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The Island Regulatory and Appeals Commission

Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)

TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.ircac.pe.ca

NOTE:
Appeal process is a public process.

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of BRACKLEY (name of City, Town or Community) on the 19 day of JUNE, 2019, wherein the Minister/Community Council made a decision to deny My APPLICATION TO REZONE PID# 467 BRACKLEY POINT ROAD FROM A1 TO M1 (attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows: (use separate page(s) if necessary)

ON SEPARATE SHEET

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I/we seek the following relief: (use separate page(s) if necessary)

① TO GRANT REZONING OF PID# 640011 FROM A1 TO M1

② TO QUASH THE ISSUE OF WATER ON THIS LOT. IT WAS A ONCE IN LIFE TIME EVENT CAUSED BY ALL TIME RECORD SNOW FALL IN 2014-2015. NO EVENTS HAVE BEEN

Name(s) of Appellant(s): DONALD TURNER Signature(s) of Appellant(s): Donald Turner Reported Since
SUSAN TURNER Susan Turner

Mailing Address: 2054 Winsloe Road City/Town: North Winsloe

Province: PEI Postal Code: C1E 2Y9

Email Address: DONALD r TURNER @GMAIL.COM Telephone: (902) 394-4581

Dated this 9 day of JULY, 2019.
day month year

IMPORTANT

Under Section 28.(6) of the *Planning Act*, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

Service of the Notice of Appeal is the responsibility of the Appellant

Information on this Form is collected pursuant to the *Planning Act* and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at info@ircac.pe.ca.



Rural Municipality of Brackley

14 Union Road
Brackley, PE C1E 3J6

June 24, 2019

Mr. Donald Turner
2054 Winsloe Road
North Winsloe, PE C1E 2Y9

Dear Mr. Turner:

As per the attached memorandum from our Development Officer Derek French, Planning Board and Council have denied your application of April 23, 2019 to rezone PID#640011, 467 Brackley Point Road from (A1) Agricultural to (M1) Industrial as reviewed and decided at the June 19th Council Meeting.

You have 21 days to appeal the decision to IRAC.

Sincerely,

Brendon McKenna
Mayor

Enc. (1)

MEMO

Applicant

Donald & Susan Turner
2054 Winsloe Road
North Wiltshire, PE
C1E 2Y9
902-394-4581
Donaldrturmer80@gmail.com

June 19, 2019

1. Application dated April 23, 2019 requesting a rezoning of 467 Brackley Point Road, pid no. 640011 from Agricultural (A1) zone to Industrial (M1) zone.
2. The proposed usage of the subject property is possibly offices at the front of the building with storage at the rear. Light manufacturing, such as a cabinet shop. No particular land use was indicated on the application. This implies all permitted uses in the Industrial zone may be requested.
3. The May 22, 2019 Public Meeting was advertised in the Guardian newspaper on May 11th and May 18th. Notices of the public meeting were mailed to 15 surrounding properties. The meeting was well attended with approximately 23 residents. I gave a presentation on the proposed rezoning and Donald Turner added some additional information. The floor was open to residents and many comments were made. A large percentage of the comments were not in favour of the rezoning.
4. We asked for written comments to be submitted as well. I received four written comments not in favor of the rezoning. Included was a partition that included 35 signatures not in favour of the rezoning.
5. The major concerns raised during the public meeting and stated in the written comments are:
 - a. The proposed lot was left as Agricultural in order to provide a buffer to the existing single family dwellings in the area. The previous land owner who also owned the surrounding lands asked to have his property zoned industrial for an Auto Salvage Yard. My understanding the Council of the time were willing to zone the area as Industrial provided the subject lot was left as agricultural to allow for a future single family dwelling, inkeeping with the adjacent land uses.
 - b. Safety is a major concern with traffic, school bus stop, excessive pollution, excessive noise, potable water contamination and surface water flooding.
 - c. If the subject property was zoned Industrial, there are many uses that may be permitted. Most of these possible uses would not be compatible with the existing single family dwellings.

