.

## **2. Jurisdiction of the Board**

The chair noted the planner's submission identified issues of its jurisdiction to hear this appeal and requested arguments from both parties in this regard.

## **3. Appellant's Presentation**

The Appellant addressed the question of jurisdiction arguing that the town plan was not followed when the town passed a motion to extend the original lease to a term of forty-five years from the original term of five years as outlined in the original request for proposals, while other proponents were not presented with this opportunity.

## **4. Authority's Presentation**

The Authority addressed the question of jurisdiction noting that an appeal concerning a lease agreement is not in accordance with section 42 of the Act and therefore not subject to a decision of the West Newfoundland Regional Appeal Board.

The town solicitor further argued that this appeal was not related to a development but focused solely on a lease between the Town of Deer Lake and a developer and therefore outside the jurisdiction of the board. He further stated the appeal was outside the time limits as outlined in the act and regulations.

## **5. Interested Parties**

An interested party, Sheina Lerman, spoke regarding the Board's jurisdiction. She argued that while the lease may be outside of the jurisdiction of the board and therefore not subject to appeal, it should be within the board's jurisdiction.

## **Board's Analysis**

The Board acknowledges the submissions received from all parties, both written and oral, including multiple emails.

The Board heard arguments from the Appellant and the Authority regarding its jurisdiction to hear this appeal. It reviewed the grounds of appeal as outlined in the appeal form filed on May 3, 2021.

The Board considered section 42 of the Act which states:

*42. (1) A person or an association of persons aggrieved of a decision that, under the regulations, may be appealed, may appeal that decision to the appropriate board where the decision is with respect to*

- (a) an application to undertake a development;*
- (b) a revocation of an approval or a permit to undertake a development;*
- (c) the issuance of a stop work order; and*
- (d) a decision permitted under this or another Act to be appealed to the board.*

The Board received no evidence to indicate that a permit was issued for this development and, as a result residents and interested parties were not provided with an opportunity to file an appeal with respect to an application for a development.

The Board notes that work on this site has been underway for some time. Under section 45 of the Act its states:

Development may not proceed:

*45. (1) Where an appeal is made under section 42, the development with respect to the appeal, work related to that development or an order that is under appeal shall not proceed or be carried out, pending a decision of the board.*

Section 12 of the Act states that:

- 12. A plan and development regulations are binding upon*
  - (a) municipalities and councils within the planning area governed by that plan or those regulations; and*
  - (b) a person undertaking a development in the area governed by that plan or those regulations.*

These legislative requirements must be adhered too by all municipalities to ensure procedural fairness.

The Board considered the arguments regarding its jurisdiction to hear the appeal under section 42 of the Act. After due consideration of both written and oral submissions including the Appellant's form which stated that the appeal is regarding amendments to the lease agreement only, the Board concludes that it has no jurisdiction to hear the appeal concerning the leasing of the Deer Lake RV Park. The Board determined that only those decisions related to an application for development, to revoke a permit or to issue an order are subject to appeal to the Board as outlined by section 42 of the Act.

The Board in reviewing the legislative requirements when dealing with development, as the construction of the park is development, it is expected that a development permit as required, be considered, voted, and passed by the elected body of council.

## Board's Conclusion

After reviewing the information presented, the Board concludes that under Section 42 of the Urban and Rural Planning Act, 2000 it has no jurisdiction to hear this appeal.

## Board's Order

*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 is unable to confirm, reverse or vary the decision by the Town of Deer Lake to extend the lease of the Deer Lake RV Park since the appeal did not pass the jurisdictional requirement as outlined under the Urban and Rural Planning Act, 2000.

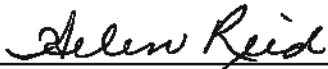
The Authority and the Appellant(s) are bound by the decision of this West Newfoundland Regional Appeal Board.

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).

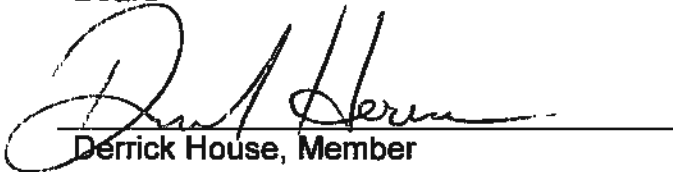
DATED at Deer Lake, Newfoundland and Labrador, this June 24, 2021.



Lloyd Walters, Chair  
West Newfoundland Regional Appeal  
Board



Helen Reid, Member  
West Newfoundland Regional Appeal  
Board



Derrick House, Member  
West Newfoundland Regional Appeal  
Board