

BEFORE THE ISLAND REGULATORY AND APPEALS COMMISSION

IN THE MATTER OF an appeal pursuant to s.28 of the *Planning Act*, RSPEI 1988 c. P-8 by Anchored Construction Group Inc. and Allan Fraser with respect to the denial of an application for a Development Permit located at PID's 198887, 199224, and 199232 at Murphy Lane and Gaul Road, Montague, Prince Edward Island

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OVERVIEW

1. Anchored Construction Group Inc. and Allan Fraser (collectively referred to as the “**Appellants**”), submitted a Development Permit Application, designated Development Application 60.26.DEP (the “**Application**”) to the Town of Three Rivers (the “**Town**”) seeking a development permit to build a three-storey, mixed use building consisting of 24 residential units and 3,000sq. ft. of commercial space at Murphy Lane and Gaul Road in Montague, PE (the “**Development**”).
2. The Town Council (the “**Council**”) refused the Application (the “**Decision**”).
3. The Appellants request that the Commission approve the Application and substitute the approval for the Council’s Decision.
4. Council did not adhere to their duty of procedural fairness as they were unaware of the bylaw that was governing them at the time that they made their decision.
5. Furthermore, their Decision was not based on sound planning principles, the Official Plan dated March 2023 (the “**Official Plan**”) [Tab 1] or Development Bylaw #2023-02 (the “**Bylaw**”) [Tab 2].
6. The letter sent to the Appellants advising them of the Decision contained no explanation whatsoever. Various reasons for the refusal may be gleaned from the record as a whole; they include wanting to have the Province complete a traffic study on the area, wanting the Province to sign off on a new development bylaw, creation of additional green space (both in the bylaw and in the Development), and because constituents in the area were opposed to the Development.
7. None of these reasons are grounded in sound planning principles, the Official Plan or Bylaw. As such, the Commission does not owe Council deference and may substitute their decision for that of Council.
8. The Application was the necessary first step of a partnership with Canadian Mental Health Association and Anchored Construction Group Inc. to provide affordable housing options in Montague, PE. Canadian Mental Health Association cannot apply for funding through the Federal Government’s Build Canada Homes initiative without the requisite municipal permits in effect. This federal funding is based on a first-in application process; therefore, the length of time it has taken to have the Application objectively and fairly reasoned puts the Development at risk.

FACTS

9. Allan Fraser is the owner of PIDs 199232, 198887, and 199224.

10. On April 10, 2026, Anchored Construction Group Inc. applied for a development permit from the Town to develop the three parcels of land in question. The Development was a partnership between Canadian Mental Health Association and Anchored Construction Group Inc. to provide affordable residential units and 3,000sq. ft. of commercial space at Murphy Lane and Gaul Road in Montague, PE.
11. On April 23, 2026, Lee Kenebel, Town Planning and Development Officer, prepared a proposal to the Town Planning Board recommending that the Town approve the Appellant's Application conditional on: 12-month permit expiry, service plan, drainage and erosion controls, access/entrance permit, landscaping, and completion of parcel consolidation and approved plans (the "**Proposal**").
12. On April 23, 2026, the Town Planning Board held a Planning Board Meeting wherein they reviewed the Proposal and engaged in discussion with members of the public in attendance. After consideration, the Planning Board unanimously recommended that the Mayor and Council approve the Proposal.
13. On May 11, 2026, the Town held a Regular Council Meeting. The agenda included the Application. Council unanimously carried this agenda item to the next Regular Council Meeting so that staff could reach out to the Province to request an updated copy of the Town traffic study.
14. On May 22, 2026, Brett Wallace, Traffic Operations Engineer with the Department of Transportation, Infrastructure and Energy wrote to Jordan Fraser and explained that the anticipated traffic volume generated from the proposed Development was "*not expected to result in significant impacts to the surrounding roadway network*".¹
15. On May 28, 2026, the Province presented Council with the Montague Traffic Congestion Evaluation report.
16. On June 10, 2026, the Town held a Regular Council Meeting. The agenda included discussion of the Application. Council refused the Application with a vote of four no to two yes, with one abstaining and one absent.
17. On June 11, 2026, the Town sent the Appellants a notice that advised of the Decision and of their appeal rights but did not provide reasons.

