

October 15, 2019

The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501,
134 Kent Street, P.O. Box 577,
Charlottetown, PE C1A 7L1



Attn: Mr. Philip Rafuse
Appeals Administrator

Dear Mr. Rafuse:

Re: Appeal pursuant to Section 28 of the *Planning Act*

Further to our telephone conversation of October 11, 2019, attached to this correspondence, please find a Notice of Appeal pursuant to Section 28 of the *Planning Act*. Our appeal involves the amendment of a City of Charlottetown Zoning and Development Bylaw, which was given second reading and was adopted on September 26, 2019.

We have also included a copy of the decision, as well as a rather extensive outline of our grounds for this appeal which are outlined on the attached four pages, titled as Grounds for Appeal.

A separate sheet has also been included for the additional Appellants. I have agreed to be the primary contact for the Appeal, however, so the contact information provided is mine.

We are also in the process of seeking a reconsideration by the Charlottetown City Council, pursuant to Section 3.15 of the Charlottetown Zoning and Development Bylaw. For this purpose, we ask that the Commission's consideration of our Appeal be held in abeyance until such time as we have exhausted the recourse of reconsideration with the City of Charlottetown. Your response to this request in writing would be most appreciated.

I trust this is satisfactory. Should you require anything further or have any questions, please do not hesitate to contact the undersigned.

Yours truly,

A handwritten signature in black ink, appearing to read "Jessie Frost-Wicks". The signature is stylized and cursive.

Jessie Frost-Wicks
36 Palmers Lane
Charlottetown, PE C1A 5V8
902-628-1657
j.frostwicks@gmail.com

RECEIVED

OCT 16 2019

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.irac.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 the City of Charlottetown (name of City, Town or Community) on the 26th day of September, 2019, wherein the Minister/Community Council made a decision to to approve and adopt Bylaw PH-ZD.2-019, a Bylaw to amend the Zoning & Development Bylaw, to rezone the property at 38 Palmers Lane (PID #275156) from Low Density Residential (R-2) Zone to Medium Density (R-3) Zone (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)

1. Council was misinformed as to the importance of a feasible and compliant proposal for the intended structure which accompanies an application to rezone a piece of property. Prior to the vote at the first reading, Councillor Rivard advised Councillor Duffy that the proposed structure was irrelevant, and that the vote only pertained to the rezoning application. The proposed structure is, in fact, (see attached)

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)

That the decision of the Charlottetown City Council to approve and adopt Bylaw PH-ZD.2-019, A Bylaw to amend the Zoning & Development Bylaw, to rezone the property at 38 Palmers Lane (PID #275156) from Low Density Residential (R-2) Zone to Medium Density (R-3) Zone, be rescinded, and a rejection of the application be entered.

Name(s) of Appellant(s): JESSIE FROST WICKS Signature(s) of Appellant(s): [Signature]
Please Print AND OTHERS (see attached)

Mailing Address: 36 Palmers Lane City/Town: Charlottetown

Province: PE Postal Code: C1A 5V8

Email Address: j.frostwicks@gmail.com Telephone: 902-628-1657

Dated this 15th day of October, 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@irac.pe.ca.

Grounds for Appeal (Continued from Notice of Appeal)

1. (cont.) integral to the question of rezoning. How else can the Council properly make a determination whether the rezoning is appropriate and in keeping with the principles and objectives of the Official City Plan? In this case, the proposed structure contains more units than can be accommodated on the property, and Councillor Duffy's questions pertained to that deficiency in the proposal. Councillor Rivard's comments may well have swayed the votes of other Councillors, as well as Councillor Duffy's vote.
2. The decision of the Charlottetown City Council has no merit based on sound planning principles. In its initial report from August 6, 2019, the City of Charlottetown Planning & Heritage Department completed an analysis of this proposal and noted that 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. It also noted that the existing neighbourhood is an older established neighbourhood comprised of one and two unit dwellings to the west of the subject property as well as on the opposite side of the street. It concluded that, notwithstanding the shortage of affordable housing in the City, the main issue in this proposal is the shifting of a higher density residential zone further into an existing, low density mature neighbourhood. The proposal was stated to conflict with the primary objective of the Charlottetown Official Plan which is to preserve the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surroundings. The recommendation was that medium density residential development in this area of the City should be encouraged to be located towards the Commercial Corridor of St. Peter's Road rather than into the interior of the existing neighbourhoods.

