



New Brunswick | Newfoundland and Labrador | Nova Scotia | Prince Edward Island

August 1, 2019

Island Regulatory & Appeals Commission
5th Floor Suite 501
134 Kent Street
Charlottetown, PEI
C1A 7L1

Attention: Philip Rafuse

Dear Mr. Rafuse:

Re: Brown's Volkswagen, Phillips Suzuki, Centennial Auto Group and Cathy Feener v. City of
Charlottetown
Appeal Dated July 9, 2019

This letter is by way of reply to yours of July 10, 2019 directed to the undersigned, legal counsel for the City of Charlottetown Planning Department, wherein you requested the City's summary response to the grounds for appeal in this matter.

City's response to Brown's Volkswagen, Phillips Suzuki, Centennial Auto Group and Cathy Feener's July 19, 2019 Appeal Grounds

The City shall respond briefly to each of the grounds of appeal enumerated in the Notice of Appeal.

1. The City of Charlottetown (the "City") failed to comply with the notice provisions set forth in section 18(1) of the Planning Act, R.S .P.E.I. 1988, Cap. P-8 (the "Planning Act"), and in sections 3.10.4 and 3.10.7 of the City of Charlottetown Zoning and Development Bylaw (the "Zoning Bylaw");

The statutory provisions in question read as follows:

Section 18(1): Planning Act, R.S .P.E.I. 1988, Cap. P-8 (the "Planning Act")

18. Notice of meeting

- (1) Before making any bylaw the council shall

David W. Hooley, Q.C. | Senior Partner

Direct 902 629 3903 Main 902 628 1033 Fax 902 566 2639 Email dhooley@coxandpalmer.com

Dominion Building 97 Queen Street Suite 600 Charlottetown PEI C1A 4A9

Practicing as Professional Corporation

*20009937/00310/654888/v2

August 1, 2019

- (a) give an opportunity to residents and other interested persons to make representations; and
- (b) at least seven clear days prior to the meeting, publish a notice in a newspaper circulating in the area indicating in general terms the nature of the proposed bylaw and the date, time and place of the council meeting at which it will be considered.

Section 3.10.4: City of Charlottetown Zoning and Development Bylaw

3.10.4 Before a Rezoning is heard at a public meeting, the Development Officer shall:

- a. Provide written notice by ordinary mail advise all Affected Property Owners within 100 m (328.1 ft) of the boundaries of the subject Lot through notification in writing at least seven (7) calendar days prior to the public meeting, of the date of the public meeting; and
- b. Ensure that the notice identifies the subject Lot and describes the Rezoning application and the date by which written objections must be received.
- c. Publish a notice in not less than two issues of a newspaper circulating in the City with the first notice at least seven (7) calendar days prior to the public hearing date.
- d. Post a copy of the notice in at least one (1) conspicuous place on the subject Lot at least seven (7) calendar days prior to the date fixed for the public meeting.

Section 3.10.7: City of Charlottetown Zoning and Development Bylaw

3.10.7 Where there is a proposed amendment to the text of this by-law that does not entail Rezoning, all procedures in this subsection shall be followed except that the procedure for notification of Affected Property Owners shall not apply.

It is the City's position that the above noted provisions were complied with throughout the processes of considering the text amendments to the Bylaw in question.

According to section 18(1) of the *Planning Act*, Council must (1) give an opportunity to residents and other interested persons to make representations, and (2) publish a notice in a newspaper circulating in the area indicating in general terms the nature of the proposed bylaw and the date, time and place of the council meeting at which it will be considered at least seven clear days prior to the meeting. The City fulfilled this requirement when it posted a notice in the March 16, 2019 and March 23, 2019 issues of The Guardian.

The notice as published (copy annexed as **Appendix "A"**) provided the following information:

August 1, 2019

Amendments to the Zoning & Development Bylaw (Bylaw 2018-11)
Proposed amendments to the Zoning & Development Bylaw
pertaining to Housing Transitional Facility, Site regulations for
Lodging Houses, Group Homes, Site Landscaping Requirements,
Undersized Lot Regulations, Asphalt, Aggregate & Concrete Plant and
General Housekeeping amendments.

[Emphasis added]

The public notice also stated that interested persons could make inquiries at the Planning department and that a public meeting would be held on Wednesday, March 27, 2019 at 7:00 p.m. in the Provinces Room at the Rodd Charlottetown Hotel on 75 Kent Street. The notice further indicated that “the general public is invited to attend.” Had a resident or other interested individual asked the Department for more information or attended this meeting wanting to make representations, they would have had the full opportunity to do so. For whatever reason, that did not happen.

A further notice was posted on the City of Charlottetown website containing the same information (copy annexed as **Appendix “B”**). *It is important to understand that, unlike a site specific bylaw amendment, a text amendment has application to multiple properties, so that there is not a map included identifying the single subject site affected such as we see in the same notice for certain other properties where site specific amendments were involved.* The nature and content of the notice required differs accordingly.

