

MANITOBA) Order No. 75/03
)
THE PUBLIC UTILITIES BOARD ACT)
)
THE CEMETERIES ACT) May 1, 2003

BEFORE: G. D. Forrest, Chairman
M. Girouard, Member
S. Proven, Member

**APPLICATION BY WERESCHUK FUNERAL CHAPEL
AND WINNIPEG MORTUARY SERVICES FOR
APPROVAL TO CONSTRUCT A CREMATORIUM IN
THE RURAL MUNICIPALITY OF ST. ANDREWS**

On February 25, 2003, Mr. Paul Wereschuk (the Applicant), co-owner and operator of Wereschuk Funeral Chapel and Winnipeg Mortuary Services located at 447 Selkirk Avenue, Winnipeg, Manitoba made Application to The Public Utilities Board (the Board) to construct a crematorium which will form part of a structure to be known as Alician Fields Crematorium and Memorial Centre. This Order only deals with crematorium aspects.

This Application is made pursuant to The Cemeteries Act (the Act). Subsection 19(6) of the Act sets out the

requirements for the approval of plans of the crematorium and Subsection 19(7) sets out the requirements for the authority to maintain and operate the crematory. This Order only deals with Subsection 19(6) approvals.

The crematorium is to be located at 420 Airport Drive on the St. Andrews Airport property in the Rural Municipality of St. Andrews. The following documents were filed by the Applicant in support of the Application:

1. Site plans showing the location of the structure on the airport property.
2. Floor plan of the structure showing the location of the proposed crematorium.
3. Letter dated December 11, 2002, from St. Andrews Airport Inc. to Environment Canada indicating that the Applicant has received approval for their facility from St. Andrews Airport Inc. and NAV Canada. The letter also confirms no tenants on the airport property oppose the facility.
4. Specifications and documentation of the retort from Crematory Manufacturing & Services, Inc. the proposed supplier of the crematorium equipment.

In addition the Board received the following:

1. A letter dated December 30, 2002 from Mr. Larry Strachan, Director of Environmental Approvals of the Department of Conservation confirming that the Department is satisfied that the retort operation, as designed, will satisfy the requirements of Manitoba Incinerators Regulation 91/88R. The Department certified that:

"Accordingly, I hereby certify, pursuant to Section 19(1)a, Part II of the Manitoba Cemeteries Act, that the plans provide for the installation of the proper equipment for the disposal of human bodies by cremation and are satisfactory in all respects."

2. A letter dated March 19, 2003 from Richard Nichol, Senior Access Management Analyst of the Department of Transportation and Government Services to Mr. Craig Skonberg of the St. Andrews Airport Authority advising that on the understanding that the proposed structure will be moved approximately 220 feet south of its original location, the structure will not be affected by the statutory controls under The Highways Protection Act.
3. A letter dated April 9, 2003 from Mr. E. Arnold, Manager of the Selkirk & District Planning Area Board confirming that the conditional use for the crematorium was approved by Council for the Rural Municipality of St. Andrews on April 8, 2003 and that the proposal now complies with Subsection 19(6) of The Cemeteries Act. A copy of the

resolution of the Rural Municipality of St. Andrews was forwarded to the Board by the Applicant on April 11, 2003.

The letter also confirms that no dwelling house exists within 200 yards of the proposed crematorium.

4. At the request of the Board, the Rural Municipality of St. Andrews also filed a letter dated April 22, 2003 stating the following:
 - i. Council passed a resolution to approve Conditional Use Application #45/02 on April 8th, 2003 without prejudice or precedent to the position of the R. M. of St. Andrews not having jurisdiction on this matter.
 - ii. The application was approved in accordance with the Zoning By-law of the municipality.
 - iii. The application is valid in accordance with by-laws of the municipality.
 - iv. The application meets all municipal and other building restrictions.
5. During the filing process an issue arose as to jurisdiction over land use planning matters related to the St. Andrews Airport and a letter dated March

5, 2003 from Ms. H. MacKnight, Assistant Deputy Minister of the Department of Intergovernmental Affairs to Mr. E. Arnold identified earlier was filed with the Board which indicated that:

"It is our understanding that the airport lands are no longer owned by the Government of Canada, and that the Rural Municipality of St. Andrews, which now owns the property, has created the St. Andrews Airport Inc. to manage the airport facility."

and,

"Based on the information available to the Department of Intergovernmental Affairs, it is our conclusion that local planning authority applies pursuant to *The Planning Act* of Manitoba."

In a letter dated received by the Board on April 22, 2003, Mr. G. Pike of 24 Mitchell Bay of St. Andrews, Manitoba objected to the Application. Mr. Pike advised that 297 residents who reside mainly next to the Airport support his objections which include the following:

1. St. Andrews Council in issuing its Conditional Use Permit on April 8, 2003 did not follow public notification requirements.
2. Facts were not presented under The Planning Act - Section 53(7)(b) to approve the permit.

