THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LA10017
Order LA10-10

IN THE MATTER of an appeal by Andrea Battison and Joan Cumming of a decision of the City of Charlottetown, dated June 14, 2010.

BEFORE THE COMMISSION

on Wednesday, the 10th day of November, 2010.

Allan Rankin, Vice-Chair
David Holmes, Commissioner
Chester MacNeill, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by Andrea Battison and Joan Cumming of a decision of the City of Charlottetown, dated June 14, 2010.

Contents

IN THE MATTER of an appeal by Andrea Battison and Joan Cumming of a decision of the City of Charlottetown, dated June 14, 2010.

Appearances & Witnesses

1. For the Appellants

Andrea Battison
Joan Cumming

2. For the Respondent City of Charlottetown

Counsel:

David W. Hooley, Q.C.

Witness:

Don Poole

3. For the Developer Charlottetown Area Development Corporation

Ernie Morello

Witness:

Radya Rifaat

IN THE MATTER of an appeal by Andrea Battison and Joan Cumming of a decision of the City of Charlottetown, dated June 14, 2010.

Reasons for Order

1. Introduction

[1] The Appellants Andrea Battison (Ms. Battison) and Joan Cumming (Ms. Cumming) have filed an appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the ***Planning Act***, R.S.P.E.I. 1988, Cap. P-8, (the ***Planning Act***). The Appellants' Notice of Appeal was received by the Commission on July 5, 2010.

[2] This appeal concerns a June 14, 2010 decision of the Respondent City of Charlottetown (the City) to approve the following resolution:

Mary Councillor Tweel + Richard

CITY OF CHARLOTTETOWN JUL 05

RESOLUTION

MOTION CARRIED Unan

MOTION LOST _____

Planning #9

Date: June 14, 2010

Moved by Councillor Kim Devine Kim Devine

Seconded by Councillor Peter McCloskey Peter McCloskey

RESOLVED:

That the requests to amend Appendix "G" of the Zoning and Development Bylaw "List of approved properties in the Comprehensive Development Area Zone and their Permitted Uses" for the lands located on the south side of Grafton Street and identified as PID# 825943, 841494, a portion of 825950 and a portion of 338921 as per the submitted Development Concept Plan which includes the development of an Entertainment/Concert Venue with asphalt and landscaped areas as proposed, a ticket office, entrance gates, and parking for approximately 121 cars and 6 buses will proceed through the rezoning process and submitted for approval at Council's earliest opportunity once the purchase of land identified as PID#841494 has been completed.

And that the request to rezone properties north of Grafton Street, identified as PID# 365668 and 365924, a portion of 825927 and a portion of 336537 from CDA – Comprehensive Development Area to P – Parking Zone; and to rezone a portion of PID# 640847 from Open Space to Parking, and to approve the request to consolidate this portion of the lot with PID# 365668, subject to the receipt of pinned survey plans; and to amend Appendix "A" - Future Land Use Map of the Official Plan - for portions of PID# 640847 and 825927, from Recreation to Concept Planning Area will proceed through the rezoning process and submitted for approval at Council's earliest opportunity once the purchase of land identified as PID #365668 has been completed.

[3] After due public notice, the appeal was heard on September 1, 20 and 21, 2010.

[4] Following the hearing, the Commission received an October 1, 2010 written submission from the Appellants, an October 8, 2010 written submission from the City, an October 8, 2010 written submission from the Developer Charlottetown Area Development Corporation (CADC) and an October 15, 2010 rebuttal submission from the Appellants.

2. Discussion

The Appellants' Submissions

[5] Highlights of the Appellants' submissions include the following:

- The public meeting held by the City on June 8, 2010 was a "travesty". The City's Council Chambers did not provide adequate space and many persons in attendance were unable to hear the proceedings due to the lack of a sound system.

- The purchase of "toxic" land by CADC and the expense of making it useable needs re-evaluation. The City's Official Plan requires an environmental impact statement for any new development which in the City's judgment could have a significant environmental impact. It is submitted that the City did not raise concerns about contamination or possible adverse effects on the neighbourhood.

