

# West Newfoundland Regional Appeal Board

Appeal #	15-006-072-011
Appellant(s)	Ian and Pauline Hutchinson
Respondent / Authority	City of Corner Brook
Date of Hearing	October 13, 2021

## Board Members

Chair	Lloyd Walters
Member	Derrick House
Member	Boyd Noel

## Also in Attendance

Representatives for the Authority	Lorilee Sharpe, City Solicitor Darryl Skinner, Development Inspector III Marina Redmond, City Clerk
Secretary to the Board	Robert Cotter
Technical Advisor to the Board	Elaine Mitchell, MCIP
Start/End Time	9:00 am – 10:20 am

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

## Board's Role

The role of the West Newfoundland Regional Appeal Board(WNRAB) is to determine if the City of Corner Brook acted in accordance with its Integrated Municipal Sustainability Plan 2012 (Municipal Plan) and Development Regulations when it decided to approve a crematorium at 167 Country Road at a regular meeting of Council on May 31, 2021.

## Presentations at the Hearing

### 1. Planner's Presentation

The Technical Advisor presented information regarding the Corner Brook Integrated Municipal Sustainability Plan 2012 and Development Regulations noting that the subject site at 167 Country Road was located in the Community Services future land use designation and Community Services zone. According to the Development Regulations, funeral homes are listed as a discretionary use in the Community Services (CS) zone. Schedule B identifies crematoria as an example of a funeral home. Regulation 26 requires the Authority to give notice.

### 2. Appellant's Presentation

The Appellant argued that the City was not transparent in its process as the residents were not informed after the previous decision that the Applicant could re-apply. The Appellant explained that the time provided by the City for responses was very restricted. In addition, the City provided little background information such as a site plan. Impacts of the crematoria on surrounding residents are considerable, are noxious and dwellings in the surrounding neighbourhood are in close proximity to the subject site. The Appellant noted that Council did not recognize the social and economic impacts of this development on nearby residents and these were not specifically addressed at the public meeting of Council. In particular, the Appellant noted that the residents raised the concept of a setback, which was best practice based on a study provided to Council. The appellant indicated this subject was not discussed by Council.

### 3. Authority's Presentation

Mr. Skinner, Development Inspector III, presented on behalf of the Authority. He noted his role was to handle the advertisement of the discretionary use. He stated that a Land Use Assessment Report would only be carried out if the proposed use was not permitted, it was a discretionary use or required an amendment to the Municipal Plan and Development Regulations. It was determined that a Land Use Assessment Report was not required by the City's Planning Department for this application. Land Use Assessment Reports are not frequently required.

Mr. Skinner explained that the application was advertised by direct notice to residents who were within 250 m of the proposed development. A notice was published in the Western Wire and also posted on the City's website. He also noted that the notice to residents was re-distributed to residents when the deadline for submission was extended. He explained that he prepared a report for Council consideration which outlined input from residents and included a letter from the Department of Environment and Climate Change, who reviewed a report regarding the crematoria, and provided a response. Council was also provided with the technical report provided by the Appellant although it was also found by staff during their research on this proposal. Staff provided a positive recommendation to Council to approve this specific unit only.

Ms. Redmond, City Clerk and ATIPP Coordinator, indicated that an ATIPP request regarding this application was received on September 23, 2021. This request is currently being processed. She outlined the information that was included in the Council package prior to the Council consideration of the application. She noted that there were 95 submissions received from the discretionary use notice as well as several petitions. Staff usually summarize submissions in their report for Council and, as a result, a legal letter as well as several letters from residents was removed from the council agenda package.

Ms. Sharpe addressed the grounds of appeal and noted that the Board does not have the authority to overturn a discretionary decision of Council. She argued that the City process was open and transparent. Notices were given to residents and the deadline for submissions extended. Councillors demonstrated an open mind when reviewing information from the Appellant. Staff summarized all arguments and submissions for Council consideration and it is the City's practice not to provide individual submissions to Council. The City had not received a request for information with respect to the application at the time that the application was under consideration. A Land Use Assessment Report is rarely required and only required when determined by Council. The application conforms to the Development Regulations where funeral homes are listed as a discretionary use. She indicated that council did consider the risks associated with the proposed use when considering this application.

The conflict of interest issue raised in the technical report was because the Councillor was a resident in the area and his conflict was in common with other residents of the area and that the Councillor in question voted against the motion. Ms. Sharpe stated the conflict of interest was dealt with in accordance of the *City of Corner Brook Act*.

Ms. Sharpe also addressed the requirement to add a notice of appeal to the decision letter as indicated in the technical report. She indicated that this is a requirement that will have to be addressed by the City in future but had little impact on the Council decision making process.

## Board's Analysis

### What is the matter under consideration by the board?

The matter under consideration by the board is to determine if the City of Corner Brook acted in accordance with the Corner Brook Integrated Municipal Sustainability Plan 2012 (Municipal Plan) and Development Regulations when it decided to approve a crematorium at 167 Country Road at a regular meeting of Council on May 31, 2021.

### How is the subject property zoned?

The report of the technical reviewer stated that the subject property is zoned Commercial Services under the City of Corner Brook Municipal Plan and Development Regulations adopted June 28, 2013.

The Municipal Plan objective 4.6.2 01 states that the purpose of this designation is to reserve land for the development and expansion of public and private community services.

Is the building and operation of a Crematorium permitted in this zone?

The Board reviewed the City of Corner Brook Development Regulations and determined that a funeral home is listed as a discretionary use in the Community Service (CS) use zone table (Schedule C).