The adequacy or sufficiency of the content of the notice published ought to be determined solely by the satisfying the express requirements of the Act (and bylaw). That occurred in this case. The fact the appellants did not apparently see or overlooked the notices published March 16 and March 23 respecting the March 27 meeting to consider the proposed amendments pertaining to “Asphalt, Aggregate and Concrete Plants” (allegedly because the notice did not identify all M2 Zoned lands in the City including those on the Sherwood Road) is not the appropriate test. Again, this was not a site specific amendment.

As such, we can only conclude that Section 18(1) of the *Planning Act* was complied with.

Section 3.10.7 of the City of Charlottetown Zoning and Bylaw indicates that where there is a proposed amendment to the text of the by-law that does not entail a Rezoning, (as was the case with this amendment), all procedures in subsection 3 must be followed - except that the procedure for notification of Affected Property Owners shall not apply. This means that

August 1, 2019

the City is also required to abide by Section 3.10.4(b), (c) and (d) but not section 3.10.4(a) as it is the provision requiring notice to Affected Property Owners. There is provision for posting a copy of the notice on the subject property which logically also does not apply with a text amendment.

Thus, the City complied with the relevant subsections in section 3.10.4.

2. The City generally failed to provide proper and adequate notice to the public of the proposed amendment to the Zoning Bylaw;

It is the City's position that the notice provisions set forth in section 18(1) of the *Planning Act*, R.S .P.E.I. 1988, Cap. P-8 (the "*Planning Act*"), and in sections 3.10.4 and 3.10.7 of the City of Charlottetown Zoning and Development Bylaw (the "*Zoning Bylaw*") were adhered to. Accordingly, proper and adequate notice is not a matter to be "assessed."

In *Souris (Town) v Jarvis* 2009 PESC 35, the Prince Edward Island Supreme Court determined that passing a zoning bylaw is a legislative function. As such, so long as a Municipality meets their statutory requirements, then it is not subject to further common law requirements of procedural fairness.¹

The City respectfully submits that in the case at bar, making a text amendment to the By-Law was a legislative decision, and in accordance with *Souris (Town) v Jarvis*, the common law requirements of procedural fairness do not apply. The statute has subsumed the common law and specifies what's required thus providing certainty to municipalities and citizens alike.

If, in the alternative, the City is found not to have followed the notice provisions in the *Planning Act* or By-Law, and procedural fairness is a matter to be "assessed", *Baker v Canada* (Minister of Citizenship & Immigration) 1999 SCC 699 is the appropriate authority on procedural fairness and sets out five (5) factors used to determine the scope of the procedural duty of fairness on a case-by-case basis. An application of such factors to the facts in the case at bar give rise to little arising in the way of procedural fairness.

According to *Baker*, when assessing the nature of the statutory scheme and the terms of the statute pursuant to which the body operates, one must consider whether the statute

¹ 2009 PESC 35 at para 16.

August 1, 2019

provides a route of appeal. The ability to appeal gives rise to lower procedural protection as the Appellant is afforded another opportunity to make their case. As the Appellants' may, and have, appealed the City's decision to IRAC, we can reasonably conclude that this is an indication of less procedural fairness being required.

Baker also warrants assessment of the legitimate expectations of the person challenging the decision. The Appellants may legitimately expect the City to follow the notice provisions set forth in the *Planning Act* and the By-Law. While it has been explained above how exactly the City adhered to these provision, it may be useful to reiterate in brief.

The City posted a copy of the notice in two issues of a newspaper circulating in the City on March 23, 2019 and March 16, 2019 respectively. An invitation to make inquiries seeking more information at the Department and/or to attend the Public Meeting was included in each and outlined the date, time, and location. Making inquiries or attending this meeting would have afforded any individual who wished to make representations the opportunity to do so. The portion of the notice pertaining to the text amendment in question reads as follows:

Amendments to the Zoning & Development Bylaw (Bylaw 2018-11)
Proposed amendments to the Zoning & Development Bylaw
pertaining to Housing Transitional Facility, Site regulations for
Lodging Houses, Group Homes, Site Landscaping Requirements,
Undersized Lot Regulations, Asphalt, Aggregate & Concrete Plant and
General Housekeeping amendments.

[Emphasis added]

Written notice by ordinary mail was not sent to all Affected Property Owners within 100m as stipulated in section 3.10.4(a) of the By-Law, since section 3.10.7 precludes this as a requirement where the proposed amendment to the text of the By-law does not entail a rezoning. This text amendment did not entail any rezoning. As such, on an objective standard, the legitimate expectations of the Appellants were met.

Baker also indicates that important weight must be given to the choice of procedures made by the agency itself and its institutional constraints. The City has the power to set its own procedure, and it has done so here. This attracts deference and lower procedural fairness.

August 1, 2019

In conclusion, although the City met its statutory obligations and thus proper and adequate notice to the public is not a relevant consideration, even if it were, the duty of procedural fairness would be low and the published notices (i.e. in the Guardian and on the City's web site) met a reasonable standard of procedural fairness in providing the general public with notice of the intended text amendments pertaining to Asphalt, Aggregate and Concrete Plants.