ISSUES

18. The Appellants submit that the Decision raises the following issues for review by the Commission:
 - a. Did the Town follow proper procedure as required by its Bylaw and the *Planning Act*?

¹ Record filed by The Town of Three Rivers, Appeal #LA26006, at p. 93 of pdf [**Record**].

- b. Was the Decision made in accordance with the Official Plan, Bylaw and based on sound planning principles?

LAW & ARGUMENT

The Decision and Reasons

19. In this case, it is difficult to discern the precise reason(s) for the Decision. On June 12, 2026, the Town's Planning and Development Officer sent the Appellants a letter advising that, "*The Council at their meeting of June 10, 2026 have resolved to refuse to issue a development permit for [Application 60.26.DEF]*".² No explanation was provided.
20. Various reasons for the refusal may be gleaned from the record as a whole; they include wanting to have the Province complete a traffic study on the area, wanting the Province to sign off on a new Town bylaw, creation of additional green space (both in the bylaw and in the Development), and because constituents in the area (friends of Councillor Spin)³ were opposed to the Development.

The Applicable Test

21. When exercising its appellate authority under the *Planning Act*, the Commission considers a two-part guideline:
 - a. Whether the Town followed proper procedure; and
 - b. Whether the Decision has merit based on sound planning principles in the field of land use planning and as enumerated in its Official Plan and Bylaw.⁴
22. A planning appeal is a hearing *de novo*. The Commission has discretion to substitute its decision for the Decision of the Town.

Issue 1: The Town did not adhere to its duty of procedural fairness

23. The Town did not discharge its duty of procedural fairness when it failed to carefully evaluate the Application and give reasons for refusing it.

² Record, at Tab 13.

³ Record, at p. 141.

⁴ *Judy Shaw v. Rural Municipality of West River*, 2026 PEIRAC 34 (CanLII), Order No. LA26-09, at para. 24 [Tab 3].

24. The Town owes a duty of procedural fairness to the Appellants.⁵ The PEI Legislature delegated authority to the Town over planning related matters in its jurisdiction. It fulfills this authority by administering the Official Plan and Bylaw⁶. To do that, it must understand the legal framework in place at the time it makes a decision.⁷ In addition, proper procedure requires Council to deliberate on the Bylaw-approval criteria, project specifications, and any conditions or comments from the Planning Board.⁸ Such due process is to ensure that Council discharges its duty fairly, in good faith, and in view of the public interest.⁹ Development permit applicants must have an opportunity to know the rules upon which Council will determine their applications, which takes a considerable amount of time and resources.¹⁰ The expectation is that Council will do the same.
25. The Town did not carefully evaluate the Application, give reasons for refusing it, or properly defend it.¹¹ It could not because it was unaware of the bylaws within which the Development was set. For example, Councillors Munro and MacDonald were against the Development because it did not include green space; however, in the (then) current Bylaw, there was no requirement for green space. The nay sayers required education on this point yet maintained their contrary views. A review of the minutes demonstrates the lack of awareness of the Bylaw governing Council:
- a. **Councillor Alan Munro:** I understand your permit meets all the requirements, but myself, uh, I'd like to see some more green space, too.¹²
 - b. **Councillor Martina MacDonald:** Well, just, you know, from all other construction projects, the green space seems to be kind of a critical piece to this. So, I'm not quite understanding how we can approve a project that doesn't have the requirement of green space.¹³
 - c. **Lee Kenebel (Planning & Development Officer):** There isn't a requirement for green space. There used to be a requirement to deliver uh open space as part of that type of development that was in the old Montague Bylaws previously. So that requirement has fallen away when the current bylaw was adopted, and potentially an

⁵ *Congregation des temoins de Jehovah de St-Jerome-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, at para. 12 citing *Prud'homme v. Prud'homme*, 2002 SCC 85, at para. 23 [*Congregation*] [Tab 4]; and *Hanmac Inc. (Re)*, 2014 CanLII 150459 (PE IRAC), at para. 40 [*Hanmac*] [Tab 5].

⁶ *Planning Act, Charlottetown (City) v. Prince Edward Island (Island Regulatory and Appeals Commission)*, 2013 PECA 10, at para. 29 [*Charlottetown*] [Tab 6].