Schedule B further identifies crematoria as an example of a Funeral Home.

Is the building and operation of a Crematorium a discretionary use in the subject Zone?

Yes, the building and operation of a crematorium is a discretionary use in the CS zone.

What procedure is the City required to follow when dealing with the Crematorium application?

Since this application for development is a discretionary use under the City of Corner Brook Development Regulations the city is required to provide residents with public notice that such an application has been received and provide adequate time for residents to provide input.

Regulation 26 of the Development Regulations states that the Authority must give notice of an application for a discretionary use by public advertisement.

*26. NOTICE OF APPLICATION*

*The Authority may, and when a variance is necessary under Regulation 12 and the Authority wishes to consider whether to authorize such a variance, when a change in nonconforming use is to be considered under Regulation 82 and/or Regulation 83, or when the development proposed is listed as a discretionary use in Schedule C of the Regulations shall, at the expense of the applicant, give notice of an application for a permit or for outline planning permission, by public advertisement in a newspaper circulating in the area or by any other means deemed necessary.*

Further, Regulation 128 of the Development Regulations states that discretionary uses may be permitted provided that the Authority is satisfied that the development is not contrary to the intent of the Regulations or Municipal Plan or to the public interest; that the Authority has given public notice; and that objections and representations have been considered.

*128. DISCRETIONARY USES*

*Subject to these Regulations, the uses that fall within the Discretionary Use Classes set out in the appropriate Use Zone Table in Schedule C may be permitted in that Use Zone if the*

*Authority is satisfied that the development would not be contrary to the general intent and purpose of these Regulations, the Municipal Plan, or any further scheme or plan or regulation pursuant thereto, and to the public interest, and if the Authority has given notice of the application in accordance with Regulation 26 and has considered any objections or representations which may have been received on the matter.*

Did the City follow the requirements with respect to the legislation for an application for discretionary use?

The Board learned that the City ran a public notice of the application in the March 16, 2021 edition of the Western Star. Further evidence was presented to the board showing that all residents within 250m of the proposed development were notified of the application on March 11, 2021. The City Clerk, Ms. Redmond, stated that notice of the proposed development was posted to the city website on March 16, 2021. Mr. Skinner stated that on March 19, 2021 residents of the area were notified that the deadline for submissions regarding the application were extended to April 12, 2021. A public notice of the extension for submissions was then confirmed at the council meeting on March 22, 2021.

The Board heard evidence that there was a sharing of information on the health, physical and social effects of a crematorium between the appellant and all city counsellors prior to the meeting of May 31, 2021. In addition, the board heard evidence that prior to the meeting of May 31, 2021, counsellors received an analysis of the petitions from residents, feedback from the general public and the 2020 study by the National Collaborating Center for Environmental Health. As well, a letter from Mr. Barrie Lawrence, Senior Environmental Scientist, Pollution Prevention Division with the Department of Environment and Climate Change was included as part of the Request for Decision (RFD) supplied to all Counsellors prior to the meeting.

Did the City of Corner Brook have the authority to approve the subject application?

The Board learned that Regulation 128 of the City of Corner Brook Development Regulations states;

*“discretionary uses may be permitted provided that the Authority is satisfied that the development is not contrary to the intent of the Regulations or Municipal Plan or to the public interest; that the Authority has given public notice; and that objections and representations have been considered.”*

What are the grounds stated for the appeal?

The Appellants ground for appealing the decision of the City of Corner Brook to approve the application to build and operate a Crematorium at 167 Country Road are based on the following grounds:

- Council's decision making process was not transparent or unbiased as due consideration of objections from existing residents was denied;
- Opposing arguments and documents were dismissed and information, such as a legal letter, was not shared with Council;
- The decision appears to have be pre-determined on information that was not shared with residents;
- A land use assessment report was not required by the City contrary to the City Municipal Plan and Development Regulations;
- The City failed to properly exercise its discretion in relation to the proposal which does not complement future development of community services uses and failure to address long and short term impacts; and

The Board heard that Council followed all requirements for consideration of a discretionary use application including public notice of the application as required under Section 26 of the Regulations and other considerations including the public feedback as required under Section 128.

The Board heard that all documentation received and public feedback received was in whole or summary format, was provided to Council as part of the RFD.

The Board heard that a land use assessment is only requested if the application requires a re-zoning to accommodate the application and is at the discretion of Council.

The Board did not hear any evidence to support the contention that the City failed to exercise its discretion in relation to this application.

## Board's Conclusion

After reviewing the information presented to this Board, the Board concludes that the Authority acted properly and within its discretion with regards to the application to build and operate a crematorium at 167 Country Road.

The Board must act in accordance with section 42 (1) of the *Urban and Rural Planning Act, 2000*.

*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.*

## Board Order

The Board orders the decision of the City Corner Brook to approve a crematorium at 167 Country Road City of Corner Brook be confirmed.

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 Corner Brook, Newfoundland and Labrador, this 13<sup>th</sup> October, 2021 October 13, 2021.



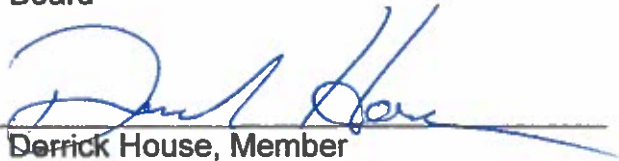
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Lloyd Walters, Chair  
West Newfoundland Regional Appeal  
Board



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Boyd Noel, Member  
West Newfoundland Regional Appeal  
Board



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Derrick House, Member  
West Newfoundland Regional Appeal  
Board