

WEST NEWFOUNDLAND REGIONAL APPEAL BOARD

URBAN AND RURAL PLANNING ACT, 2000

APPEAL

15-006-054-012

BETWEEN Country Haven Funeral Home Ltd. **Appellant(s)**

AND City of Corner Brook **Authority**

RESPECTING Refusal of an application for a crematorium at 167 Country Road,
Corner Brook, NL

BOARD MEMBERS Chair: Lloyd Walters
Member: Boyd Noel
Member: Derrick House

DATE OF HEARING September 20, 2018, 9:00 AM
Holiday Inn Express Hotel
Deer Lake, NL

IN ATTENDANCE

Name of Respondent: Darryl Skinner, Development Inspector III,
City of Corner Brook
Lorilee Sharpe, Solicitor,
City of Corner Brook
Appellant(s) name: Dwayne Parsons,
Owner/Operator, Country Haven Funeral Home

Interested parties that presented at the hearing
Dave Temple

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

DECISION

Facts/Background

On February 15, 2017, the Applicant, Dwayne Parsons on behalf of Country Haven Funeral Home Ltd., applied to construct a crematorium at 167 Country Road in the City of Corner Brook. On August 22, 2017, the City informed the Applicant by way of a letter that the application had been refused. The letter outlined that the refusal could be appealed and how to file an appeal.

The Appellant is appealing Council's decision to refuse the Appellant's application.

In accordance with the *Urban and Rural Planning Act, 2000*, a public notice of the appeal was published in *The Western Star* on April 4, 2018 and a notice of the time, date, and place of the Hearing was provided to the appellant(s) and respondent on August 28, 2018.

Legislation, Municipal Plans and Regulations considered by the Board

Urban and Rural Planning Act, 2000

City of Corner Brook Development Regulations

Matters presented to and considered by the Board

How is the Subject Property Zoned?

The property at 167 Country Road, Corner Brook is Zoned Community Service (CS)

Is a Crematorium an allowed use within the Community Service (CS) zone?

The Board accepts that a Funeral Home is allowed as a discretionary use in a CS zone as outlined in Schedule "C" of the City of Corner Brook 2012 Development Regulations. However, Mr. Skinner and the Ms. Sharpe for the city of Corner Brook in their presentations argued that a crematorium is not necessarily an auxiliary use of a Funeral home and can in fact be a standalone operation. Several examples were provided to support this contention. They argued that therefore the City has discretionary power when dealing with this application. The Board finds no fault with this argument that in fact this application for development can be considered as a discretionary use under the City of Corner 2012 Development Regulations and Schedule C of the

The Solicitor for the City of Corner Brook further referenced section 42(11) of the *Urban and Rural Planning Act 2000*. Printed below:

“Notwithstanding subsection (10), where a council, regional authority or authorized administrator may, in its discretion, make a decision, a board shall not make another decision that overrules the discretionary decision.

“The Board considered case law, *Stroud v. Newfoundland and Labrador (Central) Regional Appeal Board* wherein Justice Richard D. LeBlanc . refers to *O’Dea v. City of St. John’s*(City), (2004), 241 Nfld. & P.E.I.R. 199 (N.L.S.C. (TD), per Goulding, J. at paragraph 20.).

“While the Board must act in the manner described above in considering a discretionary decision made by a regional authority, this does not mean that every such decision is absolutely immune from review and possible reversal. Any decision made by a town council or other reasonable authority that involves an exercise of discretion must be made on the basis of a proper understanding of the request. Where, as here, the town proceeds to make its decision not knowing the location where the development is to occur, or at the least, having an erroneous understanding of the location, the Board is entitled to exercise its appeal function to override the decision made. If the authority makes its decision based upon an erroneous view of material circumstances, the discretion exercised is not immune from being overruled. The same can be said where the authority acts with bad faith or improper bias or fails to follow procedural guidelines that permit proposals to be appropriately considered. The Board’s role is not merrily to “rubber stamp” the decision solely on the basis it was one made within the discretion of the authority. The process leading up to the exercise of the discretion is important. Where that process is appropriate, it is then that the board is not permitted to override the discretion exercised.”

Therefore, the Board asserts its right to consider the matter before it and make an appropriate decision.

Did the City of Corner Brook follow proper procedure when reviewing the application?

Yes, the Board finds the City of Corner Brook followed appropriate procedures as outlined in section 26 of the City of Corner Brook 2012 Development Regulations when considering the application.

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

Yes, under the City of Corner Brook 2012 Development Regulations the City did have the authority to refuse the subject application.

Did the City of Corner Brook adequately notify the Appellant of Councils decision?

Section 25 of the City of Corner Brook 2012 Development Regulations state:

“The Authority shall, when refusing to issue a permit or attaching conditions to a permit, state the reasons for so doing.”

Section 35(1)(g) URPA 2000 states:

“requiring that a decision of a council or regional authority with respect to a permit be in writing and state reasons for a refusal of or conditions placed upon a permit;

In its letter to the applicant, dated August 22, 2017 the City of Corner Brook states:

“Your application was voted on at the public council meeting on August 21, 2017 and council voted to refuse the application for the proposed Crematorium to be constructed at the rear of the existing funeral home at 167 Country Road, Corner Brook, NL.”

There were no reasons for the refusal provided in the letter, contrary to Section 25 of the City of Corner Brook 2012 Development Regulations.

Therefore, the Board finds that by failing to state the reason for the refusal of the application, the City of Corner Brook did not properly notify the Applicant of its decision and were in violation of section 25 of the City of Corner Brook 2012 Development Regulations.

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 review, the Board finds that the City of Corner Brook erred in its notification to the Applicant by not stating the reasons for refusal of the subject application.

Therefore, the Board varies the Respondent’s decision to deny the application for a proposed Crematorium to be constructed at the rear of the existing Funeral Home at 167 Country Road, Corner Brook, NL.

Order

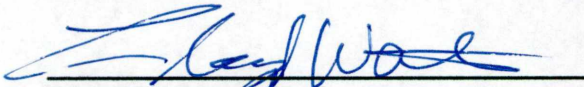
Based on the information presented, the Board orders that the decision by the City of Corner Brook to deny the subject application is varied. That is to say the Board directs the City of Corner Brook to vary the letter issued to the appellant and directs the city to provide reasons to the applicant for denying the application.

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

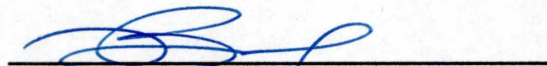
In accordance with section 44(3) of the *Urban and Rural Planning Act, 2000*, the Board further orders the Respondent pay an amount of money equal to the appeal filing fee of \$230.00 to the Appellant.

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).

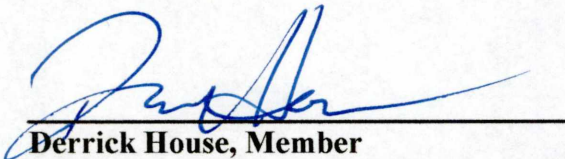
DATED at Deer Lake, Newfoundland and Labrador, this 20th day of September, 2018. _____



Lloyd Walters, Chair
West Newfoundland Regional Appeal Board



Boyd Noel, Member
West Newfoundland Regional Appeal Board



Derrick House, Member
West Newfoundland Regional Appeal Board