



Docket: LA19-015

Order: LA20-04

IN THE MATTER of an appeal by Jessie Frost-Wicks et. al., of a decision of the City of Charlottetown, dated September 26, 2019, to approve the rezoning of a property from R-2 (low density residential) to R-3 (medium density).

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Phil Rafuse,
Appeals Administrator
Island Regulatory & Appeals Commission

BEFORE THE COMMISSION ON Wednesday, October 7, 2020.

J. Scott MacKenzie, Q.C., Chair

M. Douglas Clow, Vice-Chair

Erin T. Mitchell, Commissioner

ORDER

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Appearances & Witnesses

1. **For the Appellants, Jessie Frost-Wicks, et. al.**

Witnesses:

Jessie Frost-Wicks

2. **For the Respondent, City of Charlottetown**

Counsel:

David W. Hooley, Q.C., Cox & Palmer
Melanie McKenna, Cox & Palmer

Witnesses:

Laurel Palmer Thompson, City Planner
Greg Morrison, City Planner

3. **For the Developer, Weymouth Properties Ltd.**

Counsel:

James C. Travers, Q.C., Stewart McKelvey

IN THE MATTER of an appeal by Jessie Frost-Wicks et. al., of a decision of the City of Charlottetown, dated September 26, 2019, to approve the rezoning of a property from R-2 (low density residential) to R-3 (medium density).

Reasons for Order

Overview

1. On September 26, 2019 the City of Charlottetown (the "City") approved an application filed July 16, 2019, by Weymouth Properties Ltd. (the "Developer") to rezone a vacant lot at 38 Palmers Lane, Charlottetown, PEI (PID #275156) (the "Property") from R-2 (Low Density Residential) to R-3 (Medium Density) to allow for the construction of a three-story, 18-unit apartment building (the "Application").¹
2. A number of Charlottetown residents appealed the decision of the City to approve the rezoning, alleging that the decision was not based on sound planning principles, did not comply with the City's Official Plan and was not a *bona fide* exercise of discretion by City Council.

Planning Department Recommends Against Public Meeting

3. On August 6, 2019, the City's planning department (the "Department") filed a ten-page report with the City's Planning Board.² The report was prepared by City planner Laurel Palmer Thompson ("Thompson"). Department staff recommended against proceeding to public consultation on the Application. In making its recommendation, the Department described, in part, the existing zoning within the current neighbourhood as follows:

Zoning within this neighbourhood is R-2 consisting of low density single family and two-unit buildings to the west as well as on the opposite side of the street, in contrast to the two 2.5 storey (R-4) apartment buildings to the east, which then transition into the commercial properties (i.e. car dealer, real estate office) on St. Peters Road. The lot in question contained a single-detached dwelling which was demolished after 2010.

4. In its report, Department staff highlighted various portions of the City's official plan, noted an increased demand in the City for housing, and stated that the vacancy rate within the City was "very low". However, in recommending against proceeding to a public meeting, the Department stated that the proposed rezoning would not provide a transition between the existing apartment buildings and low density uses and would result in a "shifting of a higher density residential zone further into an existing, low density mature neighbourhood", in conflict with the City's Official Plan:

¹ Application dated July 16, 2019 – Record, **Tab 2**.

² Record, **Tab 2**.

However, for this proposal the existing neighbourhood context must be considered. The majority of the neighbourhood is currently comprised of one and two unit dwellings to the west of the subject property as well as on the opposite side of the street. This is in, [sic] contrast to the two 2.5 storey apartment buildings on the east, which then transition into the commercial properties (i.e. car dealer, real estate office) on St. Peter's Road. The addition of a third, 3-storey 18-unit apartment building would result in a westward shift of the low-to-high density transition along Palmer's Lane. Rezoning the lot to R-3 would not provide any form of transition or buffer between the existing apartment buildings and low density uses. The proposed 18-unit building is larger than the existing 12 unit buildings therefore, the density would increase between the existing apartment buildings and low density uses. The decrease in zoning (R4-R3-R2) would actually result in the same hard transition that currently exists between the 12 unit building and the single detached dwellings to the west. However, it would now be one property further westward on Palmers Lane. The general practice in zoning to mitigate land use conflicts between higher density and lower density uses is to allow a transitional use such as town houses or semi-detached dwellings between low and higher density uses.³

Planning Board Recommends Public Meeting and Council Agrees

5. Contrary to the Department's recommendation, Planning Board recommended that the Application proceed to a public meeting.⁴ On August 12, 2019, Council agreed that the Application proceed to a public meeting.⁵