- Neither the City, CADC, the Appellants nor the Commission have seen the Conestoga-Rovers Report prepared for Imperial Oil.

- The City's decision was inconsistent with two objectives of the Planning Act, namely to provide for efficient planning at the municipal level and to provide the opportunity for public participation in the planning process.

- The principles embraced for the Eastern Gateway Study are not being applied to the proposed entertainment / concert venue site.

- The proposed 500 to 600 car parking lot will not meet the needs of the estimated 5000 vehicles expected for a large concert event. The traffic consultant who testified for CADC was not aware that large areas of the downtown have been cordoned off in the past two years as part of festival security measures. This will reduce the number of available parking spots. To date, a special event management plan has not been devised.

[6] The Appellants' offered the following conclusion to their written submissions:

Conclusion

The site in question is described as "vacant" which implies it has no predetermined use, yet, without any input from citizens (other than selected stakeholders), it will become noisy, disruptive and congested, dedicated to a use that will make it miserable for people to live there. Consideration of what is viable for "the community" and "the stakeholders" has ignored all those who will have to put up with the major change the plan will bring to their expected lifestyle. How many of the decision makers live in the area?

This brownfield presents an opportunity to showcase environmental stewardship in Canada's Green Province and be a model for sustainability and a monument to a modern, innovative approach – taking responsibility for cleaning up rather than covering up. Brownfield developers are clamouring for the privilege and opportunity to rejuvenate sites like this and revert them to economic assets in the community thus raising their value. What an opportunity will be missed if it is turned into a parking lot and a concert site. The heritage links proposed for this are in the City's Official Plan seem to have been forgotten. Is it not time for the City to display the same foresight now in the 21st. Century that gave rise to the legacy we have in Victoria Park from the 19th Century? This gateway is the closest one to our heritage district. Considering the unattractiveness of all the other routes into this City, Canada's Birthplace, are we not obliged to put our absolutely best effort forward and make this entry point something to be proud of?

We therefore request that

"A forum for the proper expression of ideas and alternative uses for the site should be created with all relevant information available before the land is purchased.

Respectfully submitted,

Andrea Battison and Joan Cumming.

The City's Submissions

[7] Highlights of the City's submissions include the following:

- The City submits that the issues on appeal boil down to (i) whether the City, in reaching its decision, followed the required process and procedures set out in the Zoning and Development Bylaw (the Bylaw) and (ii) whether the City's decision is consistent with good planning principles.

- The City submits that it satisfied all of the requirements of sections 4.27 and 4.28 of the Bylaw as to process and procedure.

- There was no credible evidence placed before the Commission by way of an independent expert planner or otherwise to the effect that the proposed development is inconsistent with good planning principles.

- The evidence of Don Poole on behalf of the City and Ernie Morello on behalf of CADC indicate that there are numerous reasons to conclude that the proposed development is entirely consistent with good planning principles for this "brown field" site.

- The City submits that it is "crystal clear" that the City and the Commission have no jurisdiction to deal with the environmental concerns presented by the Appellants. An Environmental Impact Statement was prepared by Mr. Morello on behalf of CADC and this document was filed with the City. It is the responsibility of the Department of Environment, Energy and Forestry (the Department) to administer their Environmental Impact Assessment Guidelines. The appropriate forum for environmental concerns respecting this proposed development is the Department. Judicial Review, under the ***Judicial Review Act***, would be the appropriate forum for a review of the eventual decision of the Minister of said Department.

- It is evident from the record before the Commission that everyone who wanted to speak at the June 8, 2010 Public Meeting had an opportunity to do so. There was no official complaint about the adequacy of the facilities raised at the public meeting. There was no request that the meeting be adjourned to another date, place and time for a fuller public meeting. While the physical facilities may not have been perfect for the number of persons who unexpectedly turned out, the facilities were adequate and a "proper public meeting took place as required by the Bylaw".