On September 3, 2019, that report was amended by additions following public meetings. The Planning & Heritage Department reiterated the statements previously made and added that the rezoning of the subject property to R-3 would not provide any form of transition or buffer between the existing apartments and low density uses, noting that the subject lot once contained a single detached dwelling, which was there when most, if not all, of the surrounding residents in the neighbourhood purchased their property, not anticipating the potential for higher density development. The Department indicated that while the Official Plan does encourage infill development within neighbourhoods, it must be development that will not adversely impact adjoining neighbours. There needs to be stability within existing low density neighbourhoods. In planning practice, higher density is usually located along the periphery of low density neighbourhoods.

The Planning department of the City of Charlottetown is comprised of trained professionals who are there specifically to advise Council and its members and provide their expertise on issues pertaining to planning. As residents and taxpayers in this City, we pay to have those trained professionals in that Department and we should be able to rely on their decisions and on the fact that the City Council will heed that advice when

and wherever possible. Sound planning principles and recommendations were presented to City Council on at least three occasions with respect to this property, and were ignored.

3. The decision of the Charlottetown City Council does not comply with the principles and objectives of the Official City Plan. Section 3.1.2 of the Official City Plan outlines the objective of promoting compact urban form and infill development, as well as the efficient use of infrastructure and public service facilities. It sets out the policy which shall be to allow moderately higher densities in neighbourhoods, and to allow in-law suites in residential land-use designations, and to make provision for multiple-family dwellings in the downtown core, and multiple-family dwellings in suburban centres and around these centres provided it is development at a density that will not adversely affect existing low density housing.

Section 3.2 of the Official City Plan further states that the goal is to maintain the distinct character of Charlottetown's neighbourhoods, to enhance the special qualities of each, with an objective of preserving the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surroundings. The policy that accompanies that is to ensure that the footprint, height, massing and setbacks of new residential, commercial, and institutional development in existing neighbourhoods is physically related to its surroundings. The objective of Section 3.2.2 is to allow moderately higher densities and alternative forms provided that this development is well planned overall, and harmonious with existing residential neighbourhoods.

The proposed structure on this ½ acre lot of land is an 18 unit apartment building, which is constructed with a brick exterior, is three full storeys high, and allows the bare minimum of setback on both the front and sides of the buildings. The property is surrounded by single, semi-detached and duplex residential properties to the north, west and south. On the east are two 12 unit low-rise buildings, each 2 ½ storeys in height. All of the homes in the neighbourhood are wood construction with wood or vinyl siding, and none are more than 2 storeys in height, with most being 1 or 1 ½ storeys. If this rezoning is permitted to proceed, this proposed structure will be the largest, tallest, most imposing structure in the neighbourhood. It will tower over the single family property immediately adjacent to it on the east, and will place the entire west side of the low-rise 12 unit building on the east of it in virtual darkness, as, although it meets the minimum setback of 14.9 feet on the east side, the low-rise 12 unit building sits right on the property line. There will be only 14.9 feet between the 2 ½ storey structure and the 3 storey structure, which will be completely out of character for the neighbourhood, as all other properties enjoy ample green space around the structures. It will, in essence, be an eyesore and a blemish on the appearance of this established neighbourhood. It flies in the face of the primary objective of the Official City Plan.

4. There was no *bona fide* exercise of discretion on the part of Charlottetown City Council in deciding to approve the rezoning of 38 Palmers Lane from R-2 to R-3. Council had the discretion to reject this proposal before it went to Public Meeting, as well as at First Reading, and again at Second Reading, and had there been a judicious and reasonable, or even any consideration of all of the relevant factors, there may have been no need for this appeal. There is no such thing as discretion which allows for arbitrary decisions, but there is no evidence that this decision by City Council was anything but arbitrary.

When this application was received, the Planning and Heritage Department recommended to City Council that the application be rejected and that it should not go to Public Meeting. City Council ignored that recommendation, and the application when to Public Meeting on August 27, 2019.