Section #11, Community of Brackley Zoning and Subdivision Control (Development) Bylaw

Industrial (M1) Zone **PERMITTED USES**

- (1) (a) Manufacturing and Assembly
- (b) Warehousing
- (c) Transport Operations
- (d) Activities connected with the Automobile Trade other than a scrap yard

- (e) Wholesale Operations
 - (f) Business and Professional Offices
 - (g) Service Shops
 - (h) Commercial uses accessory to a main use permitted in a M2 Zone
 - (i) Restaurants and Cafeterias
 - (j) Farm Machinery and Heavy Equipment Dealerships and Repair Shops
 - (k) Heavy Equipment Depots
 - (l) Contractors Yard
 - (m) Accessory Buildings
- (2) Notwithstanding the foregoing, any Use which is deemed by Council to be obnoxious by reason of sound, odor, dust, fumes, smoke or as noted in Section 2.73 shall be denied approval.

Industrial (M1) Zone **SPECIAL PERMIT USES**

- (1) Storage of Sand and Aggregate
- (2) Asphalt Plants
- (3) Concrete Plants
- (4) Food Processing
- (5) Auto Salvage Facility

d. The applicant infilled the subject lot with soil and greatly impacted the natural flow of surface water in the area. It caused flooding to the adjacent properties. The proposal to put an industrial building and parking areas on the subject lot will only add to the flooding issues.

6. The properties to the north are presently zoned Agricultural and consist of existing single family dwellings. The properties to the east across Brackley Point Road are also zoned Agricultural and consist of existing single family dwellings. The parent property to the south and west is zoned Industrial and consists of the Island Auto Supply site (automotive salvage yard).
7. There are many references in the Community of Brackley Official Plan that refer to this type of proposed rezoning:
- a) 4.3.2 Social
 - To foster the creation and maintenance of a safe, efficient, stable and visually appealing residential environment.
 - To foster social interaction and healthy lifestyles for all residents of the Community.
 - b) 4.3.3 Economic
 - To protect the viability of established businesses in the Community.
 - To accommodate limited commercial/industrial expansion in a manner that is environmentally responsible and that is compatible with adjacent established land uses.

- c) 4.3.4 Physical
 - To establish a plan for future development that balances future residential and commercial/industrial development and maintains the rural character of the Community.
 - To encourage action to protect the quality and quantity of drinking water in the Community.
- d) 4.3.5 Environmental
 - To protect and enhance the quality and quantity of groundwater and surface water resources in and adjacent to the Community.
 - To protect and enhance significant natural areas.
 - To protect air quality.
- e) 5.2 Residential, Objectives
 - To enhance the character and appearance of established residences and neighbourhoods.
 - To encourage residential development standards which stress safety, efficiency, aesthetic appeal, land use compatibility, environmental sustainability and fostering of healthy lifestyles.
- f) 5.4 Industrial, Objectives
 - To strictly limit any further development of unserved non-resource based industrial developments in the Community.
 - Where such facilities are already established to protect their long term viability unless there are significant land use conflicts with adjacent properties.
- g) 5.4 Industrial, Policies
 - No new non-resource based industrial developments will be permitted without the provision of central services
 - It shall be the policy of Council to establish adequate buffer areas adjacent to any new or expanded industrial developments in order to minimize any negative effects on adjacent properties.

8. Based on the goals, objectives and policies of the Community Official Plan referenced in sections 4 and 5, I would recommend this rezoning request not be permitted. Mr. Turner should be notified that he may appeal the decision to IRAC within 21 days of this notice.

Regards
 Derek French
 Development Officer
 Rural Municipality of Brackley
 902-394-2945

1. "The vacant lands on the west side of the Brackley Point Road to the south of the Royalty Junction shall, also be zoned as "Industrial".

Quote from Official Plan dated May 2014.

2. In my rezoning application, Harvey Livingstone made the statement,"prior to Official Plan for Brackley dated May 2014 Phil Wood met with Harvey Livingstone. The outcome of the discussions were all of Harvey's land was to be rezoned as industrial with the exception of one piece of land to be left as residential. The lot later sold to Donald Turner was never discussed separately so Harvey assumed it was industrial.
3. Memo from Community of Brackley dated June 19, 2019. "The proposed lot was left as agricultural to provide a buffer to existing single family dwellings in the area". This contradicts Harvey's statement but also raises the question, "If this was to be Community of Brackley's thought pattern, why were not residential houses by Chris Beer's residence and Ladner's Upholstery given the same buffer. These approximately half dozen houses are industrial right to their boundary lines (no buffer).
4. Memo from Community of Brackley dated June 19, 2019 paragraph 5, section A suggests discussions were held with Harvey Livingstone. Harvey states no such meetings were held.
5. Memo from Community of Brackley, June 19, 2019 paragraph 5, section a. "The applicant in filled the subject lot with soil and greatly impacted the natural flow of surface water in the area".