[8] The City offered the following conclusion to their written submissions:

> *5.015 Given all of this and some good old fashioned trust as is warranted by CADC's excellent track record, the City submits that the Appellant's [sic] have already had (and may supplement via judicial review) their fair "day in court".*

CADC's Submissions

[9] CADC filed the following written submissions in response to the Appellants' written submissions:

CHARLOTTETOWN AREA DEVELOPMENT CORPORATION

Mr. Philip Rafuse
Appeals Administrator
Island Regulatory and Appeals Commission
134 Kent Street
Charlottetown, P.E.I.

Appeal# LA 10017

Subject: Comments from CADC regarding the final summation submitted by Andrea Battison and Joan Cumming on the proposed development of the former Imperial Oil Tank Farm Site.

Date: October 8, 2010

The Charlottetown Area Development Corporation wishes to offer the following clarifications regarding the summation/statements made by Andrea Battison and Joan Cumming in there final summation.

1. On page 5 of the summation it is stated that CADC 's landscape architect's only experience in brown field development was the clean up that happened at the Confederation Landing Park.

The Confederation Landing Park was not cleaned up to a pristine site as suggested. The site is still contaminated but provisions have been made in its construction to allow for the present uses that takes place on the site, those being parkland, concert site and parking lot.

CADC has also had a great deal of experience and a very successful track record in dealing with contaminated sites for future development purposes. In exhibit R-3, tab 4, CADC lists the projects undertaken since 1976. The following list comprises the sites that were contaminated and required special attention and intervention.

A. ***Pownal Parkade;*** *Oil contamination from the former Irving Gas Station*
B. ***Peak's Wharf and Marina****; Contamination from previous lumberyard use.*
C. ***Confederation Landing Park;*** *Oil contamination from former use as Texaco Tank Farm*
D. ***Peake's Parking Lot;*** *Contamination from former foundry use on the site*
E. ***Brass Shop Reconstruction/CN building;*** *Hydrocarbon contamination from former CN use both on the site and within the building.*
F. ***CN Station Renovation;*** *Asbestos removal from the building and site contamination on the site where parking lot is now located*
G. ***Joe Ghiz Memorial City Park,*** *Hydrocarbon contamination from former land use by CN rail.*
H. ***Rail Yard Parking Lot;*** *Hydrocarbon contamination from former land use as CN lands*

4 Pownal St , P.O. Box 786 , Charlottetown, Prince Edward Island, Canada C1A 7L9 Tel (902) 892-5341 Fax (902) 368-1935

I. ***Founders Hall/CN Car Shop,*** *Asbestos removal and hydrocarbon contamination*
J. ***East Royalty Landfill Site;*** *Former City landfill site. CADC prepared the sports field design in consultation with Jacques Whitford. (Environmental Engineers)*
K. ***AVID/APHL Housing;*** *Former Fishers and Ocean's site. Hydrocarbon contamination resulting in all soils to be buried on site.*
L. ***Abe Zakem House;*** *Former City Garage site. All contaminated materials had to be buried on site and caped.*
M. ***ONI Condo development;*** *Hydrocarbon contamination from former CN rail use.*
N. ***Invesco / Aim Trimark;*** *Hydrocarbon contamination from former car dealership. Removal and disposal of abandoned underground fuel storage tanks. Removal of contaminated material to East Royalty landfill.*
O. ***Kay's Building;*** *Asbestos removal*
P. ***Waterfront Convention Centre;*** *Former Coast Guard and Fisheries site. Collaboration with Stantec (Jacques Whittford) to prepare design solutions to contain contamination and allow for development.*

2. Page 6 of the appellants submission also suggests that CADC "was not interested " in what was under the site.

This statement is far from the truth. CADC is interested in what is in the ground but does not have staff with expertise in the field of environmental engineering. It would be extremely foolish and unprofessional for CADC to rely on it's internal staff to make environmental related design/construciton decisions based only on internal staff recommendations.

CADC relied on the professional integrity of the consultants; Conestoga Rovers, the consultants who authored the environmental assessment and the professional review of this document by the qualified staff at the P.E.I. Department of the Environment.