⁷ *Charlottetown*, at para. 35 [Tab 6].

⁸ *Charlottetown*, at para. 34 [Tab 6].

⁹ *Congregation*, at para. 2 [Tab 4].

¹⁰ *Charlottetown*, at para. 35 [Tab 6]; and *Deborah Dennis v. City of Charlottetown*, 2023 PEIRAC 5 (CanLII), at para. 66 [*Dennis*] [Tab 7].

¹¹ *Congregation*, at para. 12 [Tab 4].

¹² Record, at p. 131 of pdf.

¹³ Record, at pp. 133 and 134 of pdf.

acknowledgement of the pressures to deliver housing and commercial development and trying to find those difficult balances.¹⁴

d. **Mayor Debbie Johnston:** It's, we did have a green space requirement in the old Montague Bylaws that was hard for me to adjust to too. And, yeah, but there was some issues with it as well. And I guess neither is perfect, but we have to abide by what we have now.¹⁵

e. **Councillor Anne Van Donkersgoed:** So to this point, um, legally we are required to follow our Bylaws, which are the required number of parking spaces, which limit you on green space. We can't make a motion tonight based on if or when the new bylaw changes will happen.¹⁶

26. Furthermore, Councillor Munro was hesitant to approve the Application until a new bylaw was approved. This is an error as Council was required to decide based on the planning law that was in place at the time of the Application.¹⁷ Despite stating that he would "*like to see [the Development] go ahead at some point*",¹⁸ excerpts from the minutes of the June 10, 2026 Regular Council Meetings demonstrate that Councillor Munro preferred to delay the Development until after a new bylaw was in place:

a. **Councillor Alan Munro:** We as a Council and as a Town have been waiting on the province for a long time on bylaws to be signed off on. I understand your permit meets all the requirements, but myself, uh, I'd like to see some more green space too.¹⁹

...

b. **Councillor Alan Munro:** So, the way I'm understanding this is council this evening can approve this development, but the province has to sign off on the bylaws, in order to get the green space that we require.²⁰

27. A Council cannot fulfill its duty to evaluate and give reasons for a development decision if is not aware of the Bylaws that govern it. The Decision is indefensible.²¹

Issue 2: The Decision does not have merit based on sound planning principles and as enumerated in the Official Plan and Bylaw

Sound Planning Principles

28. In *Stringer*, the Commission confirmed that development in the province of Prince Edward Island must have merit based on sound planning principles. Given that the application of

¹⁴ Record, at p. 134 of pdf.

¹⁵ Record, at p. 135 of pdf.

¹⁶ Record, at p. 135 of pdf.

¹⁷ *Charlottetown*, at para. 35 [Tab 6].

¹⁸ Record, at p. 84 of pdf.

¹⁹ Record, at p. 131 of pdf.

²⁰ Record, at p. 132 of pdf.

²¹ *Hanmac*, at paras. 38 – 41 [Tab 5].

sound planning principles is not a black and white assessment, the Commission provided further guidance with the following comments:

[64] ... *Sound planning must be a common feature of development throughout Prince Edward Island... **Sound planning principles are a guard against arbitrary decision making** especially where a regulatory checklist does not address a concern. Sound planning principles require regulatory compliance but go beyond merely insuring [sic] such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted.*²²

29. In sum, the Appellants submit that the correct approach to a sound planning principles analysis is one which approaches discretionary provisions respecting land use planning in a principled and informed manner, to, in the words of the Commission, “guard against arbitrary decision making”.²³
30. Lee Kenebel, the Town’s Planning and Development Officer, followed sound planning principles as well as the Bylaw and Official Plan when he recommended that the Development be approved by Council with conditions. Mr. Kenebel has experience and training as a land-use planner. He is a member of the Royal Town Planning Institute. This Commission previously found him “*credible and knowledgeable*” about planning issues.²⁴
31. On April 23, 2026, Mr. Kenebel issued a Proposal to the Planning Board to approve the Application with conditions. This Proposal was a sound, well-informed recommendation; it was thorough and comprehensive and addressed how the Development meets the objectives of the Official Plan and Bylaw.
32. The Development was for a 3-storey, mixed use development featuring 16 one-bedroom units, 8 two-bedroom unites and 3,000sq. ft. of ground floor commercial office space. This Development required for the Town to consider:
 - a. Official Plan, Guiding Principles at 2.3 [Tab 1];
 - b. Official Plan, Objectives at s. 2.4 [Tab 1];
 - c. Official Plan, Intensification at 3.4 [Tab 1];
 - d. Official Plan, Economic Development at 4.2 [Tab 1];
 - e. Official Plan, Housing, and more particularly, affordable housing at s. 5.3.2 [Tab 1];
 - f. Official Plan, Policies for Community Use [Tab 1];
 - g. Bylaw, Mixed Use Zone, at 6.8 [Tab 2]; and

