**URBAN AND RURAL PLANNING ACT, 2000**

**Section 40-46**

**https://www.assembly.nl.ca/legislation/sr/statutes/u08.htm#40_**

Appeal #: 15-006-087-002

Adjudicator: John R. Whelan Q.Arb

Appellant(s): Ian Hutton

Respondent / Authority: Town of Paradise

Decision Dated: March 22, 2024

Date of Hearing: February 29, 2024

Appearances:

Lauren Walker – For the Appellant

Alton Glenn – For the Respondent

Re: Appeal of Ian Hutton against a Council decision to refuse an application for a storage business at 106 St. Thomas Line, Town of Paradise.

## Procedural Background

On or about April 24, 2023 the Appellant submitted an application to the Town of Paradise ("the Town") for a storage business at 106 St. Thomas Line. On or about June 6, 2023, the Council considered the application at a public meeting and refused to grant the permit. On or about June 22, 2023 the Town sent a notice of refusal letter to the Appellant.

The Appellant had already filed an appeal of the Council decision on or about June 20, 2023.

## Grounds of Appeal

The Appellant is appealing the refusal on the following grounds:

- That the Town had permitted other properties to operates businesses near 106 St. Thomas Line; and,
- The refusal is unfair as other businesses operating nearby generate traffic and noise.

The Appellant asks that I return this decision to the Town and provide instructions regarding its proper consideration.

**Position of the Town**

That Town has taken the position that the Appellant's intended use of the property is a Prohibited Use under its Development Regulations. The Appellant argued that it properly complied with its procedural obligations and that the refusal is ultimately a discretionary decision of Council.

The Town submitted that I should uphold the decision of Council to refuse the application.

**Onus**

It may be helpful to remind the parties that in an Appeal, the onus rests upon the Appellant. In this instance, the Town is not under an obligation to justify its conduct. Rather, the Appellant must prove their case that the decision of the Town should be overturned.

**Analysis**

The Appellant's proposal involved the installation of additional buildings on his property to accommodate short term storage lockers for individuals.

The construction of additional structures on a property constitutes "development" as defined in the *Urban and Rural Planning Act, 2000*.[1]

As noted in the Technical Report:

> *The subject property is zoned Residential Low Density (RLD) under the Town's Development Regulations and Land Use Zoning Map. Industrial uses are not a permitted use nor a discretionary use for the RLD zone. Home-based businesses may be permitted in the RLD zone as a discretionary use.*
>
> *According to the Town's Development Regulations, a storage facility is an industrial use. The definition of industry includes the use of land or buildings to store any article, commodity or substance:*
>
> *GENERAL INDUSTRY means the use of Land or Buildings for the purpose of storing, assembling, altering, repairing, manufacturing, fabricating, preparing, processing, testing, salvaging, breaking up, demolishing, or treating any article, commodity or substance, and "Industry" shall be construed accordingly.*
>
> *Schedule B of the Development Regulations lists use classes and provides examples of each use class. For the light, non-hazardous or non-intrusive industrial use class, the examples provided in Schedule B are light industry, parking garages, warehousing and distribution, workshops, and indoor storage.*[2]

[1] SNL2000, c. U-8 at s.2(g).
[2] Appeal package at p. 6

Whether a facility intended for the storage of residential property is properly considered Light Industry, or General Industry is not material. Industrial use is neither permitted nor discretionary in the RLD zone.

The RLD Zone does permit the operation of Home-Based Businesses. As noted in the Technical Report:

> *Home-based businesses as defined in the Development Regulations may include professional, medical, personal, general service and office uses but limit industrial uses to small-scale manufacturing such as arts and crafts:*
>
> *HOME-BASED BUSINESS means a secondary Use of a Dwelling Unit or its Accessory Building by at least one of the residents of such Dwelling Unit to conduct a gainful occupation or business activity, and subsidiary to a residential Use. Includes professional, medical, personal, general service, and office uses, as well as small-scale manufacturing such as crafts and art, but does not include a woodworking shop for the purposes of manufacturing such things as stairs or cabinets.*[3]

The Appellant proposed that the business would involve the construction of additional buildings to accommodate the storage. I find that the construction and use of multiple outbuildings would fall outside the scope of operations considered to be Home-Based Businesses. While the definition does contemplate "industrial uses" it restricts those uses to types of use consistent with small-scale manufacturing "such as arts and crafts." I find that the operation of commercial storage units is not considered comparable to the construction of arts and crafts, and the Town was reasonable in concluding the same.

Further, I find that the construction of additional accessory buildings – large enough to store personal property ordinarily contained in residential premises, is not activity that would be ordinarily considered subsidiary to residential use.

I find that there is no overriding error with the Town's consideration of the Appellant's proposal and the application of its Development Regulations. The decision of Council to deny the permit was consistent with the Development Regulations. The Council enacted its decision in a manner consistent with the Development Regulations, provided written reasons to the Appellant, and advised the Appellant of their right to appeal.

*Failure to Provide Procedural Fairness to the Appellant*

While not articulating its argument as one of procedural fairness, the Appellant argued that they had been treated unfairly by the Town. Specifically, that the allowance of other businesses at adjacent properties constitutes differential treatment to the Appellant.

Respectfully, I cannot reach this conclusion. No evidence was provided regarding the permitting and development processed for adjacent properties. No evidence was provided that the properties

[3] *Ibid at* p. 11.

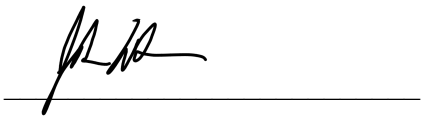
were considered under the same development regulations. No evidence was provided that the businesses operated at the adjacent properties were similar in scope to the Appellant's intended business. Consequently, while I accept that there may well be adjacent businesses to the subject property, I have no evidence to conclude that those businesses would have created an objectively reasonable expectation of approval for the Appellant.

I conclude that there is insufficient evidence to support the contention that the Appellant was treated in a manner inconsistent with the principles of procedural fairness.

**Order**

1. The Appeal is dismissed;
2. The Town's refusal is confirmed.

DATED at St. John's, Newfoundland and Labrador, this 22th day of March 2024.



John R. Whelan Q.Arb

Adjudicator