Our task at CADC was to ensure that these reviews took place and that we followed the recommendations and restriction imposed on the site by the two professional groups, one which authored the study and other with the expertise to review the study.

CADC thanks the commission for the opportunity to make these clarifications.

Sincerely,

Erne Morello
Landscape Architect

2

3. Findings

[10] After a careful review of the evidence, the submissions of the parties, and the applicable law, it is the decision of the Commission to deny this appeal. The reasons for the Commission's decision follow.

[11] Subsection 28(1.1) of the ***Planning Act*** reads as follows:

> *28(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality*
>
> *(a) that is made in respect of an application by the person, or any other person, under a bylaw for*
>
> *(i) a building, development or occupancy permit,*
>
> *(ii) a preliminary approval of a subdivision,*
>
> *(iii) a final approval of a subdivision; or*
>
> *(b) to adopt an amendment to a bylaw, including*
>
> *(i) an amendment to a zoning map established in a bylaw, or*
>
> *(ii) an amendment to the text of a bylaw,*
>
> *may appeal the decision to the Commission by filing with the Commission a notice of appeal.*

[12] The City's June 14, 2010 resolution does not appear to fit squarely between the corners of subsection 28(1.1) of the ***Planning Act***.. It could be characterized as a decision made in respect of an application by CADC for an amendment to the Bylaw. But, it appears to contemplate a more final decision as it reads in part:

> *… will proceed through the rezoning process and submitted for approval at Council's earliest opportunity once the purchase of land identified as PID#841494 has been completed.*

[13] Similar wording is repeated in the second paragraph of the resolution, referring to a different parcel number.

[14] A June 15, 2010 letter from Hope Gunn, Planning & Development Officer for the City to Mr. Morello for CADC sheds further light on the matter:

> *First Reading of the required Bylaw amendment also took place at that meeting. The amendment will be held in First Reading until sale of the properties is finalized*.

[15] Subsection 28(1.4) of the ***Planning Act*** reads as follows:

> *28(1.4) For greater certainty, where a person is dissatisfied by the decision of a council of a municipality to adopt an amendment to a bylaw, the 21-day period for filing a notice of appeal under this section commences on the date that the council gave final reading to the amendment to the bylaw.*

[16] The Commission notes, for the record, that none of the parties raised this jurisdictional concern as a preliminary matter at the outset of the hearing on September 1, 2010. At the commencement of the afternoon session on the second day of the hearing, the Commission's Vice-Chair raised the matter. Some discussion ensued and the parties appear to have consented to the Commission's jurisdiction to hear the appeal. As the parties did not raise the issue in their extensive written submissions, the Commission finds that the parties had in fact consented to the Commission's jurisdiction.

[17] However, while helpful, the fact that all parties consented to the Commission's jurisdiction is not enough. The Commission derives its jurisdiction from statute and the Commission must be satisfied that the various applicable statutes provide it with the necessary jurisdiction to hear an appeal.

[18] Section 9 of the ***Interpretation Act*** reads as follows:

> *9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.*

[19] Section 2 of the ***Planning Act*** reads as follows:

> *2. The objects of this Act are*
>
> *(a) to provide for efficient planning at the provincial and municipal level;*
> *(b) to encourage the orderly and efficient development of public services;*
> *(c) to protect the unique environment of the province;*
> *(d) to provide effective means for resolving conflicts respecting land use;*
> *(e) to provide the opportunity for public participation in the planning process. 1988,c.4,s.2.*

[20] A plain reading of subsections 28(1.1) and 28(1.4) imply that the Commission does not have the jurisdiction to hear this appeal. The City's Resolution of June 14, 2010 may be characterized as a preliminary approval of amendments to the Bylaw. The City's Resolution is not, strictly speaking, one of the enumerated items within subsection 28(1.1). The City's resolution is not a decision to adopt a bylaw amendment. Rather, it anticipates a further decision to be made once the purchase of the lands has been completed. Subsection 28(1.4) then provides that the commencement of the appeal period begins on the date of final reading of the bylaw amendment. The evidence suggests that the Resolution was neither a decision to implement a bylaw amendment nor a final reading.