At the Public Meeting, there was an indisputably negative response from the residents from the neighbourhood of this property, both in person at the meeting and in written submissions. Many concerns were expressed including traffic concerns, excess runoff from the elevated property, and the fact that this is the third time the applicant has brought an application to rezone this property or to build structures over an above what is permitted. The first such application was for a 12 unit multi-residential structure, which was rejected by City Council based on the concerns of the neighbourhood and the fact that it was not an appropriate structure for the neighbourhood. The second application sought to have a grouping of structures, which would be comprised of three 3-storey duplexes. This, too, was rejected by City Council as the buildings proposed were out of character with the other buildings in the neighbourhood and were of a discordant size for the area. This third application clearly has no similarity to the first two and is particularly repugnant as it presents a structure even larger, less attractive and more imposing on the neighbourhood than the first two. The primary concern, however, of the residents at the public meeting was the size, and appearance of the proposed structure. It will be massive in relation to all of the surrounding homes, and although new and no doubt well maintained, it will be unsightly and jarring. Residents suggested that they are not opposed to development of the vacant lot, but only ask that the development be of a size and construct that is in harmony with the neighbourhood. The precedent of the first two applications was apparently meaningless to City Council, and the concerns of the residents were also ignored.

Subsequent to the Public Meeting, the City of Charlottetown Planning Board met on September 3, 2019, and considered the application. The Board considered the report of the Planning Department, and after lengthy discussion, recommended to City Council that the application be rejected, based on a 6 – 3 majority vote.

On September 9, 2019, the proposal was presented to Council. There was no discussion or debate. There was one question asked by one Councillor, one response (which is outlined in item #1 above), and it went to vote. Despite the recommendation of the Planning and Heritage Department, the Planning Board, and the clear concerns of the residents of the affected neighbourhood, City Council voted 5 – 4 in favour of the proposal at first reading. Subsequently, on September 26, 2019, the resolution went to second reading, and the only issue discussed was whether or not the residents had adequate notice of the special meeting that had been called to present it for second reading. At second reading, City Council again voted 5 – 4 in favour of the proposal.

There is nothing in the records available to suggest that Council considered any of the relevant factors in reaching this decision. There was certainly much evidence before Council, from professionals and lay persons alike, to suggest that the proposal should be rejected, and yet City Council inexplicably voted in favour of the proposal. The only reason given was the “Housing Crisis”. No other justification was presented, nor even any details about the housing crisis, or what makes it relevant to this particular application. City Council had an obligation to give a thorough consideration of all factors, but it seems they simply adopted the phrase “Housing Crisis” as a catch all justification to render decisions randomly. Certainly, there have been other similar applications presented in recent months that were turned down. Was the housing crisis not a concern then? According to the City Planners, the crisis for housing in this city centers on affordable housing. Did City Council consider whether this proposal presents an option for affordable housing? There is no evidence of it, if they did. There were so many other relevant considerations that didn’t even seem to come to light – Is this going to provide affordable housing? What impact will this development have on the “housing crisis”? If there is an impact, is it greater than the impact the development will have on the existing neighbourhood? What is it about this development that makes it somehow better or more appropriate than the previous two applications by the same developer for this same property?

City Council has been reported in the media as being completely inundated with development permits, having already approved 1200 units in the city with many more to come. Permit values for multi-unit residential housing in PEI, according to CBC, has increased by 450% in the past two years alone. There are empty buildings in the downtown core which could be developed to provide affordable housing. It is unknown whether City Council considered these factors, but there is no evidence to suggest that they did. The “Housing Crisis” in and of itself is not a sufficient reason to approve this proposal without an examination of exactly what it is about the affordable housing shortage that will be addressed by this development, and whether or not the benefit will outweigh the cost to the rest of the existing neighbourhood. City Council did not exercise its discretion in a reasonable and judicious manner and it is obligated to do so.



CITY OF CHARLOTTETOWN
BYLAW

Carried
5-4 (Councillors
Tweed, Condy,
CB Doiron &
McCabe
opposed

To adopt Bylaw PH-ZD.2-019, A Bylaw to amend the Zoning & Development Bylaw, to rezone the property at 38 Palmers Lane (PID #275156) from Low Density Residential (R-2) Zone to Medium Density (R-3) Zone.