Public Meeting and Resident Feedback

6. The Application was presented at a public meeting on August 27, 2019.⁶ A representative of the Developer made a presentation to Council and members of the public.⁷ A number of residents attended and spoke against the Application.⁸

Planning Department Recommendation

7. On September 3, 2019, following the public meeting, the Department filed an eleven-page report with Planning Board recommending against rezoning the Property.⁹ The Department noted that it had received seven letters opposing the Application and one in favour.¹⁰ The Department reiterated many of its previous concerns¹¹ and suggested that a less dense town-house development is more fitting for the Property:

³ Planning Department Report (Meeting Date August 6, 2019) – **Record, Tab 2.**

⁴ Planning Board Meeting Minutes (Verbatim Excerpt) dated August 6, 2019 – **Record, Tab 2.**

⁵ City of Charlottetown Resolution (Planning #3) dated August 12, 2019 – **Record, Tab 3.**

⁶ **Record, Tabs 4 & 5.**

⁷ Public Meeting of Council (August 27, 2019) Verbatim Minutes – **Record, Tab 5.**

⁸ Ibid.

⁹ This Report, like the August 6th report, was also authored by Thompson.

¹⁰ Planning Department Report (Meeting Date September 3, 2019) – **Record, Tab 6.**

¹¹ Planning Department Report (Meeting Date August 6, 2019) – **Record, Tab 3.**

Notwithstanding, the main issue remains to be the shifting of a higher density residential zone further into an existing, low density mature neighbourhood, which conflicts with the primary objective of Section 3.2 of the Charlottetown Official Plan which states that "Our objective is to preserve the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surroundings". Perhaps a more appropriate option for the site would be a town-house development that is less dense, is more fitting in mass & scale and provides a further transition between higher density development and low density development along the street.¹²

8. The Department suggested that medium density residential development in the area "should be encouraged to be located towards the Commercial Corridor of St. Peters Road rather than into the interior of the existing neighbourhoods."¹³

Planning Board Recommends Denying the Application

9. On September 3, 2019, by a vote of six to three, and following a presentation by Thompson summarizing her report, Planning Board recommended to Council that the Application be rejected.¹⁴

Council Decision and Discussion

10. On September 9, 2019, Council rejected the recommendation of Planning Board and introduced a motion to approve the Application.¹⁵
11. The verbatim transcript from the meeting of Council totals four pages and includes discussion by two councillors. Councillor Tweel spoke against the Application and Councillor Rivard spoke in favour. In support of the Application, Councillor Rivard stated as follows:

*I don't want to get into an argument with Councillor Tweel but we talked about people lobbying and making an effort to lobby for votes; if I recall the floating dock there was a level of lobbying going for a floating dock that people opposed. From a planning perspective what Councillor Tweel is missing is that the Upper Prince Street application was actually forwarded from staff with the recommendation to not approve. This is very different; Planning staff felt that was a good project to take place and it was different. **The reason why I support this project, it wasn't easy and we have lots of information in our binders from Planning staff. There are pros and cons to this. There are parts of the Official Plan that this meets and doesn't meet. We are in a spot where we have a shortage of housing***

¹² Planning Department Report (Meeting Date September 3, 2019) – **Record, Tab 6.**

¹³ Ibid.

¹⁴ Planning Board Meeting Minutes (Verbatim Excerpt) dated September 3, 2019 – **Record, Tab 7.**

¹⁵ City of Charlottetown Resolutions (Planning #1) dated September 9, 2019 – **Record, Tabs 8 & 9.**

right now. My meter certainly flops the way of housing as it is something we desperately need in Charlottetown.¹⁶ [emphasis added]

12. On September 26, 2019, the motion to approve the Application passed second reading.¹⁷

Appeal to Commission and Request for Reconsideration

13. On October 16, 2019, the Appellants filed this appeal with the Commission.
14. On October 22, 2019, the lead appellant, Jessie Frost-Wicks ("Frost-Wicks"),¹⁸ filed a request for reconsideration of Council's decision. This request was denied by Council on December 9, 2019¹⁹ and this matter was subsequently set down for a hearing on February 20, 2020, the first date that was acceptable to the parties.