[21] The Commission has often referred to section 9 of the ***Interpretation Act*** where a strict reading of legislation would appear to frustrate the appeal process. The Commission is mindful of the above cited objects of the ***Planning Act***. Objects (a) and (d) are particularly germane to this jurisdictional issue. There is considerable merit in encouraging the appeal process to be exercised as early as practical in the planning process, as this allows an appellant to exercise the right to appeal a project in its early stages before a developer incurs greater development costs. In addition, if the outcome of an appeal requires modifications to a project, it is easier and less expensive to implement such modifications in the concept stage, rather than at a much later stage. Simply put, it is often good for all parties to an appeal to deal with the issues as early as practical provided that such an early determination is also just and fair. It is often said that justice delayed is justice denied. It may also be said that justice rushed is justice hushed. These two sayings may be reconciled by proceeding as swiftly as possible, provided that due process is followed and the rights and responsibilities of all parties are respected.

[22] The Commission finds that proceeding with an appeal in the early stages of a project helps to facilitate efficient municipal land use planning. It also helps to provide an effective means for resolving land use conflicts by addressing the issues before plans become highly detailed and fixed. In the present appeal, proceeding with the appeal benefits all three parties while delaying the appeal until after a final reading of the various bylaw amendments was passed would cause confusion, delay, added expense and runs the risk of bringing the administration of justice into disrepute.

[23] Given that all parties to this appeal consented to the Commission's jurisdiction with respect to this present appeal, the Commission hereby applies a fair, large and liberal construction to section 28 of the ***Planning Act***, as it applies to the City's June 14, 2010 Resolution, in order to best ensure the attainment of the objects of the ***Planning Act***. Accordingly, the Commission finds that it has the jurisdiction to hear the present appeal.

[24] Appeals under the ***Planning Act*** generally take the form of a hearing *de novo* before the Commission. In an often cited decision which provides considerable guidance to the Commission, In the matter of Section 14(1) of the *Island Regulatory and Appeals Commission Act* (Stated Case), [1997] 2 P.E.I.R. 40 (PEISCAD), Mitchell, J.A. states for the Court at page 7:

> *it becomes apparent that the Legislature contemplated and intended that appeals under the **Planning Act** would take the form of a hearing de novo after which IRAC, if it so decided, could substitute its decision for the one appealed. The findings of the person or body appealed from are irrelevant. IRAC must hear and decide the matter anew as if it were the original decision-maker.*

[25] In previous appeals, the Commission has found that it does have the power to substitute its decision for that of the municipal or ministerial decision maker. Such discretion should be exercised carefully. The Commission ought not to interfere with a decision merely because it disagrees with the end result. However, if the decision maker did not follow the proper procedures or apply sound planning principles in considering an application made under a bylaw made pursuant to the powers conferred by the ***Planning Act***, then the Commission must proceed to review the evidence before it to determine whether or not the application should succeed.

[26] The Commission finds that the above-cited principle, originally applied to decisions concerning building or development permits, and later applied to

applications for variances and applications for rezoning, is applicable to the facts of this case. A two-part test is invoked:

- Whether the municipal authority, in this case the City, followed the proper procedures as required in its Bylaw in making a decision on what is essentially a rezoning and a bylaw amendment application; and

- Whether the City's decision with respect to the proposed rezoning and bylaw amendment has merit based on sound planning principles.

[27] The Commission wishes to make it clear that this appeal is an appeal pursuant to the ***Planning Act***. While there was much discussion about the proposed development from an environmental perspective, the Commission does not have general appellate jurisdiction under the ***Environmental Protection Act***.

[28] With respect to the first part of the two part test, the Commission must determine whether the City followed the procedures set out in section 4.27 of its Bylaw for amendments to said Bylaw. The evidence before the Commission is that the required letters were sent to property owners owning lots located within a 100 metre radius of the subject properties, the required newspaper notices were placed and a public meeting was held. The Appellants submit that the City's June 8, 2010 public meeting was a "travesty". The issue for the Commission is to determine whether the public meeting which was held met the requirements set out in section 4.27 of the Bylaw.