BE IT RESOLVED THAT THE "BYLAW TO AMEND THE CITY OF CHARLOTTETOWN ZONING AND DEVELOPMENT BYLAW, (PH-ZD.2-019, as it pertains to 38 Palmers Lane (PID #275156))", as attached, be read a first time.

Date: _____ September 09, 2019

Moved by Councillor: *[Signature]* X *Greg Rivard* 5-4

Seconded by: *[Signature]* X *A. Doiron*

BE IT RESOLVED THAT the Zoning & Development Amendment Bylaw (PH-ZD.2-019), be approved and that it be read a second time at the next Public Meeting of Council.

Date: _____ September 09, 2019

Moved by Councillor: *[Signature]* X *Greg Rivard* 5-4

Seconded by: *[Signature]* X *A. Doiron*

WHEREAS THE "BYLAW TO AMEND THE CITY OF CHARLOTTETOWN ZONING AND DEVELOPMENT BYLAW, (PH-ZD.2-019, as it pertains to 38 Palmers Lane (PID #275156))", as attached, was read and approved a first time on September 09, 2019;

BE IT RESOLVED THAT the said Bylaw be read a second time.

Date: _____ October 14, 2019

Moved by Councillor: *[Signature]* X *Greg Rivard* (Opposed) 5-4

Seconded by: *[Signature]* X *Mike Duffy* Councillors Condy,

BE IT RESOLVED THAT the said Bylaw be approved and adopted.

Date: _____ October 14, 2019

Moved by Councillor: *[Signature]* X *Greg Rivard* McCabe,

Seconded by: *[Signature]* X *Mike Duffy* Doiron,
Condy,
Councillor
Ramsay
absent.

Mayor/Chairperson
(signature sealed)

Chief Administrative Officer
(signature sealed)

City of Charlottetown
A Bylaw to amend the Zoning and Development Bylaw.
BYLAW # PH-ZD.2-019

BE IT ENACTED by the Council of the City of Charlottetown as follows:

PART I – INTERPRETATION AND APPLICATION

1. Title

(1) This Bylaw shall be known and cited as the “Bylaw to amend the Zoning and Development Bylaw, Bylaw # PH-ZD.2-019”

2. Authority

(1) Section 16 of the Planning Act R.S.P.E.I 1988 Cap. P-8, enables the Council of the City of Charlottetown, to adopt bylaws implementing an official plan for the municipality

3. Purpose

(1) The purpose of this bylaw is to amend the City of Charlottetown’s Zoning and Development Bylaw provisions found in Appendix G.

PART II – AMENDMENTS

4. The zoning of the property at 38 Palmers Lane (PID #275156) as shown on Appendix “G” of the Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, is Medium Density Residential (R-3) Zone, hereby excluding it from its former designation of Low Density Residential (R-2) Zone.



PART III – EFFECTIVE DATE

20. Effective Date

- (1) The effective date of the Zoning & Development Bylaw amendment is the date as signed by the Minister of Communities, Land and Environment.

First Reading:
This Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, was read a first time at Council meeting held on the _____ day of _____, 2019.

This Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, was approved by a majority of Council members present at the Council meeting held on _____ day of _____, 2019.

Second Reading:
This Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, was read a second time at Council meeting held on the _____ day of _____, 2019.

This Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, was approved by a majority of Council members present at the Council meeting held on _____ day of _____, 2019.

Approval and Adoption by Council:
This Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, was adopted by a majority of Council members present at the Council meeting held on _____ day of _____, 2019.

21. Signatures

Mayor/Chairperson
(signature sealed)

Chief Administrative Officer
(signature sealed)

This Zoning & Development Bylaw, Bylaw #PH-ZD.2-019, adopted by the Council of the City of Charlottetown on _____ day of _____, 2019 is certified to be a true copy.

Chief Administrative Officer
(signature sealed)

Date:

MINISTERIAL APPROVAL

This Zoning and Development Bylaw amendment (PH-ZD.2-019) is hereby approved.

Dated on this ____ day of _____, _____.

Hon. Bloyce Thompson
Minister of Agriculture and Land

Effective Date

The effective date of the Official Plan amendment is the date as signed below by the Minister of Communities, Land and Environment.

Adoption and Approval by Council:

The Official Plan amendment(s) was adopted and approved by a majority of the Councillors present at the Council Meeting held on the 9th day of September, 2019.