3. Jurisdiction over planning on the airport property was not conclusive.
4. Environmental concerns have not been fully addressed.

Mr. Pike requested the Board consider the matters in its review.

In a letter also dated April 22, 2003, Mr. M. Zelyck, former reeve of the Rural Municipality of St. Andrews (1992 - 1998) expressed similar concerns to those raised by Mr. Pike.

Ms. Barbara Wilson of the Rural Municipality of St. Andrews also wrote the Board on April 22, 2003. While Ms. Wilson also provided comment on jurisdictional, environmental and process issues, she also reviewed with the Board her concerns regarding the handling of bodies and contagious diseases. She alleges that Manitoba's guidelines for cause of death and autopsies are not adequate.

While noting that the guidelines for emissions from Manitoba Conservation have been met by the applicant, she noted these guidelines date back to approximately 1979.

Ms. Wilson also touched upon land use issues particularly the proximity of the proposed crematory to land dedicated for a community centre. She noted that the centre and related activities at the centre are directly downstream of predominantly north west winds in the area.

Ms. Wilson together with Ms. Marilyn Woloshyn raised concerns as to whether cremations performed at a crematorium located on industrial land was disrespectful to the deceased person.

Ms. Marilyn Woloshyn also of the Rural Municipality of St. Andrews wrote the Board on April 27, 2003. Again, this respondent commented on issues of process followed by the Rural Municipality, environmental matters and as noted above, also about dignity of the person. Ms. Woloshyn also expressed concern about future development on the airport property because of the crematorium and questioned the need for an additional crematorium in the marketplace at this time.

Board Comments

The Board notes that the Applicant has made an application to construct a crematorium pursuant to Subsection 19(6) of The Cemeteries Act and that the authority to maintain and operate the crematorium, once constructed, is an annual licensing requirement under Subsection 19(7) also of The Cemeteries Act. In considering an Application for license the Board will again require certain confirmations as noted therein.

The Board also noted that Subsection 19(2) and 19(3) speak to the location of crematories and they state as follows:

"Limitation on construction of crematories

19(2) No crematory shall be constructed nearer to any dwelling house than 200 yards, except with the

consent in writing of the owner of the dwelling house, if he is the occupier thereof, and also with the consent of the tenant or occupier, if the owner is not the tenant or occupier thereof."

"Crematories authorized

19(3) Subject as herein provided, and subject

(a) to a zoning by-law under *The Planning Act*;

(b) to all validly enacted municipal by-laws; and

(c) to all municipal and other building restrictions in force in the municipality;

applicable thereto, a crematory may be constructed, maintained, and operated, in any municipality and at any place therein, either in a cemetery or elsewhere."

The Board would like to express its gratitude for the input it has received from many of the residents in the area.

Having carefully reviewed the application and all the correspondence, the Board is satisfied that the Applicant has fully met the requirements of Subsections 19(2), 19(3) and 19(6) and therefore, will approve the plans for and the site of the proposed crematory.

In doing so, the Board considered the question of jurisdiction and accepted the position of the Department of Intergovernmental Affairs, and accordingly, accepted the approvals of the Rural Municipality of St. Andrews. The Board also assumes and accepts that the approvals of the Rural Municipality of St. Andrews have been provided consistent with their statutory requirements.

Many of the environmental issues raised related to the funeral home aspects of the structure and were not germane to the consideration of the crematorium. In this regard the Board has forwarded a copy of these submissions to the Department of Conservation for their information and consideration. With respect to the crematorium, the Department of Conservation has examined the proposed crematorium facility and also, has provided the necessary approval required by the Board.

Many of the respondents reviewed issues related to land use policies and in this regard, the Board notes that these are issues for the local planning authority to consider in providing the Board with their approval pursuant to Subsection 19(6) (b). However, the Board noted that Subsection 19(2) and 19(3) of the Act clearly provides a degree of latitude as to the location of crematoriums in any municipality.

Issues related to the appropriateness of crematoriums on industrial sites and the alleged degradation to the respect for deceased persons, the Board notes that this issue is a determining factor to be considered by any person before subscribing to the services offered by the crematorium.

While there are a number of crematoriums located throughout Manitoba, the Board would note that viability is a business decision to be taken by an owner.

Finally, with respect to communicable diseases, the Board noted such issues are addressed by The Public Health Act and supporting regulations.

IT IS THEREFORE ORDERED THAT:

1. Alician Fields Crematorium & Memorial Centre be and is hereby granted approval for the plan for and the site of the proposed crematorium.

2. Pursuant to Subsection 19(7) of The Cemeteries Act, Alician Fields Crematorium & Memorial Centre make application to the Board for license to maintain and operate the crematory.

THE PUBLIC UTILITIES BOARD

Chairman

Secretary