²² *Stringer (Re)*, 2017 CanLII 153317 (PE IRAC), at para. 64 [Stringer] [Tab 8].

²³ *Stringer*, at para. 64 [Tab 8].

²⁴ *Geraldine Johnston-Grinton and Paul Grinton v. Town of Three Rivers*, 2021 PEIRAC 4 (CanLII), Order No. LA24-04, at para. 61 [Tab 9].

- h. Bylaw, High-Density Residential, at 6.6 [Tab 2].
33. Mr. Kenebel's Proposal addresses how the Development meets the abovementioned Official Plan and Bylaw. The first substantive portion of his Proposal was entitled, "Official Plan and Bylaw Assessment", highlights include:
- a. *This area is within a Mixed Use (MU) Zone and set amongst an area of mixed residential and commercial character.*²⁵
 - b. *This wide variety of uses strongly reflects the mixed character of the area and it supports a wide range of development as envisioned by the Official Plan, particularly in the case of residential and commercial use.*²⁶
 - c. *The Official Plan (OP) looks to encourage a range of housing types and for all types of household tenures with the overarching aim of attaining higher density development within sustainable locations...*²⁷
 - d. *The OP aspires to ensure that development is attractive, compatible and functional. Reducing a relatively large number of units down into three smaller two-storey blocks is a notable aspect of the scheme and engages well with the established local character.*²⁸
 - e. *With respect to the provisions of the Bylaw the proposed residential development is compliant with the requirements for a multi-unit development proposal in the MU Zone.*²⁹
34. The Proposal stated that, "*The development represents a thoughtful approach balancing issues of housing need, commercial growth and locational context within the Mized-Use Zone.*"³⁰ ... *A notable strength of the proposal is its emphasis on accessible design... Overall, the proposal represents a well-considered form of sustainable development in a serviced location. It contributes meaningfully to housing supply while maintaining compatibility with the surrounding area and advancing the policy objectives of the Official Plan.*"³¹
35. On April 23, 2026, the Proposal was discussed at the Town's Planning Board Meeting. At this meeting, the Planning Board heard from concerned citizens regarding increased traffic, the size of the Development on the lot, lack of streetlights and sidewalks in the area, lack of landscaping, and a lack of details regarding plan drainage and erosion control. Mr. Kenebel addressed these concerns as follows:

²⁵ Record, at p. 25 of pdf.

²⁶ Record, at p. 25 of pdf.

²⁷ Record, at pp. 25 and 26 of pdf.

²⁸ Record, at p. 26 of pdf.

²⁹ Record, at p. 27 of pdf.

³⁰ Record, at p. 27 of pdf.

³¹ Record, at p. 27 of pdf.