- 3. Residents and other interested persons did not have the opportunity to make representations to Council with respect to the Zoning Bylaw amendment, contrary to section 18(1)(a) of the Planning Act, and contrary to the express objects of the Planning Act;**

The notice published in the March 16, 2019 and March 23, 2019 issues of The Guardian and on the City's web site all indicated both the time and place of the Public Meeting. Each issue of the notice further extended invitation to the general public. Although no representations were made to Council with respect to this text amendment, the "opportunity" was certainly made available to residents and other interested persons.

By publishing the notice in The Guardian eleven days prior to the meeting, indicating that the nature of the proposed bylaw included amendments to the Zoning and Development By-Law surrounding asphalt, aggregate and concrete plants, and indicating the date, time and place of the council meeting at which it would be considered, the City complied with the *Planning Act*. This notice provided the public with a platform to voice representations. By inviting the public to attend the public Meeting the City complied with section 18(1)(a) of the *Planning Act* as any residents or interested persons in attendance would have been able to make representations.

- 4. The amendment to the Zoning Bylaw to allow asphalt, aggregate and concrete plants in the Heavy Industrial (M-2) Zone, and in the City generally, is inconsistent with the City's Official Plan;**

The amendment to the Zoning Bylaw to allow asphalt, aggregate and concrete plants in the Heavy Industrial (M-2) Zone, and in the City generally, is not inconsistent with the City's Official Plan. The Appellants have not cited any particular provisions of the City's Official Plan that were allegedly contravened. Prior to the amendments, unless one interpreted the definition of "Manufacturing, Heavy" to include an asphalt, aggregate or concrete plant (which was perhaps ambiguous), there was no zone in the City specifically listing an asphalt,

August 1, 2019

aggregate or concrete plant as an express permissible use. By enacting this text amendment, the City simply intended to remedy this deficiency by defining and then adding this use to the permitted uses listed in the most intensive use zone in the City's bylaw – the M2 Zone.

It should also be remembered that the Province has strict regulations governing asphalt, aggregate or concrete plants. See the following:

(1) *Environmental Protection Act* RSPEI 1988, c. E-9, s. 25(1)(e.1)(i).

(2) PEI Reg EC2000-691, ss. 1(h), 2, 3(1), 4, 5, 8(3), 8(4)

Note: asphalt plants are considered an 'industrial source'

(3) Province of Prince Edward Island Department of Community and Cultural Affairs Guidelines for Asphalt Plants (July 1985) (copy annexed as **Appendix "C"**)

5. **The City failed to apply sound planning principles in approving the amendment to the Zoning Bylaw to allow asphalt, aggregate and concrete plants in the Heavy Industrial (M-2) Zone, and in the City generally;**

In approving the amendment to the Zoning Bylaw to allow asphalt, aggregate and concrete plants in the Heavy Industrial (M-2) Zone, and in the City generally, the City applied sound planning principles. Again, as with a generally alleged violation of the City's Official Plan, the Appellants have not cited any particular planning principle(s) that have allegedly been violated making it difficult to respond in an informed manner at this early stage in this appeal.

6. **Members of Council, the Planning Board and/or City employees failed or refused to declare a conflict of interest, real or perceived, with respect to the decision under appeal;**

There is no specific conflict of interest, real or perceived, which has been alleged with respect to the decision under appeal so the City is unable to intelligibly respond.

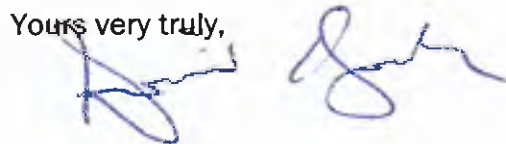
7. **The City has otherwise failed to comply with the Planning Act and the City's own Bylaws; and**

August 1, 2019

The City, at all times, complied with the *Planning Act* and its own By-Laws. Again, particulars are needed in order to respond intelligibly.

8. Such further and other grounds as counsel for the Appellants may advise upon receipt of the complete record on which the decision is based.

Yours very truly,

A handwritten signature in blue ink, appearing to read 'D. Hooley', written over a horizontal line.

David W. Hooley, Q.C.

DWH/mh

c. Alex Forbes

August 1, 2019

Appendix "A"
City of Charlottetown Notice

Page 10 – March 16th, 2019 Notice in The Guardian

Page 11 – March 26th, 2019 Notice in The Guardian

PUBLIC MEETING

City Council will hold a Public Meeting to hear comments on the following:

197 Miami Jane Drive (PD #338941)

A request to rezone the property at 197 Miami Jane Drive (PD #338941) from Comprehensive Development Area (CDA) Zone to the Highway Commercial (HC) Zone and amend the designation in the Official Plan from Concept Planning Area to Commercial in order to construct a 70-unit apartment building as well as an additional parking in the future which will finally contain a commercial daycare centre. This request includes a height increase from 49.2 ft to approximately 62.75 ft.

**88 Brockton Point Road (PD #339774)**

A request to rezone the property at 88 Brockton Point Road (PD #339774) from the Single-Detached Residential (S1-1L) Zone to the Medium Density Residential (R-1) Zone and amend the designation in the Official Plan from Low Density Residential to Medium Density Residential in order to facilitate the construction of a 30-unit apartment building on one portion and a residential development on the other portion of the lot.