Submissions from the Parties

The Appellants

15. The Appellants raise three primary arguments against the decision by Council to approve the Application. They submit that the decision was not based on sound planning principles, was not compliant with the City's Official Plan, and was not made with a *bona fide* exercise of discretion.
16. The Appellants argue that the Application does not have merit based on sound planning principles. They argue that Council's focus on the "housing crisis" in the City is not the only factor in determining sound planning, but rather one of many relevant factors for consideration. The Appellants argue that the Official Plan addresses housing shortages and that this topic was considered by the Department in its reports to Planning Board and also raised at the public meeting. The Appellants argue that a severe housing shortage is "not a license to ignore the Official Plan, the advice of the trained professionals whom the City has hired to advise on these very issues, or the concerns of the citizens who live in the area."²⁰
17. The Appellants also argue that the Application is contrary to the goals, objectives, and policies of the Official Plan. They state that the development will be a "further encroachment on what has historically been a low density residential neighbourhood" and will irrevocably change the neighbourhood's character. The Appellants argue that the proposal conflicts with the primary objective of section 3.2 of the City's Official Plan because it does not preserve the built form and density of the existing neighbourhood and is not harmonious with its surroundings.

¹⁶ The votes to reject the Planning Board recommendation and to approve the application each proceeded by way of a five to four split. Regular Meeting of Council (Verbatim Excerpt) dated September 9, 2019 – **Record, Tab 8**.

¹⁷ Again by a five to four vote.

¹⁸ A designation, signed by all of the Appellants, was filed with the Commission designating Frost-Wicks as their representative before the Commission. For ease, Ms. Frost-Wicks is referred to as Frost-Wicks or the "lead appellant".

¹⁹ City of Charlottetown Resolution (Planning #3) dated December 9, 2019 – **Record, Tab 23**.

²⁰ Appellants' Written Addendum to Notice of Appeal (February 12, 2020) – **Exhibit A-1(a)**.

18. The Appellants also argue that Council ignored the expertise of the Department and suggest that the record is insufficient to indicate that the City engaged its own expertise to evaluate the Application. They further contend that the decision was arbitrary and made without consideration of all relevant factors. They argue that there has been no explanation as to how or why the decision was made, other than the reference to the “housing crisis”. In doing so, the Appellants rely on a previous decision of the Commission, *Pine Cone Developments Inc. v. City of Charlottetown*,²¹ and case law from the Supreme Court of Canada.²²
19. The Appellants filed a lengthy notice of appeal and a number of addendums to the notice of appeal. Frost-Wicks testified before the Commission.

The City

20. The City defends its decision on the basis that Council rendered its decision in a reasonable and informed manner, that the Application has merit based on sound planning principles, the Application has support in the Official Plan, and that Council appropriately exercised its discretion in approving the Application.²³
21. The City argues that Council rendered its decision in a reasonable and informed manner. It argues that the councillors were provided with the relevant background information and “voted their conscience accordingly.” The City argues that councillors are elected officials who vote based on the information before them and their own personal knowledge and beliefs.
22. The City states that there is cogent evidence to support the finding that the decision accords with sound planning principles, while recognizing that the housing shortage in the City was “plainly one of the main reasons” it approved the Application. The City states that there is a general obligation on Council to render decisions in accordance with good planning principles, the Official Plan and the Bylaw, but that there is no requirement that it must consider every factor considered by the Department or the Planning Board. In other words, the fact that Council did not specifically or expressly consider land use conflicts, transitions, buffer structures, or the concerns of residents does not mean that Council was not alive to those considerations. Instead, it “suggests that Council/Councillors considered other good planning principles (i.e. enabling an adequate supply of housing) as more relevant and important to this particular decision.”
23. The City states that the decision of Council accords with its Official Plan and relies on various provisions of the Official Plan.²⁴ The City argues that the Application will maximize existing underground services and allow for a moderately higher density development that does not interfere unreasonably with the existing mixed use density neighbourhood.
24. The City contends that the decision of Council was an appropriate exercise of its discretion and was not arbitrary.²⁵ It was based on the reports from the Department, the recommendation from Planning Board, and the concerns of the residents.

²¹ Order LA17-08 (“Pine Cone”).

²² *Congregation des temoins de Jehovah de St-Jerone-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48.

²³ City Written Submissions dated January 18, 2020 – **Exhibit R-2**.

²⁴ Including sections 3.1, 3.1.1, 3.1.2, 3.1.3, and 3.3.2.

²⁵ The City also relies on *Seanic Canada Inc. v. St. John's (City)*, 2014 NLTD(G) 7 at paras.51-53.