- a. *So, when you can develop right up to the edge of the property like that, that the message is clear, which is this is a high-density site. This we're anticipating high-density development. It's been planned for high density development.*³²
 - b. *Now, the amount of development in that site, well, that's what we're planning for. That's why that's zoned this way. If the intention was to retain a low-density residential area, I suspect the plan makers at the time would have scripted that as a R1, maybe an R2. But that was never the case. This is a serviced site. This is where we want those higher densities within the town, within the walkable areas.*³³ *... And that's if we if we didn't develop those high densities, we would have the opposite effect. We would have the sprawl that people do speak out against, and I completely agree with that where there's services, where there's connectivity within the town, we need that.*³⁴
 - c. *And again, this is trying to balance this high-density need, against maintaining characters of area, delivering desperately needed housing units, uh the quality of the development, the commercial spaces, economic growth. The official plan speaks to all these things. It speaks of a wide variety of housing types. So, that's why we look at these uh very favorably sometimes because that's what the plan is asking for.*³⁵
 - d. *...We got a lot of accessible units here, and that's great to see because I don't see a lot of that in proposals.*³⁶
 - e. *No, it isn't a condition requiring the road to be widened. Because that will come down to DTI's involvement at the DTI culvert permitting stages. If they deem and it's a necessary requirement to occur, then that's when we're going to have to re-look at what's being asked. Does that affect the proposal that you see before you today? ...Maybe. Maybe, but we don't we don't know that yet. That's why some of this work has to come at certain stages. ... So, hence, we are at the start of this journey for a lot of applicants.*³⁷ *.... If the development needs a wider lane constructed, obviously it's going to be that that cost will be borne elsewhere, and it may be that those amendments are brought back again, as I said, if it affects the development and the layout.*³⁸
36. Based on the strength of Mr. Kenebel's Proposal and the discussion at the April 23, 2026 Planning Board Meeting, the Planning Board unanimously recommended to Council to approve the Development.³⁹

³² Record, at p. 43 of pdf.

³³ Record, at p. 44 of pdf.

³⁴ Record, at p. 44 of pdf.

³⁵ Record, at p. 46 of pdf.

³⁶ Record, at p. 46 of pdf.

³⁷ Record, at p. 48 of pdf.

³⁸ Record, at p. 50 of pdf.

³⁹ Record, at Tab 4.

37. On May 11, 2026, Council delayed their Decision until their next Regular Council Meeting so that the Town could obtain an updated traffic study from the Province.⁴⁰
38. In a letter dated May 22, 2026 addressed to Jordan Fraser, the Province advised that, "*the anticipated traffic volumes are not expected to result in significant impacts to the surrounding roadway network.*"⁴¹ On May 28, 2026, the Province shared their completed Montague Traffic Congestion Evaluation report with the Town.⁴²
39. On June 10, 2026, Despite Mr. Kenebel's Proposal and guidance to Council regarding the Development, Council rejected the Application 4:2, with one Councillor abstaining and another absent. Mr. Kenebel advised Council that the Development was compliant with the Bylaw and Official Plan.⁴³ In refusing this Development, Council made a Decision that was not animated by sound planning principles, the Bylaw or Official Plan.

Council's Decision was not animated by sound planning principles

40. While the record suggests that Council refused the Development because of their desire to pressure the Province into completing a traffic study for Montague and for more green space to be included in the plan, the most persuasive reason seems to be that neighbouring constituents were not in favor of the Development.
41. Excerpts from the record identify constituent disapproval as the primary reason for Councillors Spin, MacLean and MacDonald's refusal:
 - a. **Councillor Wayne Spin:** Well, the last couple of days I've banged on a few doors on Gaul Street [Road], and I figured it was very important to hear their point of view because it's going to be in their neighbourhood. Um, lots are definitely not in favour of it. Whether it's the street is in such bad shape, it's too big, it's everything. Um, and sitting in this chair, I think I'm supposed to be here for the people. So, what I have heard and listened to, I will not be supporting this.⁴⁴

...

Councillor Wayne Spin: I'd just like to say that, you know, first of all, it's a privilege to sit in this seat for Three Rivers, for the people. Um, I'm glad I actually went to the doors and heard their point of view. ... And, you know, I voted against it. Well, the people that wanted it, they are my friends or whatever. But I just want people to realize

⁴⁰ Record, at Tabs 7 and 8.

⁴¹ Record, at Tab 9.

⁴² Record, at Tab 10.

⁴³ Record, at Tab 12.