Mayor/Chairperson
(signature sealed)

Chief Administrative Officer
(signature sealed)

MINISTERIAL APPROVAL

This Official Plan Amendment (PH-OPA.1-006) is hereby approved.

Dated on this ___ day of _____,

Hon. Bloyce Thompson
Minister of Agriculture and Land



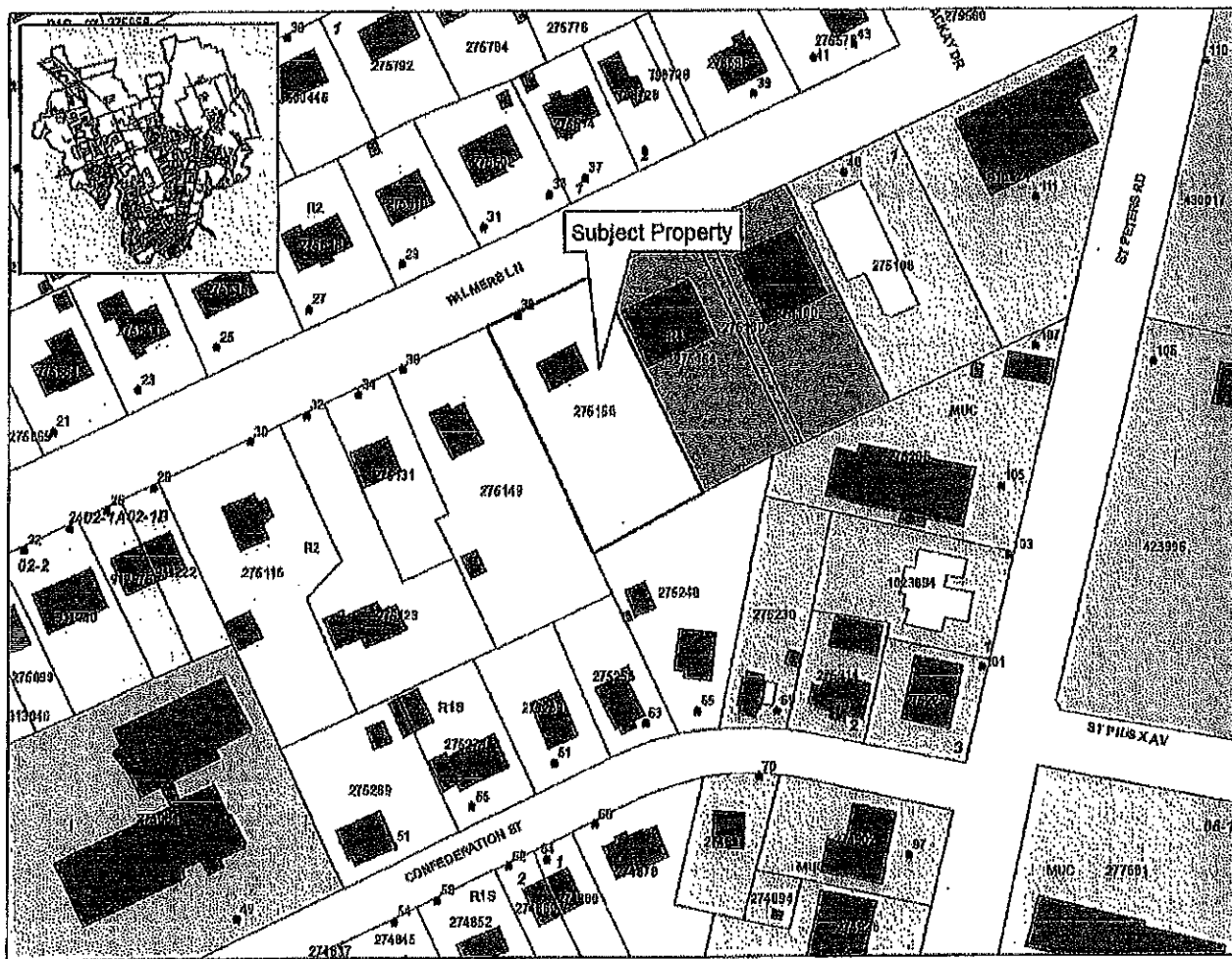
CITY OF CHARLOTTETOWN

Official Plan Amendment PH-OPA.1-006
Appendix "A" - Official Plan Map

Authority

The Council for the City of Charlottetown under the authority vested in it by Section 11 and 15 of the Planning Act R.S.P.E.I. 1988 Cap. P-8 hereby enacts as follows:

The land use for 38 Palmers Lane (PID #275156) as shown on Appendix A -- Official Plan Map of the City of Charlottetown Official Plan, is designated as Medium Density Residential, hereby excluding it from its former designation of Low Density Residential.





