

7 April 2025

VIA EMAIL

Island Regulatory and Appeals Commission
Attention: Philip Rafuse, Appeals Administrator
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Our File: 15042-287dk

Dear Mr. Rafuse:

RE: Appeal LA25002 – Z&C Flourish International Ltd. v. City of Summerside

We write further to the Commission's letter dated 26 February 2025, in which the Commission requested the City of Summerside (the "**City**") to file a Record and Reply to the Notice of Appeal filed by Z&C Flourish International Ltd. (the "**Appellant**") on 21 February 2025 (the "**Appeal**"). Please accept this correspondence as the City's Reply to the Notice of Appeal.

NATURE OF THE APPEAL

The Appellant applied to rezone three portions of PID 1163526 (the "**Subject Property**") from the existing R1 or R2 to High Density Residential R4 zone to permit development of apartment buildings (the "**Rezoning Application**"). The City's planning staff and Planning Board recommended approval. Council denied the Rezoning Application through reference to applicable *Official Plan* policies and sound planning criteria contained in the City's *Zoning Bylaw*.

GROUND'S OF APPEAL

The Appellant's grounds of appeal are as follows:

- *The concern was how to deal with waste, which we addressed;*
- *We had the support of Planning Board, which means we met all the requirements; and*
- *Canada Housing Infrastructure Fund is available, we could accelerate all the development process.*

RESPONSE TO APPEAL

- **Waste**

Council's reasons for voting against the Rezoning Applications are in the Minutes of the Special Council Meeting dated 4 February 2025.¹ It does not appear that any Councillors who voted against the Rezoning Application raised waste management as an issue. Additional information from the Appellant is necessary to respond to this ground of appeal.

- **Planning Board Recommendation**

The City acknowledges that its planning staff² and the majority of the Planning Board³ supported the Rezoning Application.

However, it is well settled in matters before the Commission that a municipal council is not bound by the recommendations of their planning department nor their Planning Board.⁴ What is required is that the final decision "*should be rooted in planning principles.*"⁵

In the present matter, Council for the City of Summerside grounded their reasons in the criteria established in the *Official Plan* and at section 5.7 of the City's *Zoning Bylaw*.⁶ Indeed, the reasons for Council's decision included budgetary impacts, location criteria for high-density housing developments, and the lack of proposed diversity of housing forms.⁷

The Commission has previously described its reluctance to interfere with municipal decisions on the ground of sound planning where the decision is supported by objective and reliable evidence that confirms the decision is based on the applicable Official Plan and bylaw and sound planning principles.⁸ The Commission has previously described its policy is to defer to a municipal council's decision where the municipality has followed the process set out in its bylaws, was fair to all parties, and rendered a decision which is rooted in sound planning principles.⁹

- **Canada Housing Infrastructure Fund**

The City is not clear on the meaning of this ground of appeal and requires additional information. Generally speaking, the availability of uncommitted grant funding is not a matter which Council is required to consider.

¹ City Record, Minutes of Special Council Meeting, 4 February 2025, TAB 5B, PDF pgs 166-171.

² City Record, Staff Planning Report, 20 January 2025, TAB 4A, PDF pgs 88-104.

³ City Record, Minutes of Planning Board Meeting, 20 January 2025, TAB 4B, PDF pgs 107-116.

⁴ Order LA10-06, *Doiron v. City of Charlottetown* (July 14, 2010) at paras 39, 42 [Order LA10-06].

⁵ *Ibid.*, at para 42.

⁶ City Record, Minutes of Special Council Meeting, 4 February 2025, TAB 5B, PDF pgs 167, 168.

⁷ *Ibid.*

⁸ *Charlottetown (City) (Re)*, 2020 CanLII 125991 (PE IRAC) at para 41; *Queens County Condominium Corporation No. 40* (Order LA18-02, July 11, 2018) at paras 39-45;

⁹ *Charlottetown (City) v. Island Reg. & Appeals Com.*, 2013 PECA 10 (CanLII) at para 40.

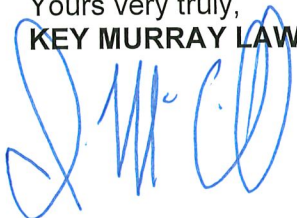
CONCLUSION

The City respectfully requests that the Commission defer to Council's judgment in this matter, based on Council having followed its process, provided reasons for differing from the recommendation of its planning staff, and having rooted its decision in planning considerations.

The City reserves the right to provide additional evidence and argument at a hearing of this matter.

Yours very truly,

KEY MURRAY LAW



Iain M. McCarvill

cc. Appellant
Kendra Gunn – Director of HR and Legal Services, City of Summerside
Derek D. Key, K.C.