⁴⁴ Record, at pp. 137 and 138 of pdf

it's not as easy as you think just to sit up here and say nor or yes, because we're supposed to be, I think we're supposed to be, for the people.⁴⁵

b. **Councillor Cindy MacLean:** I too uh agree with Councillor Spin. I will not be supporting this as well. Um, I think there needs to be more of – I believe there should be a study for the traffic. Um, and I'm not sure I like the look of where it's going and in the surrounding community there. So we do have to listen to our residents...⁴⁶

c. **Councillor Martina MacDonald:** Well, I'd like to say the same as Wayne. Um, I did hear from the community a lot on this.⁴⁷

42. The Commission has clearly stated that municipalities cannot rely on the “*hue and cry*” of neighbours when making decisions. Instead, reliance must be placed on the assessments, opinions and reports of trained professionals. Where Council decides a matter against the Planning Board's recommendation, it has a heightened obligation to ground it in planning law and principles.⁴⁸

43. Council has a hybrid political and administrative purpose. Public input and participation into planning is important but must not overwhelm the process.⁴⁹ Council may accept and consider public feedback in respect of a particular project only if it “*filter[s] that feedback through the lens of the Official Plan and Bylaw and ensure[s] that its final decision, while informed by that public feedback, is ultimately animated by sound planning considerations*”.⁵⁰

44. The Appellants agree with the Respondent that Council has discretion to depart from the Planning Board and Mr. Kenebel's Proposal. However, there are limits to this discretionary power; Council's discretion is not unfettered.⁵¹ This prevents arbitrary decision making that focuses solely on the public function of accountability to its constituents and disregards its administrative function.⁵²

45. In *Dennis*, a case relied on by the Respondent, this Commission provided no deference to the City of Charlottetown when it “*Was swayed by the subjective complaints of nearby residents that ‘enough is enough’ and that building 17 additional lots in this subdivision would violate the expectations they had about future development when they purchased their homes*”.⁵³

⁴⁵ Record, at p. 141 of pdf.

⁴⁶ Record, at p. 138 of pdf.

⁴⁷ Record, at p. 141 of pdf.

⁴⁸ *Charlottetown*, at para. 36 [Tab 6]; and *New Homes Plus Inc. v. City of Charlottetown*, 2023 PEIRAC 3 (CanLII), at para. 60 [New Homes] [Tab 10]; and *Dennis*, at para. 61 [Tab 7].

⁴⁹ *New Homes*, at para. 60 [Tab 10]; and *Dennis*, at para. 61 [Tab 7].

⁵⁰ *Dennis*, at para. 62 [Tab 7].

⁵¹ *Dennis*, at para. 62 [Tab 7].

⁵² *Congregation*, at para. 5-7 [Tab 4].

⁵³ *Dennis*, at para. 61 [Tab 7].

46. In this case, Council made a substantive error when it failed to ground its Decision on sound planning principles and the Official Plan and Bylaw.

Consideration of Irrelevant Factors

47. In addition, Council erred when it considered irrelevant factors, such as whether a new bylaw could be passed and the need for a traffic study.
48. Excerpts regarding Councillor Munro's preference to delay the decision until a new bylaw was passed is outlined at paragraph 26 above.
49. Excerpts from the June 10, 2026 Regular Council Meeting demonstrate that Councillor MacLean relied on the fact that the Province should provide a further traffic study, beyond the one produced on May 28, 2026:
- a. **Councillor Cindy MacLean:** Um, I think there needs to be more of – I believe there should be a study for the traffic. ... Um, so I think we should either get the study for the roadway, and there should be, I don't think all the questions have been answered, actually, um, that were concerning this. Um, so I will not be passing this through.⁵⁴
 - b. **Mayor Debbie Johnston:** Didn't we just send around the study for the road? Didn't we pass that around? ... The traffic study was sent around to everyone.⁵⁵
 - c. **Councillor Cindy MacLean:** Yeah, but it didn't say a whole heck of a lot. It didn't answer a whole lot of questions. I was very vague. So, in my opinion, Transportation dropped the ball on this, and I'm putting it on our shoulders. So, no, I'm not putting this through.⁵⁶
 - d. **Mayor Debbie Johnston:** Yep. No, I just wanted to make sure you had the traffic study.⁵⁷
50. Both the bolstered traffic study and the requirement to pass new bylaws were irrelevant factors. Traffic assessments fall under the jurisdiction of the Province and would not become a planning issue unless the traffic created by a development would materially impact the project.⁵⁸ The Province stated in a letter dated May 22, 2026 that this was not the case. With respect to passing new bylaws, clearly this is irrelevant as it a process independent of development applications.
51. The PEI Court of Appeal addressed this in a similar fact scenario in *Charlottetown* [Tab 6]:

[36] The Commission stated its expectation that where Council makes such a decision against Planning Board's recommendation, that Council would explain its thought process and analysis. In the

⁵⁴ Record, at p. 138 of pdf.