**183 Great George Street (PD #344044)**

A request to obtain a site specific exemption as it pertains to 183 Great George Street (PD #344044) in order to allow the sale of alcohol within a mobile container; allow the mobile container to operate from April 1st to October 31st annually; and utilize a container to contain washroom facilities. The site specific exemption also includes bag violations to increase the maximum height for a fence in the front yard and increase the minimum front yard setback.

**Amendments to the Zoning & Development Bylaw (ZDB) 2015-11**

Proposed amendments to the Zoning & Development Bylaw pertaining to Accessory Residential Facility, Site Regulations for Lodging Houses, Group Homes, Site Landscaping Requirements, Underpinning Lot Regulations, Access, Appurtenant & Common Plans and General Landscaping Amendments.

Secondary and Garden State Registry Bylaw

A proposal to create and amend the Secondary and Garden State Registry Bylaw to create and make available to the public a registry of all approved Secondary and Garden Sublots, as per the previous Affidavit Notice of Anticipated requirements.

Anyone wishing to view the proposed amendments may do so at the Planning & Heritage Department, 233 Queen Street, between the hours of 8:30 AM – 5:00 PM, Monday – Friday. The proposed amendments are also on the City's website at www.charlottetown.ca. Please have any written comments submitted to the Planning Department before 12:00 p.m. on Thursday, March 28, 2018. Comments may also be emailed to planning@charlottetown.ca. Any responses received will become part of the public record.

The Public Meeting will be held on:
THURSDAY, MARCH 27, 2018 AT 7:00 P.M.
PROVINCIAL HOTEL, 6000 CHARLOTTETOWN HOTEL
75 KENT STREET

The general public is invited to attend.

3/26/2019

<https://pei-news.pressreader.com/the-guardian-charlottetown/20190323>

CHARLOTTETOWN

PUBLIC MEETING

City Council will hold a Public Meeting to hear comments on the following:

197 Minna Jane Drive (PID #469841)

A request to rezone the property at 197 Minna Jane Drive (PID #469841) from Comprehensive Development Area (CDA) Zone to the Highway Commercial (C-2) Zone and amend the designation in the Official Plan from Concept Planning Area to Commercial in order to construct a 70-unit apartment building as well as an additional building in the future which will likely contain a commercial drycleaning centre. This request includes a major height variance from 49.2 ft to approximately 88.75 ft.



88 Brackley Point Road (PID #398770)

A request to rezone the property at 88 Brackley Point Road (PID #398770) from the Single-Detached Residential (R-1L) Zone to the Medium Density Residential (R-3) Zone and amend the designation in the Official Plan from Low Density Residential to Medium Density Residential in order to facilitate the construction of a 30-unit apartment building on one lot and a townhouse development on the other portion of the lot.



183 Great George Street (PID #344044)

A request to obtain a site specific exemption as it pertains to 183 Great George Street (PID #344044) in order to allow the sale of alcohol within a mobile cart; allow the mobile cart to operate from April 1st to October 31st annually; and utilize a container to contain washroom facilities. The site specific amendment also includes two variances to increase the maximum height for a fence in the front yard and increase the minimum front yard setback.



Amendments to the Zoning & Development Bylaw (Bylaw 2018-11)

Proposed amendments to the Zoning & Development Bylaw pertaining to Housing Transitional Facility, Site regulations for Lodging Houses, Group Homes, Site Landscaping Requirements, Under-sized Lot Regulations, Asphalt, Aggregate & Concrete Plant and General Housekeeping amendments.

Secondary and Garden Suite Registry By-law

A proposal to create and implement the Secondary and Garden Suite Registry By-law to create and make available to the public a registry of all approved Secondary and Garden Suite(s) as per the previous Affordable Housing Amendment requirements.

Anyone wishing to view the proposed amendments may do so at the Planning & Heritage Department, 233 Queen Street, between the hours of 8:30 AM – 5:00 PM, Monday – Friday. The proposed amendments are also on the City's website at www.charlottetown.ca. Please have any written comments submitted to the Planning Department before 12:00 p.m. on Thursday, March 28, 2019. Comments may also be emailed to planning@charlottetown.ca. Any responses received will become part of the public record.

The Public Meeting will be held on:
WEDNESDAY, MARCH 27, 2019 AT 7:00 P.M.
PROVINCIAL ROOM, ROLD CHARLOTTETOWN HOTEL
75 KENT STREET

The general public is invited to attend.

August 1, 2019

Appendix "B"
City of Charlottetown Website Information

**Notice of Public Meeting on Wednesday, March 27, 2019 at 7:00 p.m.
Provinces Room, Rodd Charlottetown Hotel, 75 Kent Street**

Charlottetown City Council will hold a Public Meeting to hear comments on the following:

197 Minna Jane Drive (PID #469841)

A request to rezone the property at 197 Minna Jane Drive (PID #469841) from Comprehensive Development Area (CDA) Zone to the Highway Commercial (C-2) Zone and amend the designation in the Official Plan from Concept Planning Area to Commercial in order to construct a 70-unit apartment building as well as an additional building in the future which will likely contain a commercial daycare centre. This request includes a major height variance from 49.2 ft to approximately 69.75 ft.