The lot surface was only raised about 6 - 12" but lot was already about 36" above neighbouring lot. Donald Turner made sure nothing came within 10 - 15' of boundary lines. The only exception was where a culvert was placed at back corner of the late Merrill Clark's lot. Engineer's report for culvert is included.

The only incident reported to Donald Turner was in spring 2015, the year of all time record snowfall volume of snow melting in spring was responsible for this probably once in lifetime event.

6. As over 97 percent of land on west side of Brackley Point Road and on south side of Royalty Junction Road in Community of Brackley is already zoned as other than agriculture, for example, commercial, institutional and industrial. This lot is a natural fit for this area of Brackley and already has a buffer provided by Island Auto.

**Donald Turner
208 Stead Road
Rusticoville, Prince Edward Island
C0A 1N0**

**Job# 15-11455
21 July 2015**

**RE: Culvert Design Review – PID# 640011, Brackley Point Road, Brackley,
Prince Edward Island**

Dear Mr. Turner;

Fundy Engineering & Consulting Ltd. was retained to conduct a culvert design review on a property located on the Brackley Point Road in Brackley, Prince Edward Island. The property is registered as Property Identification Number (PID#) 640011. Earthwork was completed in the spring of 2015 where several meters of structural fill were placed on the property. A culvert was installed on the property during this time. There has been some questions raised with respect to the flow capabilities of this culvert and Fundy Engineering was hired to investigate this issue.

On July 17, 2015 Chris MacPherson, *P.Eng.*, of Fundy Engineering visited the subject site to conduct a visual assessment and to take measurements of the culvert structure. A culvert was identified on the property that runs north to south and slopes towards the south at an approximate grade of 2%. The corrugated HDPE (high density polyethylene) culvert runs the entire width of the property (approximately 38 m), and has an inner diameter of 0.375 m.

Flow discharge rates were calculated for this culvert based on its size and construction. If the culvert were subject to a water level at a height of 0.15 m the culvert would be capable of discharging surface water at a rate of 0.0724 m³/sec (72.4 litres per second). If the water level was at 0.30 m height in the culvert, the calculated discharge rate would be 0.210 m³/sec (210 litres per second). If water level was allowed to accumulate to the top of the culvert at a height of 0.375 m, the structure would be capable of discharging 0.2148 m³/sec (214.8 litres per second).