⁵⁵ Record, at p. 138 of pdf.

⁵⁶ Record, at p. 138 of pdf.

⁵⁷ Record, at p. 138 of pdf.

⁵⁸ *Dennis*, at para. 63 [Tab 7].

absence of a record of Council having considered the statutory criteria, and in the presence of a record that Council did consider other matters, the Commission formed the view that Council did not decide the Developer's application based on its respective merits or lack thereof, as its Chair of the Planning Board advised it to do, but instead appeared to have been concerned about other matters, including Planning Board's recommendation having been circulated in the media, whether compromise was possible, and the need for a new waterfront plan. Ultimately, the Commission found that Council sidestepped the merits of the application in pursuit of its desire for a new waterfront plan. ... in this case the presence of a fully explained Planning Board Recommendation for approval, the absence of Council reference to the statutory criteria, and the verbatim report of the Council discussion being focused on other considerations, there is a sufficient basis upon which the Commission sitting as the appeal tribunal to have made its conclusion.

52. This substantive error requires Commission interference.

REMEDY

53. In this case, Council failed its duty of procedural fairness and did not animate its Decision based on sound planning principles or law. Council deserves no deference; the Commission may substitute its decision for that of the Town.⁵⁹
54. We request that Council exercise its discretion and approve the Application such that a develop permit may be issued.
55. The Appellant reserves the right to present additional evidence at a hearing on the merits.

All of which is respectfully submitted this 7th day of August, 2026.



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⁵⁹ *Dennis*, at para. 34 [Tab 7]; and *Charlottetown*, at para. 40 [Tab 6].

File No. LA26006

**BEFORE THE ISLAND REGULATORY
AND APPEALS COMMISSION**

IN THE MATTER OF an appeal pursuant to s.28 of the *Planning Act*, RSPEI 1988 c. P-8 by Anchored Construction Group Inc. and Allan Fraser with respect to the denial of an application for a Development Permit located at PID's 198887, 199224, and 199232 at Murphy Lane and Gaul Road, Montague, Prince Edward Island

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CLG - 283768

Tab 1.



Three Rivers

OFFICIAL
PLAN



Official Plan
March 2023



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Appendix 1: Terms of Reference for Required Plans and Studies

The Town of Three Rivers acknowledges that Prince Edward Island (Epekwitk) is unceded Mi'kmaq territory.

“The Three Rivers – Montague, Brudenell, and Cardigan – wind through towns, villages, and communities in Kings County, draining into Cardigan Bay, known to the Mi’Kmaq people as Samkook (sandy shore)...

The waters of the Three Rivers still flow, as they have for centuries, past farms, fisheries and shipyards, linking all those who live along their banks to each other, to the past and to the future.”

- Adapted from a description recognizing The Canadian Heritage Rivers System



How to Use This Plan

This Official Plan for the Town of Three Rivers provides guidance for members of the public, Town Staff, the Planning Board, and Town Council on land use planning matters.

The steps below are provided to assist the reader when development on a property is proposed.

1	Find the property on the Schedules. Schedules are found at the end of the document. Be sure to check each Schedule, as each one illustrates different policies.
2	Find the policies that relate to the applicable land use designations in Section 5 (Designations and Land Use Policies).
3	Review Section 4 (General Policies) to determine if the Plan offers specific guidance for the proposed use or application.
4	The property to be developed may contain natural or heritage resources that are not shown on the Schedules. Review Section 6 (Protection of Natural and Built Heritage Resources) section to determine if these policies apply.
5	The property to be developed may contain or generate hazards or compatibility concerns. Review Section 7 (Development Hazards and Land Use Compatibility) section to determine if these policies apply.
6	Contact the Town of Three Rivers for questions or additional information.



1. Introduction

1.1. Purpose

The purpose of the Official Plan is to provide direction for the physical growth of the Town of Three Rivers. The Plan will be used by Town Council, the Planning Board, and Town Staff to guide the review of development applications on private land, as well as decisions for public infrastructure investment.