See Map#1



88 Brackley Point Road (PID #396770)

A request to rezone the property at 88 Brackley Point Road (PID #396770) from the Single-Detached Residential (R-1L) Zone to the Medium Density Residential (R-3) Zone and amend the designation in the Official Plan from Low Density Residential to Medium Density Residential in order to facilitate the construction of a 30-unit apartment building on one lot and a townhouse development on the other portion of the lot.

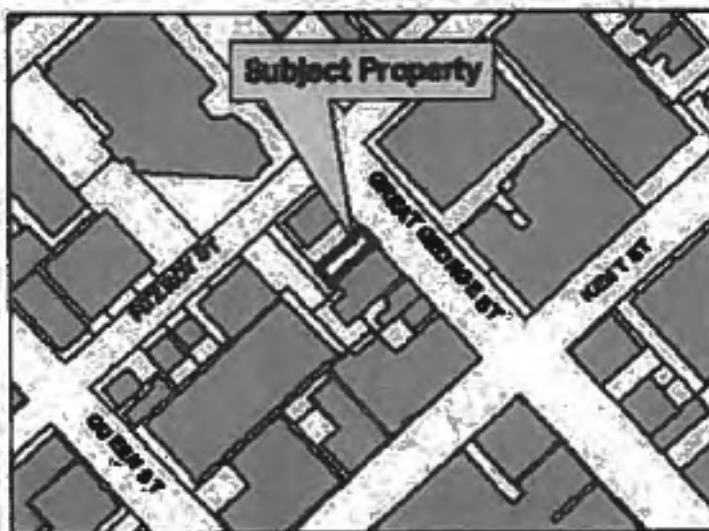
See Map#2



183 Great George Street (PID #344044)

A request to obtain a site specific exemption as it pertains to 183 Great George Street (PID #344044) in order to allow the sale of alcohol within in a mobile canteen; allow the mobile canteen to operate from April 1st to October 31st annually; and utilize a container to contain washroom facilities. The site specific amendment also includes two variances to increase the maximum height for a fence in the front yard and increase the maximum front yard setback.

See Map#3

**Amendments to the Zoning & Development Bylaw (Bylaw 2018-11)**

Proposed amendments to the Zoning & Development Bylaw pertaining to Housing Transitional Facility, Site regulations for Lodging Houses, Group Homes, Site Landscaping Requirements, Undersized Lot Regulations, Asphalt, Aggregate & Concrete Plant and General Housekeeping amendments.

Secondary and Garden Suite Registry By-law

A proposal to create and implement the Secondary and Garden Suite Registry Bylaw to create and make available to the public a registry of all approved Secondary and Garden Suite(s) as per the previous Affordable Housing Amendment requirements.

Anyone wishing to view the proposed amendments may do so at the Planning & Heritage Department, 233 Queen Street, between the hours of 8:30 AM – 5:00 PM, Monday – Friday. The proposed amendments are also on the City's website at www.charlottetown.ca. Please have any written comments submitted to the Planning Department before 12:00 p.m. on Thursday, March 28, 2019. Comments may also be emailed to planning@charlottetown.ca. Any responses received will become part of the public record.

PROVINCE OF PRINCE EDWARD ISLAND
DEPARTMENT OF COMMUNITY & CULTURAL AFFAIRS

GUIDELINES FOR ASPHALT PLANTS

JULY, 1985

PROVINCE OF PRINCE EDWARD ISLAND
DEPARTMENT OF COMMUNITY AND CULTURAL AFFAIRS
GUIDELINES FOR ASPHALT PLANTS

1. INTERPRETATION

- (1) In these guidelines, unless the content indicates otherwise, the following words and expressions mean or designate:
- (a) "Minister" means the Minister of the Department of Community & Cultural Affairs;
 - (b) "Department" means the Department of Community & Cultural Affairs;
 - (c) "Asphalt Plant" means a plant or any part thereof in which asphalt concrete is produced by heating and drying aggregate material and mixing with asphalt cement;
 - (d) "Normal cubic metre" means the quantity of gas occupying a volume of one cubic metre at standard conditions;
 - (e) "Standard conditions" means a temperature of 25 degrees centigrade and a barometric pressure of 760 millimetres of mercury;
 - (f) "Fugitive emission" means emission escaping to the atmosphere from areas or points of asphalt plant equipment other than the asphalt plant stack;
 - (g) "Asphalt plant stack" means any single chimney, flue or similar device that, according to the asphalt plant's design specifications, had the sole purpose of conducting the asphalt plant emissions to the atmosphere;
 - (h) "Particulate matter" means any finely divided liquid or solid material other than water droplets;

- 2 -

- (i) "Permanent asphalt paving plant" means an asphalt paving plant which remains in one location in excess of two (2) construction seasons;
- (j) "Portable asphalt paving plant" means an asphalt paving plant which remains in one location less than two (2) construction seasons;
- (k) "Undiluted exhaust gas" means any gas or combination of gases that are released or discharged into the air from any source;
- (l) "Opacity" means the degree to which the transmission of light is reduced;
- (m) "Stack test" means the measurement of particulate emissions as set down in Environment Canada's report EPS 1-AP-74-1 "Standard Reference Methods for Source Testing: Measurement of Emissions of Particulates from Stationary Sources" or an alternative method approved by the Department;
- (n) "Inspector" means a person appointed by the Minister for the purpose of enforcement.

