

**LARADOR REGIONAL APPEAL BOARD**

**URBAN AND RURAL PLANNING ACT, 2000**

**APPEAL**

**15-006-057-015**

**BETWEEN**

9163158 Canada Inc

**Appellant(s)**

**AND**

Town of Happy Valley-Goose Bay

**Respondent**

**RESPECTING**

data centre business at 1 St. Laurent Drive in the Town of Happy Valley-Goose Bay

**BOARD MEMBERS**

George Andrews (Acting Chair)  
Reginald Hutchings  
Nina Pye

**DATE OF HEARING**

May 13, 2019

**IN ATTENDANCE**

Akm Moynul Haque, 9163158 Canada Inc, Appellant  
Brian Johnson, Town of Happy Valley-Goose Bay, Respondent  
Robert Andrews, Town of Happy Valley-Goose Bay  
Jim Shouse, Interested party  
Robert Cotter, Secretary to the Labrador Newfoundland Regional Appeal Board  
Christopher Hardy, Technical Advisor to the Labrador Newfoundland Regional Appeal Board

## **DECISION**

### **Facts/Background**

9163158 Canada Inc. (the Appellant), represented by Akm Moynul Haque, was operating a “data centre business” at 1 St. Laurent Drive in the Town of Happy Valley-Goose Bay (the Authority). The Town issued an order on July 30, 2018 (the Order) to the Appellant. The Order outlined the following:

- That the Authority had become aware of the subject business operating at 1 St. Laurent Drive,
- That the Authority had not received a development application for a change of use nor the associated approvals from Service NL,
- That the Order was issued under s.194(c) and s. 404(1)(e) of the *Municipalities Act, 1999*,
- The consequences of not complying with the Order (i.e., S. 404 (5) of the *Municipalities Act, 1999*, and
- That the Order could be appealed and how to file an appeal.

The Appellant filed an appeal in accordance with section 42(4) and (5) of the Urban and Rural Planning Act, 2000.

### **Legislation, Municipal Plans and Regulations considered by the Board**

Urban and Rural Planning Act, 2000

Minister’s Development Regulations, NLR 3/01

Town of Happy Valley-Goose Bay Municipal Plan and Development Regulations

### **Matters presented to and considered by the Board**

#### **What was proposed to the Town?**

The Appellant on Nov 28, 2017 submitted a Building Occupancy/Change of Use Application to the Town. This was to indicate a change in use for 1 St Laurent to a Data Storage Service. The previous use indicates it was a bus garage. It was presented and acknowledged by all parties, that the Appellant paid Municipal taxes for this property for 2017 based on a mil rate of 13.5 while 2018 was based on a mil rate of 55.0.

### **Was there a decision made on the Building Occupancy/Change of Use Application?**

The application was received but no formal decision was made by Council.

### **How is the subject property zoned?**

The Board learned that the subject property located at 1 St Laurent is designated and zoned Mixed Development. Communications is listed as permitted use according to the Mixed Development Use Zone Table in the Town's Development Regulations 2008-2018.

The Board reviewed Schedule B as well as the definitions of General Industry and Light Industry. Schedule A of the Town's Development Regulations defines General Industry and Light Industry as follows:

*GENERAL INDUSTRY means the use of land or buildings for the purpose of storing, assembling, altering, repairing, manufacturing, fabricating, packing, canning, preparing, breaking up, demolishing, or treating any article, commodity or substance. "Industry" shall be construed accordingly.*

*LIGHT INDUSTRY means the use of any land or buildings for any general industrial use that can be carried out without hazard or intrusion and without detriment to the amenity of the surrounding area by reason of noise, vibration, smell, fumes, smoke, grit, soot, ash, dust, glare or appearance.*

The Board reviewed the examples of the Light and General Industry Use Classes listed in Schedule B. There appears to be a mark difference between the examples provided in the General Industry Use Class and the Light Industry Use Class.

### **Was the business established?**

Evidence indicated that the business was being operated without a permit prior to the application being submitted.

### **Why did the Town issue an order to the Appellant?**

The Town learned that there was additional development occurring at 1 St Laurent. On July 30, 2018 the Town issued a Stop Work Order under section 194 c and 404 1 e of the Municipalities Act 1999 Chapter M-24. The Appellant was advised that due to the Town had not received an application for change of use and the other required approvals from Service NL.

**Has the Town registered any changes to their Development regulations?**

On March 30, 2018, by motion of Council, a decision was made to classify all data centres under a general industrial use.

**Did the Town have the authority to issue a Stop Work Order to 9163158 Canada Inc.?**

The Board acknowledges that the Town has the authority to issue Stop Work Orders if the proposed development conflicts with the Town's Municipal Plan and Development Regulations. However, evidence was provided through a letter of acknowledgement, from the Town, dated Nov 28, 2017, that a completed business application was received.

The Town proceeded to issue a Stop Work Order in July without making a decision on the original application from the Appellant.

## **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, although having the authority to issue the order, the Town acted prematurely as there was an application from the Appellant and no decision rendered from Council.

Therefore, the Board reverses the Respondent's Stop Work Order dated July 28, 2018. The Board directs the Town to render a decision on the Appellant's application dated Nov 28, 2017. If the Town wishes to refuse the application based on the Town's motion of March 30, 2018, to classify data centres under general industrial uses, there is a formal process to make the necessary changes to its development regulations.

**Order**

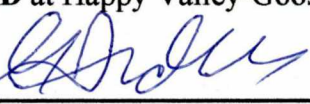
Based on the information presented, the Board orders that the decision to issue a Stop Work Order be reversed.

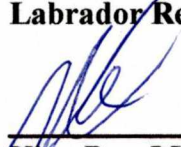
The Respondent and the Appellant(s) are bound by this decision of the Labrador Regional Appeal Board.


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 Labrador 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 Happy Valley-Goose Bay, Newfoundland and Labrador, this 14th day of May 2019

  
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**George Andrews, a/Chair**  
**Labrador Regional Appeal Board**

  
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**Nina Pye, Member**  
**Labrador Regional Appeal Board**

  
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**Reg Hutching, Member**  
**Labrador Regional Appeal Board**