25. The City argues that it is not obliged to follow the recommendation of its staff. Relying on *Doiron v. City of Charlottetown*,²⁶ the City acknowledges that it should “always demonstrate, by discussion or in writing, their consideration of relevant evidence and the reasons attributed to their decision.”
26. The City acknowledges that Council placed “significant emphasis on the ‘housing crisis’ in Charlottetown as part of their reason in allowing the rezoning application. The City argues that there is no single list of relevant factors that Council must consider in a rezoning decision, but rather Council must “intuitively weigh and weight all factors.” Counsel for the City argued that, because all councillors attended the public meeting and listened to the concerns of residents, “it is reasonable to state that Council was alive/attuned to the issues and factors” the Appellants allege were not considered.²⁷
27. The City urges deference by the Commission towards Council’s decision and relies on a number of previous decisions of the Commission in support of this position.²⁸
28. In support of its position, the City called two witnesses: Thompson, who was the City planner responsible for the Application and the author of the reports from the Department, and Greg Morrison (“Morrison”), who spoke about the City’s process on reconsideration of the decision to approve the Application.

The Developer

29. Counsel for the Developer made brief submissions at the hearing before the Commission, reiterating the position of the City, stating that the Application meets sound planning principles, and pointing to the “housing crisis” in the City in support of its request that the appeal be denied.
30. The Developer did not call any witnesses in support of its position.

Discussion and Analysis

31. The Commission has considered the written and oral submissions of the parties, the record, and the oral evidence of Frost-Wicks, Thompson and, to a lesser extent, the oral evidence of Morrison. Weighing the admissible evidence is always a discretionary exercise that is undertaken carefully by the Commission, and it is also an exercise that is informed by the cases, provisions, and principles that apply to the particular municipal decision that is under review.
32. While the Commission has been asked to consider a number of different arguments for and against the City’s decision, the Commission is satisfied that it can dispose of this appeal on primary basis that the City’s decision does not meet its obligation of procedural fairness. Neither the relevant legal considerations nor their evaluation by Council are revealed upon review of the record delivered to the Commission by the City. In particular, the verbatim transcript, minutes, and resolutions from Council are insufficient to persuade the Commission that Council properly evaluated the Application. For completeness, the

²⁶ Order LA10-06 (“Doiron”) at para.39.

²⁷ Ibid.

²⁸ *L & A MacEachern Holdings Ltd. V. City of Charlottetown* (LA08-04) and *Hanmac Inc. v. City of Charlottetown*, (LA15-06) (“Hanmac”).

Commission will also address the issue of sound planning principles. It too is dispositive of this appeal.

Reasons of Council to Justify Approval of the Application

33. A municipal council, such as the City, must provide reasons for its planning decisions. This principle is well-known to the City. For example, in *Pine Cone*,²⁹ the Commission explained that reasons assist the public and the developer to understand how and why a decision was made. Reasons also assist the Commission in fulfilling its appellate review responsibilities. Finally, reasons foster respect for public decision-making – whether by a municipal council or the Commission:

*In addition to making decisions animated by sound planning principles, a municipal council is also obligated to provide reasons for its planning-related decisions. Reasons provide a justification to the public and the developer. They are also a critical part of any review by the Commission.*³⁰ [emphasis added]

34. In *Hanmac*, a decision that pre-dates *Pine Cone*, the City denied a rezoning request, contrary to the recommendations of the Department and Planning Board. In discussing the Council's duty of procedural fairness in the context of denying a rezoning application, the Commission stated:

*A careful evaluation of Hanmac's application was given by the Planning and Development Officer and by Planning Board and these evaluations supported Hanmac's rezoning application. While Council is free to make a decision contrary to the recommendation of its staff and its Planning Board, as noted in Congregation, a municipality must undertake a careful evaluation of the application before it in order to meet the duty of procedural fairness. The verbatim minutes of July 14, 2014 persuade the Commission that there is insufficient evidence to support a finding that Council carefully evaluated the application before it. The Commission finds that the City did not meet the duty of procedural fairness as it failed to decide Hanmac's application on its merits.*³¹ [emphasis added]

35. The City contends that it is not required to follow the recommendations of its planning staff or Planning Board. In support of this position, it relies upon the Commission's decision in *Doiron*. The Commission agrees that Council for the City is not bound to follow the advice of its professional staff or the recommendations delivered by its Planning Board. However, the Commission's guidance in *Doiron*, as relied upon by and set out in the City's written submissions in this case, is very clear. In rejecting a recommendation, Council must demonstrate sound planning reasons for doing so and its decision-making process should clearly demonstrate what factors were considered that support the final decision. That final decision must be rooted in planning principles:

²⁹ *Pine Cone* at para.56.