2. AUTHORIZATION (Certificate of Approval)

- (1) Pursuant to Section 9 of the Environmental Protection Act, no person shall construct, modify, operate or permit the construction, modification, or operation of an asphalt plant without obtaining a Certificate of Approval issued by the Minister. An application shall be in the form as prescribed in Appendix 3 and the certificate shall be in the form as prescribed in Appendix 4.
- (2) No person shall operate or permit the operation of an asphalt plant except in accordance with the provisions and conditions of the Certificate of Approval granted for that asphalt plant.
- (3) The Minister may revoke a Certificate of Approval if the asphalt plant for which it was issued fails to operate in compliance with the provisions and conditions of that Certificate, and Approvals are automatically revoked by the granting of a new Approval to the same asphalt plant.

- 3 -

- (4) On receipt of an application for a Certificate of Approval, the Minister shall within fifteen (15) calendar days issue a Certificate or advise the applicant as to the reason why a Certificate has not been issued.

3. APPLICATION FOR PERMIT FOR APPROVAL

- (1) Anyone who applies for a Certificate of Approval for an asphalt plant must furnish the following information and documents;
- (a) a general plan of the area at a scale of approximately 1:5,000 (orthophoto) indicating:
 - (i) the projected site for the asphalt plant and zoning of the property;
 - (ii) the neighbouring territory of the asphalt paving plant and the zoning of such territory, the layout of public highways, access roads, water-courses, wells, houses, and any other development within a radius of 500 metres from the asphalt plant;
 - (b) make, model number, plans and specifications of the asphalt paving plant and equipment including any devices designed to abate or eliminate the emission, deposit, issuance or discharge of contaminants into the environment;
 - (c) a report describing the operating conditions, the operation of equipment and machinery, type of fuel used, the volume of production in tons per hour, and the methods of eliminating wastes and residues;
 - (d) a calculation or evaluation of particulate matter emitted into the atmosphere in micrograms per cubic metre;
 - (e) the plans and specifications of the water supply and waste water disposal equipment; and
 - (f) any further information concerning the operation and/or specifications of the asphalt plant which the Minister may from time to time require.

- 4 -

- (2) If the application concerns the relocation of a portable plant for which approval or permit has already been issued, the applicant may submit an attestation certifying that there has been no change in the data required under paragraphs (d), (e), and (f) of Section 3.(1) instead of providing information prescribed in these paragraphs.

4. SITING STANDARDS

- ✓ (1) No person shall build or install an asphalt plant in any territory zoned for residential, commercial or parks and recreational use or within 500 metres of such territory.
- ✓ (2) The asphalt plant and the loading and unloading and discharge areas of aggregate stock piles shall be situated at a minimum distance of 500 metres from any dwelling and 100 metres from any watercourse. See Appendix 1 for a sample siting standards plan.
- ✓ (3) Notwithstanding paragraph 4(2), the Minister may, in the case of the relocation of a portable plant, permit the siting of an asphalt plant within 500 metres of a dwelling provided a written agreement has been made between the owner/operator of the asphalt plant and the owner/occupier of the dwelling.
- (4) The siting standards for access along a highway as provided for in part 6 of the Planning Act Regulations shall apply notwithstanding that the land may not be subdivided. Appendix 5 is provided as a guide for selecting highway access to an asphalt plant site.

5. WATER SUPPLY AND WASTEWATER DISPOSAL

- ✓ (1) Any well on the plant site shall be protected from contamination from storm runoff and shall have a "bentonite" seal around the well casing acceptable to the Minister.
- ✓ (2) Wastewater resulting from the operation of the asphalt plant shall not be discharged outside the plant site or permitted to enter any watercourse.
- ✓ (3) Storm runoff from the plant site shall be collected and treated to meet the following conditions prior to discharge outside the plant site or to any watercourse:

- 5 -

- (a) concentration of oil, grease or tar not in excess of 15 milligrams per litre of water, and
 - (b) concentration of total suspended solids not in excess of 100 milligrams per litre of water.
- ✓ (4) Any spill of fuel which exceeds 100 litres must be verbally reported immediately to the Department and followed by a written report.

6. AIR EMISSIONS

- ✓ (1) Every reasonable effort shall be made to contain all sources of fugitive emissions including but not limited to, hot screens, bucket elevators, weight hoppers and mixing bins such that all emissions leave through the stack of the asphalt plant.
- (2) The amount of particulate matter emitted into the ambient air as a consequence of the operation of an asphalt plant shall not exceed 500 milligrams per normal cubic metre of dry, undiluted exhaust gas at standard conditions from the stack.
- ✓ (3) No visible solid material, water plume, or water droplets emitted to the atmosphere from the asphalt plant shall impinge on any point beyond the limits of the asphalt plant property.
- (4) The amount of suspended particulate matter in the atmosphere, measured at a point of impingement at or beyond the property line shall not exceed 100 micrograms per cubic metre of air, half hour average.
- (5) (1) The Department shall prepare a chart to be known as the "Visible Emission Chart of the Province of Prince Edward Island".
(2) The Visible Emission Chart shall be prepared by the recording, in three consecutive areas on the chart, of black dots or lines evenly spaced on a white background in such manner that:
 - (a) approximately 20 percent of the space in the first area is black and shall be known as density No. 1;
 - (b) approximately 40 percent of the space in the second area is black and shall be known as density No. 2;