Verbatim Excerpt requested
by Coun. Tweel re: 38
Palmers Lane (2nd Rdg)

**Special Meeting of Council
Thursday, September 26, 2019 at 4:00 PM
Council Chambers, City Hall, 199 Queen Street**

Mayor Philip Brown

Present: Deputy Mayor Jason Coady Councillor Greg Rivard
Councillor Mike Duffy Councillor Alanna Jankov
Councillor Terry Bernard Councillor Terry MacLeod
Councillor Julie McCabe Councillor Bob Doiron (arr. 4:10 pm)
Councillor Mitchell Tweel

Also: Peter Kelly, CAO Frank Quinn, PRM
Ramona Doyle, SM Scott Adams, PWM
Ronnie McPhee, CLO Tracey McLean, RMC

Regrets: Councillor Kevin Ramsay

2nd reading of the Zoning & Development Bylaw – 38 Palmers Lane

Councillor Tweel: Point of Order. Did a notice go out in the newspaper advising the residents on Palmers Lane that second reading was going to take place so that they could attend the meeting and watch the proceedings on how the vote will unfold?

Mayor Brown: We don't send out notices for second reading. Could you imagine if we did that every time.

Councillor Tweel was advised that the agenda is posted online and on the first floor of City Hall at least 24 hours in advance of the meeting.

Councillor Tweel: Do you know what? Not everybody is online. Philip, you talked about it. To use your words about being open and transparent and accountable. There are a lot of residents on Palmers Lane that are very interested in this topic and how it affects that neighbourhood.

Mayor Brown: I think they already know how the vote went. The vote went in favour of the motion. Shall it carry?

2nd reading of the Zoning & Development Bylaw - to adopt Bylaw PH-ZD.2-019, A Bylaw to amend the Zoning & Development Bylaw, to rezone the property at 38 Palmers Lane (PID #275156) from Low Density Residential (R-2) Zone to Medium Density (R-3) Zone.

**Moved by Councillor Greg Rivard
Seconded by Councillor Mike Duffy**

RESOLVED:

That the said Bylaw be read a second time, be approved and adopted.

CARRIED 5-4

Deputy Mayor Coady, Councillors Doiron, McCabe and Tweel opposed

Councillor Tweel: So just a question for you Mr. Mayor. Who is going to inform these people about the 5-4 vote? Are you going to do that? They don't know the meeting took place so who is going to tell them?

Mayor Brown: Councillor from the area.

Councillor Tweel: Oh. Ok. So is it up to the Councillor to inform them that the meeting is supposed to take place?

Mayor Brown: We do this for every resolution....

Councillor Tweel: No, no. You preached openness and transparency and accountability. I will tell you one thing Mr. Mayor, the residents of Palmers Lane are not too happy. In fact, there are other words to describe it.

Councillor Bernard: It's been posted for two days.

Councillor Tweel: That's not the point Terry. Not everybody is online as you know.

Councillor Bernard: What I do, if the matter is important, is take notices and drop them off at the doors so they will know.

Councillor Tweel: If I was to put that in the paper, does that mean I am doing Greg's job? If I want to let everyone know there is a second reading, does that mean I am doing Greg's job?

Councillor Doiron: Who determines when this comes up? Usually, it comes up at the Council meeting. Who determines if it comes up today?

Mayor Brown: The agenda is put together by the CAO and the Mayor. I put it on the agenda along with the other items because, you know what, we have to start forwarding some of these issues. Developers, whether we are with them or against them, they need to have (*a signal?*) so that is the open, transparent and accountable to them too. Councillor Doiron, I understand your point but the agenda went out within 24 hours and I remember when George MacDonald used to put it on the agenda that night. At least it is 24 hours' notice. You can make those calls and ask the constituents to come out to the meeting.

End of verbatim excerpt