³⁰ *Ibid.*

³¹ *Hanmac* at para.42.

*City Council is not bound by recommendations of their planning department. In fact, I believe that they have a public duty to not blindly follow submitted recommendations and to judge the validity of those recommendations. The Council is free to decide in the alternative but they should expect no less of their decision making process than they expect of the basis upon which a staff recommendation is made. **In rejecting a recommendation, they should demonstrate sound planning reasons for doing so, and if they wish to have the decision sustained on appeal then it should be clear in the City's decision making process that other factors were considered that support the final decision and give weight to the decision. As it is a planning matter, the final decision should be rooted in planning principles.***³² [emphasis added]

36. The thread in *Hanmac*, *Pine Cone*, and *Doiron* is strong and plain to see: procedural fairness requires, and the Commission expects, that every municipal council provide sufficient reasons, based on sound planning principles, to justify its decision so that it can be sustained on appeal. The mere assertion of a single councillor that his meter “flops the way of housing” does not meet the standard set out in the case law from the Commission and cited by the City itself in this appeal. More is expected when an application has been the subject of a public meeting, when written submissions for and against the application have been received from members of the public, and when Council has received adverse recommendations from both their professional staff and Planning Board. Those recommendations are not binding and may be overcome; however, there must be sufficient information presented to the Commission to demonstrate a careful evaluation by Council and that the final decision was motivated by planning-related considerations.
37. Upon review of this record, and in particular the reasons for the impugned decision, the Commission finds that there is insufficient evidence to conclude that Council for the City properly evaluated the Application based on sound planning principles.

Public Meeting Attendance by Councillors

38. The Commission wishes to address one particular argument advanced by the City, which was that the attendance of all councillors at the public meeting means that Council was alive to the issues raised by the Appellants.³³ Attendance at a public meeting by City councillors is not, on its own, evidence that the councillors have considered the relevant issues and made a final determination based on sound planning principles.
39. Attending a public meeting, and making a final decision on a development application that affects the rights and interests of a number of parties, are distinct functions. Both may relate to one application; however, they are different exercises. Attending a meeting is an opportunity for councillors to collect information and listen to parties that may ultimately be affected. A councillor is a public representative and a listener. No decision is made at this meeting. Making a final decision on a development application is something different. It is akin to a quasi-judicial function. Council must reach a conclusion that is based on the applicable law and the objective evidence that is contained in the record supporting the

³² *Doiron* at para.39.

³³ City Written Submissions dated January 18, 2020 – **Exhibit R-2**.

particular application. It is not grounded in earlier or other applications. In summary, while attendance at a public meeting may very well inform a councillor's vote at the end of the day, it does not relieve a municipal council from its obligation to explain how and why it decided an application in a particular way.

Sound Planning Principles

40. Based on the evidence before it, the Commission is not able to make a determination that the Application has merit and should be approved on sound planning principles.
41. As the Commission has frequently stated, it is reluctant to interfere with municipal decisions on the ground of sound planning where the decision is supported by objective and reliable evidence that confirms the decision is based on the applicable official plan and bylaw and sound planning principles.³⁴ In this case, missing from the record is sufficient objective and reliable evidence to persuade the Commission that Council for the City weighed all of the relevant factors and found that the Application met sound planning principles.³⁵
42. The Commission is concerned with the argument advanced by the City – and, to a lesser extent, by the Developer – that the “housing crisis” is, in and of itself, a sound planning principle or an overriding principle in this case. When coupled with the City’s plea for deference to Council, this argument ignores, or at least minimizes, the body of planning law that has developed in this province and requires adherence to sound planning principles.
43. This is not to say that the availability of housing within the City is not an appropriate consideration for Council.³⁶ It is relevant. However, it is not an overriding principle capable of sustaining any or all development without regard to other relevant factors or sound planning considerations. The inquiry for Council is a contextual one.
44. The reports prepared by the Department speak to a number of sound planning principles and discuss a variety of relevant factors for consideration by Council. Professional staff at the City considered and analyzed a number of factors with respect to the Application. For example, the Department considered the development history of the Property,³⁷ compliance with the Official Plan,³⁸ the existing neighbourhood context,³⁹ potential for conflict between low and high density developments in the area,⁴⁰ and the demand for housing in the City.⁴¹ Professional staff did not have one singular focus and properly so.

