

Appeal Docket LA18006 Marlene Waddell & Ronald Thomson et al v. Municipality of Kinkora – Response from Appellants

November 16, 2018

Attention IRAC, Community of Kinkora, and David&Sharon MacLeod;

Below is the requested information from the appellants regarding the potential appeal hearing for the docket listed above.

A list of all witnesses they intend to call if the Commission holds a public hearing.

Ron Thomson and Marlene Waddell

Whether they intend to retain legal counsel and if so, the name of their legal counsel

The appellant does not intend to seek legal counsel. Ron Thomson and Marlene Waddell will represent the appellants.

Whether they intend to retain and call an expert witness and if so the name and curriculum vitae for that witness.

The appellant does not intend to call an expert witness.

A will-say statement for each witness. A will-say statement describes briefly the witness and what matters they intend to address in their sworn or affirmed testimony before the Commission at any future public hearing.

Ron Thomson and Marlene Waddell live at 22 Shamrock Crescent, Kinkora. We are two year residents of the community of Kinkora and are the type of retirees we believe Kinkora is looking for.

The other appellants involved have given us their permission to represent them at this possible hearing.

We are invested in the appeal; our property is the closest bordering lot. After searching for six years throughout the Island for property to purchase, we found a home for sale at 22 Shamrock Crescent. Although I believe the Commissioners don't put much merit in signage for developments. We actually saw the signage for Somerset Estates, the signage for Somerset Estates clearly indicating large lots on a sign board. Driving through the area in question we found a large beautiful three garage at the end of Johnston Lane. This you can imagine made us feel "wow" this subdivision is going to be a beautiful development in what appeared to be future single family homes.

The current climate of the Island is extremely positive for development. People from outside of the province are coming to the island wanting to purchase single family homes, as they are often leaving (in Ontario's case) homes that are highly valued for resale, making PEI a wonderful and reasonable place to invest their futures.

A written submission addressing which portions of the 2016 Official Plan which they rely on to support their position.

(Page 22) -Policy PR-1: Zoning - It shall be the policy of Council to provide more specific protection for existing residential neighbourhoods through designation as Single Family Residential (R1) zones.

In the official plan for the Community of Kinkora it states that it wishes to provide protection for existing residential neighborhoods. Allowing the development of triplexes will eventually lead to a decrease in the property values of existing single family dwellings that surround the proposed triplexes.

(Page 22) - Plan Action (Third Bullet): Additional apartment developments may be permitted but shall proceed via a re-zoning application. Apartments shall generally be directed to locate in higher traffic locations and adjacent to commercial developments and existing apartments.

Official plan states that apartment developments (rental properties) need to be developed in high traffic areas and close to commercial developments and/or other rental properties. Presently there are four apartment buildings in Kinkora and all are located in commercial areas of the community and/or in close proximity to other rental properties. The Duffy Court subdivision, which are rental properties of duplexes and triplexes are located in the remote part of the community. Although this subdivision does surround some residential properties, these residents have investment in this subdivision as duplex/triplex owners. There is also two businesses surrounding this subdivision: Somerset Gardens and Duffy Construction. Presently, there are no commercial properties or existing apartments (or triplexes) within the Somerset Estates and Shamrock Crescent subdivision. There are a number of unsold lots surrounding the proposed triplex developments. None of these real estate listing notify potential buyers that the surrounding lots are not single family dwellings.

Please note that neither the Bylaw nor the Official Plan define "apartment" or "rental property". Since there is no clear definition and both apartments and triplexes are rentals, they should be classified as the same. As a result, triplexes should be close to commercial areas and/or other existing triplexes, not surrounding single family dwelling areas.

A written submission addressing which portions of the 2015 Development Bylaw apply.

16.1- Rezoning Procedures (page 67)

Authority Having Jurisdiction shall also forward a notification letter to property owners who own parcel(s) of land which are located in whole (or in part) within two hundred (200) feet (60.96 m) from any lot line of the parcel being proposed for rezoning.

Ron Thomson and Marlene Waddell's property is within the 200 feet rule. Ron and Marlene did receive the notification that was sent out to all Kinkora residents, but they did not receive a notification letter from the community notifying of the proposal for rezoning. Community failed to follow Section (vi) of the Rezoning Procedures by not providing such letter to Ron Thomson and Marlene Waddell.

Section 2 Definitions: (page 6)

"Dwelling" - means a building or portion thereof designated or used for residential occupancy, but does not include hotels and motels. (i) "Dwelling Unit" - means one or more habitable rooms designed or intended for use by one or more individuals as an independent and separate housekeeping establishment in which separate kitchen and sanitary facilities are provided. (ii) "Single Family Dwelling" - means a building designed or used for occupancy as one dwelling unit and shall include Modular Homes. (iii) "Duplex Dwelling" - means a building containing two dwelling units (one unit above the other) each of which has at least two independent entrances. (iv) "Multiple Family Dwelling" - means a building containing three or more dwelling units. (v) "Semi-detached Dwelling" - means a building divided vertically into two (2) separate units, each of which has at least two independent entrances. (vi) "Townhouse Dwelling or Row House Dwelling" - means a building that is divided vertically into three or more dwelling units, each of which has independent entrances to a front and rear yard immediately abutting the front and rear walls of each dwelling unit.

The appellants found it interesting that with the number of rental properties in the community that they have no definition for "apartment" or "rental properties". The various definitions under the dwellings section have no mention of renting or rental properties.

A written submission addressing the parties position – in other words, for the 1. Appellant – what is wrong with Kinkora's decision to rezone and why that decision should be quashed.

We believe the areas in question was developed with the aid of Federal, Provincial, and Municipal funds. The zoning at the time was for single family housing. I don't think a duplex and triplex community was thought of by those government officials involved in the financial support. Specifically, when the area at the time was to be planned for single family lots with one larger area at the rear of the development destined to be R4 for potential retirement multi residence or nursing home.

As noted above, there are various sections of the Official Plan and Zoning Bylaw that do not support the development of rental properties in R1&R2 areas.

IRAC's position has been for sound planning. The sound planning of Somerset Estates has already been overturned by the present council.

The council in question had 1 counselor and the mayor who excused themselves from voting on the zone change due to conflict of interest. The five remaining counselors split the decision 2-2. The deciding vote was by the acting deputy mayor. The deputy mayor also was an employee of the town of Kinkora in the role of janitor and event coordinator. Of the two remaining votes in favor of the change in bylaw, one of the counselors was renting from one of the counselors that removed himself due to conflict of interest. We also believe there were 2 counselors who voted in favour of the zone change and they also were in conflict of interest.

We believe the above information could warrant a hearing in front of the IRAC Commissioners.

We ask your consideration for our above concerns. We don't believe we are at all vexing. One look at our subdivision shows that all owners have pride in their house and property. Again, we hope the Commissioners will at least hear our appeal live.

We will do our best to answer all your learned questions.

We remain,

Ron Thomson and Marlene Waddell