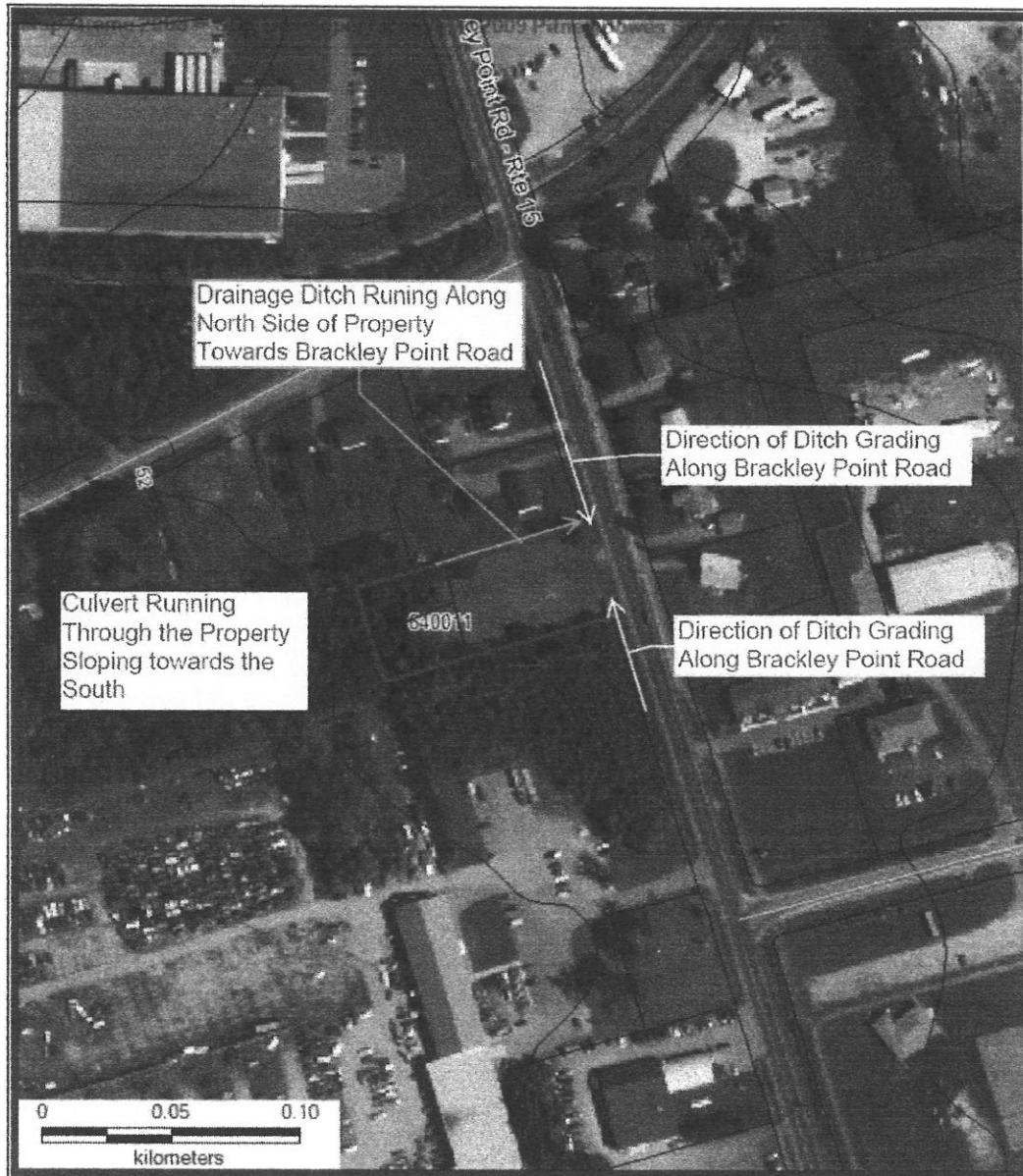
A general review of the drainage in the area was completed during the site visit which is summarized in the figure below. Surface water drainage in the area to the north of the property, which is primarily grassed area, would flow southeast towards PID# 640011. A drainage trench was identified running west to east along the north property line of PID# 640011 would direct a significant portion of the surface water from the adjacent up-gradient properties to the north towards the ditch along the Brackley Point Road. The wooded area to the south of PID# 640011 is relatively flat with a gentle slope trending towards the east. The ditching along Brackley Point Road to the north and south of PID# 640011 both slope towards the entrance of the property.

Serving Our Clients' Needs First

SAINT JOHN OFFICE
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CORNWALL OFFICE
768 Bannockburn Road, Unit #1
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902.675.4885

HALIFAX OFFICE
6037 Charles St., Suite 101
PO Box 31061
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902.492.1550



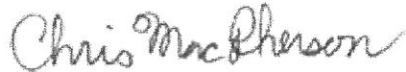
General drainage plan for PID# 640011 and surrounding areas.

Significant precipitation and surface water build-up would be required for more than a few centimeters to accumulate and flow through the culvert as the up gradient properties to the north are relatively flat and are primarily covered by a permeable surface (i.e., grassed area). Furthermore, the drainage ditch running along the north side of PID# 640011 would direct surface water away from the culvert to the ditch area along Brackley Point Road. It is estimated that the culvert would be able to handle the drainage from the adjacent properties to the north (an approximately 11,700 m² area between PID# 640011 and the Royalty Junction Road) for a precipitation event producing upwards of 120 mm/hr. It is anticipated that surface water flow through the culvert would be limited by the drainage area to the south of the subject site before maximum flow rates through the culvert are achieved.

I hope that the information that has been provided herein is sufficient to meet your current needs. Please feel free to contact the undersigned at 902 675 4885 or via email at chris.macpherson@fundyeng.com if further clarification or explanation is required.

Sincerely,

FUNDY ENGINEERING & CONSULTING LTD.



Chris MacPherson, P.Eng, CESA
Geotechnical & Environmental Engineer