³⁴ See for example, *Queens County Condominium Corporation No. 40* (Order LA18-02, July 11, 2018) (“Queens County Condo”) at paras.39-45, where the Commission upheld a decision of the City to approve a site-specific bylaw amendment and determined that sound planning principles was supported by the record and evidence of the City planners.

³⁵ The Commission has frequently commented on the need for compliance with sound planning principles and provided examples of what constitutes sound planning. See, for example, *Queens County Condo*, *Biovectra v. City of Charlottetown* (Order LA12-06) and *Atlantis Health Spa Ltd. v. City of Charlottetown* (Order LA12-02).

³⁶ As discussed in the Department reports, housing availability is an objective set out in the City’s Official Plan and is, therefore, a relevant consideration for Council.

³⁷ Planning Department Report (Meeting Date September 3, 2019) at p.3– **Record, Tab 6**.

³⁸ *Ibid.* at pp.3-7.

³⁹ *Ibid.* at pp.6-7.

⁴⁰ *Ibid.*

⁴¹ *Ibid.* at pp.7-8.

45. Following consideration of these factors, the Department recommended denying the Application. Likewise, the verbatim transcript of the deliberations at Planning Board suggests to the Commission that its members turned their minds to the planning-related issues raised by the Department.⁴² Planning Board agreed with advice from the Department and recommended denial of the Application.⁴³
46. However, there was a concerning lack of discussion by Council about these planning-related factors when making its final decision on the Application. Putting aside the commentary about potential lobbying of councillors and other historical decisions by Council, the “housing crisis” appears to be the sole reason for not following the recommendation from Planning Board and approving the Application. That discussion was limited to just two councillors.
47. In contrast, the objective reliable evidence before the Commission related to sound planning principles was the expert planning opinion proffered by the City’s own planning staff. Thompson testified before the Commission and authored the reports from the Department on the Application. Thompson’s evidence supported the recommendation by the Department to Planning Board that the Application and proposed development was not appropriate for the neighbourhood because of the existing character of the neighbourhood and issues with respect to transitioning and buffering. Planning Board deliberated and followed the recommendation from the Department.
48. In summary, the bulk of the evidence with respect to sound planning before the Commission was derived from the City’s own expert planner, Thompson. That evidence does not favour the City’s position. Absent sufficient reliable and objective evidence to the contrary, the Commission is not able to make a determination that the Application has merit and should be approved based on sound planning principles.

Evidence of Morrison

49. The Commission briefly heard evidence from Morrison, who was the planner in the Department who reviewed and provided a recommendation regarding the Appellants’ request for reconsideration. The Commission allowed this evidence at the hearing, but its usefulness was limited only to confirming the fact that a request for reconsideration was made and denied by Council. The Appellants did not attempt to appeal this decision. The Commission was also not asked to review this decision. As such, the evidence of Morrison has been given little weight by the Commission because it was not relevant to the Application or the decision under appeal and did not assist the Commission to decide the merits of this appeal.

Conclusion

50. The appeal is allowed and the decision of the City to rezone the Property from R-2 (low density residential) to R-3 (medium density) is quashed.

⁴² The September 3, 2019 Planning Board minutes indicate discussion by councillors of the official plan, transition from low to high density developments, the need for housing in the area, and the character and height of the building.

⁴³ The motion to recommend to Council rejection of the Application was carried (six in favour, three opposed).

IN THE MATTER of an appeal by Jessie Frost-Wicks, of a decision of the City of Charlottetown, dated October 16, 2019, to approve the rezoning of a property from R-2 (low density residential) to R-3 (medium density).

Order

WHEREAS the Appellants, Jessie Frost-Wicks et. al. appealed a decision of the City of Charlottetown to approve an application by Weymouth Properties Ltd. to rezone 38 Palmers Lane (PID #275156) from R-2 to R-3 to construct a three-story, 18-unit apartment building;

AND WHEREAS the Commission heard the appeal at a hearing conducted at Charlottetown, on February 20, 2020;

AND WHEREAS The Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order.

NOW THEREFORE pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*,

IT IS ORDERED THAT

1. The Appeal is allowed.
2. The September 26, 2019 decision of the City to rezone 38 Palmers Lane (PID #275156) from R-2 to R-3 to construct a three-story, 18-unit apartment building is hereby quashed.

DATED at Charlottetown, Prince Edward Island, Wednesday, October 7, 2020

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) M. Douglas Clow

M. Douglas Clow, Vice-Chair

(sgd) Erin T. Mitchell

Erin T. Mitchell, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.