- (c) approximately 60 percent of the space in the third area is black and shall be known as density No. 3;
- (5) A copy of the Visible Emission Chart is attached as Appendix 2.
- (6) No person without the written consent of the Minister shall cause or permit an emission having a density greater than density No. 1, except that for an aggregate period of not more than four minutes during one half hour, smoke may have a density greater than density No. 1, but not exceeding density No. 2.
- (7) In any prosecution for a violation of any section of this part, the opinion of an inspector based on reasonable and probable grounds, shall be conclusive.
- (8) If the Minister has reason to believe that an asphalt plant is in violation of this guideline, he may require that an emission test be conducted to determine plant emissions. The undertaking and cost of this test will be shared on a 50/50 basis between the Department and the owner or operator of the asphalt paving plant, and such test will be done by a person or persons acceptable to the Department.

7. GENERAL

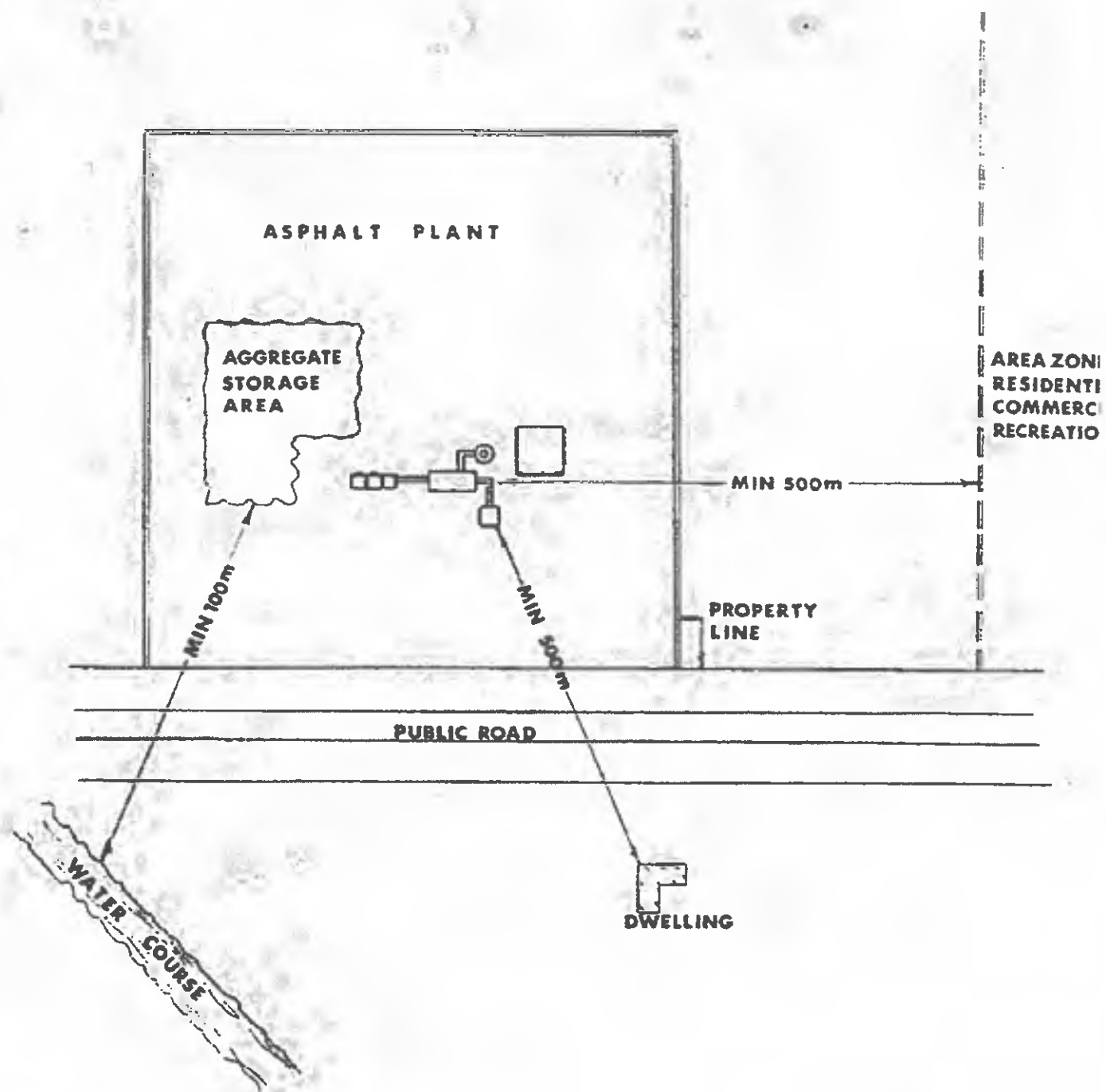
✓(1) Site Restoration:

- (a) On completion of the operation or expiration of the Certificate of Approval, all equipment and unnatural features must be removed and the site must be restored to the satisfaction of the inspector. Unless otherwise approved by the Minister the site shall be restored, insofar as practical, to its original condition.