[29] The record before the Commission makes it clear that the facilities for the public meeting were inadequate. That said, the inadequacy of the public meeting related to room size, seating capacity and lack of an audio system. There is no evidence before the Commission that discussion was stifled and no evidence that planning information was being withheld from the public. Simply put, the meeting facilities, with the benefit of hindsight, might be considered a travesty, but the public meeting process itself was certainly not a travesty.

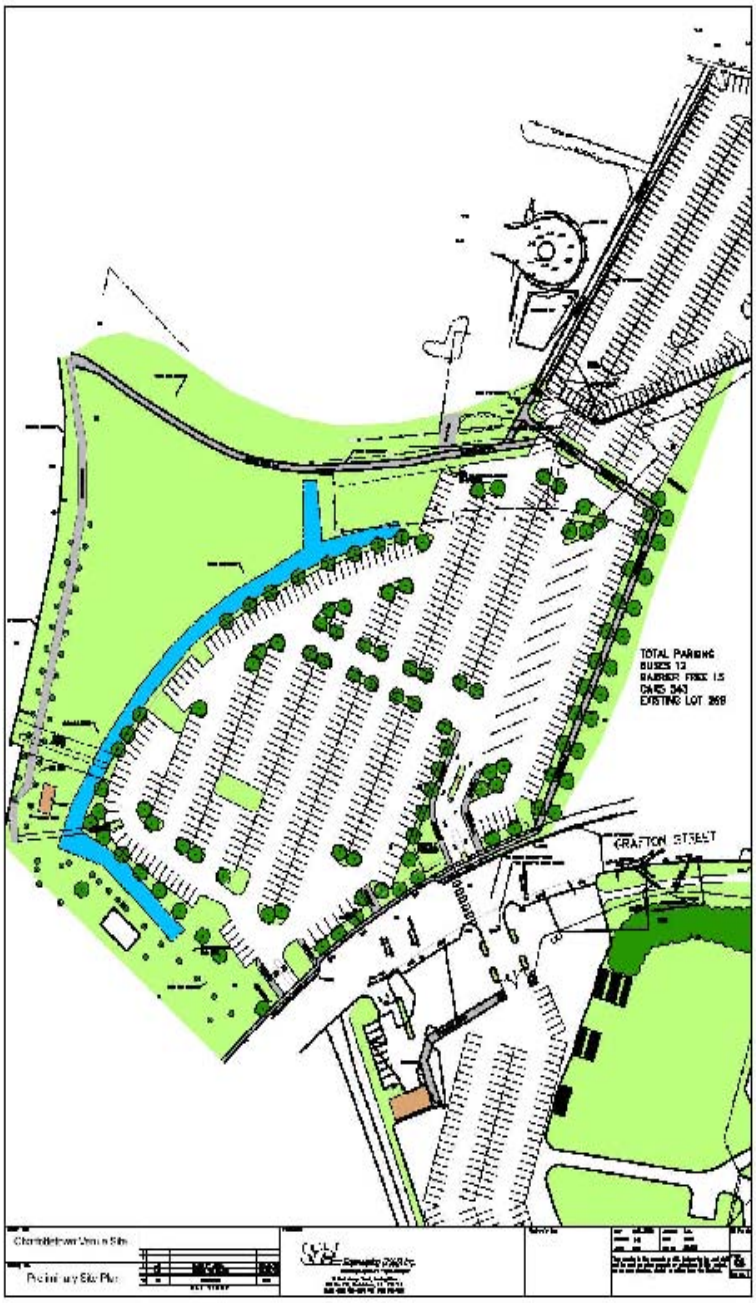
[30] The City contends that the public meeting which took place on June 8th, 2010 constituted a "fair and proper hearing", although it also acknowledges that City Hall is "not ideal" for a public meeting attended by a large number of citizens. The Commission concurs with this assessment. While the historic chambers of City Hall obviously serve the City well as a forum of executive decision making and governance, these physical facilities were not designed for, nor equipped to accommodate, a large meeting in which citizens are invited to discuss and effectively provide their views to the Mayor and Council.