Restoration shall include:

- (i) sloping or grading of surfaces, and seeding for erosion control;
- (ii) drainage and filling in of any pits and settling ponds or depressions;
- (iii) removal and proper disposal of contaminated soil;
- (iv) capping or filling in of wells; and
- (v) removal of highway access.

APPENDIX 1



SITING STANDARDS FOR
ASPHALT PLANTS

APPENDIX 2

VISIBLE EMISSION CHART OF THE PROVINCE OF P.E.I.

Department of Community & Cultural Affairs



Density # 1



Density # 2



Density # 3

Instructions for use:

1. Hold Visible Emission Chart at arm's length.
2. View the visible emission at approximately right angles to the line of travel of the visible emission.
3. If water vapour is evident in the visible emission, view the visible emission at a distance from the point of emission where the water vapour has dissipated.
4. Match the shade of the visible emission with the nearest shade of density on the Visible Emission Chart.

APPENDIX 3

APPLICATION FOR CERTIFICATE OF APPROVALTo Operate An Asphalt Plant1. Company Information:

Name of Company: _____

Address: _____

Manager: _____ Telephone No: _____

2. Plant Information

Make: _____ Model No: _____

Age: _____

Type of Plant: Batch _____, Continuous Mix _____, Drum Mix _____,
Portable _____, Permanent _____.

Plant Manager or Operator _____ Telephone No: _____

Rated Hourly Production: _____

Type of Fuel: _____ Rate of Consumption: _____

Size of Fuel Storage Tank(s) (litres): _____

3. Air Emission Control Information:

Control Equipment: _____

Make: _____ Age: _____

Type: _____ Model No. _____

Rate of Particulate Matter Emission _____ Micrograms/Cubic metre.

Additional information or comment on plant operation or control
equipment: _____

- 2 -

4. Water Supply & Waste Water Information:

Source of Water: _____

Size of Well: _____ Average Demand: _____

Settling Pond-Size: First _____, _____, _____

Second _____, _____, _____

Third _____, _____, _____

Is alteration of watercourse necessary: _____

5. Waste Disposal Information:

Describe wastes and method proposed for disposal (i.e. off specifications asphalt, settling pond sludge, mineral fines, oil contaminated soil, etc.)

6. Site Location and Layout Information:

- (a) A site sketch plan at a scale of approximately 1:500 or 1"-50' indicating the measurements and surface area of the land to be used, the asphalt plant and of storage, loading, unloading, and discharge areas of aggregate materials;
- (b) A general map of the area at a scale of approximately 1:5,000 (orthophoto) indicating:
- (i) the projected site for the asphalt plant and zoning of the property;
 - (ii) the neighbouring territory of the asphalt paving plant and the zoning of such a territory, the layout of public highways, access roads, water-courses, wells, houses, and any other development within a radius of 500 metres from the asphalt plant.

APPENDIX 4

CERTIFICATE OF APPROVAL

This Certificate Dated: _____ 19 _____

Issued To: _____

Address: _____

Pursuant To: _____

This Approval is For: _____

Located At: _____

Your Application has been reviewed on the basis of the information submitted and is approved, subject to the following terms and conditions:

Approved: _____ Date: _____
Minister

APPENDIX 5

HIGHWAY ACCESS AND SAFETY

The following is presented as a guide for selecting highway access to an Asphalt Plant Site.

1. No person shall construct or change the use of an access along an arterial highway or collector highway as designated by the Planning Act Regulations to serve a permanent asphalt paving plant.
2. No person shall construct or change the use of an access along an arterial highway as designated by the Planning Act Regulations to serve a portable asphalt paving plant unless:
 - (a) the site is within the limits of a contract to build, rebuild, pave or repave that section of the arterial highway,
 - (b) the sight distance to the access is in excess of 210 meters measured as shown in the Planning Act Regulations and,
 - (c) the applicant agrees in writing to comply with the conditions for traffic control procedures as specified by the traffic engineer of the Department of Transportation and Public Works attached to the Certificate of Approval and forming a part thereof.
3. No person shall construct or change the use of an access along any collector highway as designated by the Planning Act Regulations to serve a portable asphalt paving plant unless:
 - (a) the site is within the limits of contract to build, rebuild, pave or repave that section of the collector highway,
 - (b) the sight distance to the access is in excess of 150 meters measured as shown in the Planning Act Regulations and
 - (c) the applicant agrees in writing to comply with the conditions for traffic control procedures as specified by the traffic engineer of the Department of Transportation and Public Works attached to the Certificate of Approval and forming a part thereof.

4. No person shall construct or change the use of an access along a local road to serve an asphalt plant unless:
 - (a) the sight distance to the access is in excess of 150 meters measured as shown in the Planning Act Regulations and
 - (b) the applicant agrees in writing to comply with the conditions for traffic control procedures as specified by the traffic engineer of the Department of Transportation and Public Works attached to the Certificate of Approval and forming a part thereof.