[31] The Commission agrees with the City that the meeting of June 8th met the requirement for a public meeting as set out in Sections 4.27 the Bylaw, but only in a minimal sense, and it is suggested that the City review its present policy and practice with respect to public engagement around major projects and developments such as the one under appeal. Meaningful public discussion and engagement entails more than holding a meeting in a small venue inadequate for the intended purpose. More is expected of a capital city with the stature, resources, and democratic traditions of the City of Charlottetown.

[32] Although the Appellants rightly voiced concerns about the venue for the public meeting, the Commission finds that the City followed the procedural requirements set out in section 4.27 of the Bylaw.

[33] With respect to whether the City's decision of June 14, 2010 has merit based on sound planning principles, the Commission has the benefit of the testimony of the City's manager of planning, CADC's landscape architect, and a traffic consultant hired by CADC.

[34] The following is a portion of a site plan (focusing on the north side of Grafton Street) of the properties that are the subject of this appeal:



[35] The following is the remaining portion of a site plan (focusing on the south side of Grafton Street) of the properties that are the subject of this appeal:

[36] The Commission finds that the bulk of the north and south side subject properties are brownfields. The majority of the land area of these properties had previously been used for a petroleum bulk storage tank facility. Prior the use as a petroleum bulk storage tank facility, the north side had been used as a City landfill site. The evidence before the Commission is that the north side must be capped by asphalt or a similar surface, hence the proposed use as a parking lot.

[37] The Commission finds that the City's decision, reflected in the June 14, 2010 Resolution pertaining to the subject properties, is consistent with sound planning principles. The options for development of these properties are limited. While it might be possible to develop these properties for residential or commercial purposes, the evidence before the Commission suggests that such development is unlikely due to liability concerns.

[38] Additionally, there is merit to the use proposed by CADC for the subject properties. The City has had substantial success with hosting a variety of festivals and events, many of which have been held at the Confederation Landing Park, which is also a redeveloped brownfield site. The City has gained experience in traffic management, policing and hours of operation issues as a result of hosting similar festivals and events in recent years. While such experience does not eliminate the potential for conflict with nearby residential property uses; more efficient traffic flow, a strong police presence to deter criminal behaviour and hours of operation to curtail noise after a fixed hour serve to reduce conflict between festivals/events and residential use. The subject properties would provide a larger venue site with some on site parking to meet the needs of various festivals and events. When festivals and events are not held, the north side of the subject properties will provide additional parking space for Holland College while the south side will function as a City park.

[39] As the City followed the procedures set out in its Bylaw and its decision is consistent with sound planning principles, the Commission hereby denies the appeal.

[40] While the Appellants' appeal is denied, the Commission wishes to point out that they presented their appeal with professionalism and in the utmost good faith. The Appellants successfully brought a sense of clarification and focus to the project that allows interested parties to be better informed. Likewise, the City and CADC responded with professionalism and a recognition of the importance of the appellate process to allow the scrutiny of planning decisions, the opportunity to present fresh evidence and the opportunity for those with concerns to have a full and complete hearing.

4. Disposition

[41] An Order denying this appeal follows.

IN THE MATTER of an appeal by Andrea Battison and Joan Cumming of a decision of the City of Charlottetown, dated June 14, 2010.

Order

WHEREAS the Appellants Andrea Battison and Joan Cumming have appealed a decision of the City of Charlottetown, dated June 14, 2010;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on September 1, 20 and 21, 2010 after due public notice and suitable scheduling for the parties;

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

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

IT IS ORDERED THAT

1. The appeal is hereby denied.

DATED at Charlottetown, Prince Edward Island, this 10th day of November, 2010.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*
Allan Rankin, Vice-Chair

(Sgd.) *David Holmes*
David Holmes, Commissioner

(Sgd.) *Chester MacNeill*
Chester MacNeill, Commissioner

NOTICE

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

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

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

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

> *13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*
>
> *(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)