As the first Official Plan for the Town of Three Rivers, this Plan is intended to implement a cohesive vision for land use in the municipality. The Plan is crafted to reflect the diversity of contexts, features, and character areas in the Town, and to consider these defining elements when planning for future development of the community.

1.2. Legislative Authority

The authority of the Town of Three Rivers to adopt this Official Plan is derived from the provisions of the Planning Act R.S.P.E.I. 1988, P-8. The Act permits municipalities to adopt an Official Plan, which is to be approved by Council, on a recommendation from a Planning Board, where constituted.

Additionally, Executive Order-in-Council EC2018-586, which created the Town of Three Rivers, requires the Town to satisfy requirements for municipal planning services by September 28, 2023. The Official Plan is a key component of the core land use planning services provided by municipalities.

This Plan [has been approved] by the Minister of Agriculture and Land, as prescribed by the Planning Act R.S.P.E.I. 1988, P-8.

1.3. Structure of the Official Plan

The Official Plan is comprised of multiple sections, each of which is inter-related:

- 1) The **Basis of the Plan**, which outlines the foundational principles and approaches used in the creation of the Official Plan;
- 2) A description of the **Community Structure and Growth Strategy**, which describes the intended form of the community and establishes a high-level approach to managing development;
- 3) **General Policies**, which includes direction for various land use activities across the Town;
- 4) **Designations and Land Use Policies**, which contain specific directions for specific policy areas and classifications;
- 5) Policies for **Protection of Natural and Built Heritage Resources**, which are intended to ensure that natural resources and features are protected and managed responsibly;

- 6) Policies for **Development Hazards and Land Use Compatibility**, which ensure that existing and proposed development is protected from the impacts of surrounding features and land uses;
- 7) Policies for **Infrastructure and Public Facilities**, which ensure that adequate, safe and appropriate services and facilities are provided to residents;
- 8) Policies for **Implementation**, which specify actions and tools to be employed by the Town to ensure that the directions of the Official Plan are realized;
- 9) **Land Use Schedules**, which include maps of the Town that illustrate land use designations and other information; and
- 10) **Appendices**, which contain additional reference materials.

1.4. Interpretation

1.4.1. Components of the Official Plan

- 1) The Official Plan should be read as a whole, reflecting its role as a comprehensive policy document for decision-making regarding land use activities.
- 2) All text and Schedules constitute the Official Plan. Appendices are provided for reference only and do not form part of the Plan.
- 3) Illustrations, sidebars and photos are included for the purpose of illustration only and are not part of the Plan.
- 4) Where the Plan refers to other legislation, policy document, studies or guidelines, such documents are not part of the Plan unless the Plan has been specifically amended to include the document in whole or in part.
- 5) Where reference is made in the Official Plan to documents that reside outside of the Plan, such as provincial or federal Acts or other legislation, or to other documents that are not part of the Plan, the latest approved version of the document is implied.

1.4.2. Interpretation of Schedules

- 1) Boundaries of land use designations in this Official Plan are identified on the Schedules to this Plan. The boundaries of these policy areas are approximate and, unless otherwise noted, will be considered as general, except where they coincide with major roads, former rail corridors, hydro transmission lines, rivers and other clearly recognizable physical features.
- 2) Unless otherwise stated in the policies, when the general intent of the Plan is maintained, minor adjustment to boundaries will not require amendment to this Plan.

1.4.3. Terminology

- 1) In this Official Plan, use of the word “shall” indicates a compulsory requirement under the policy.
- 2) In this Official Plan, use of the words “may,” “should,” “can” or similar indicates an optional action on the part of the Town or development applicant, as the case may be, in general terms. However, in certain cases these actions may nonetheless be deemed by the Town to be a compulsory requirement, where warranted, in accordance with policy direction and good planning practice.
- 3) Policies referencing “Council” may also include involvement and decision-making by the Three Rivers Planning Board, in cases where such powers have been delegated by Council or prescribed in the Planning Act R.S.P.E.I. 1988, P-8.

1.5. The Town of Three Rivers

1.5.1. Setting

The Town of Three Rivers is located in the southeast region of Prince Edward Island. Recently amalgamated in 2018, the Town includes the former municipalities of Brudenell, Cardigan,

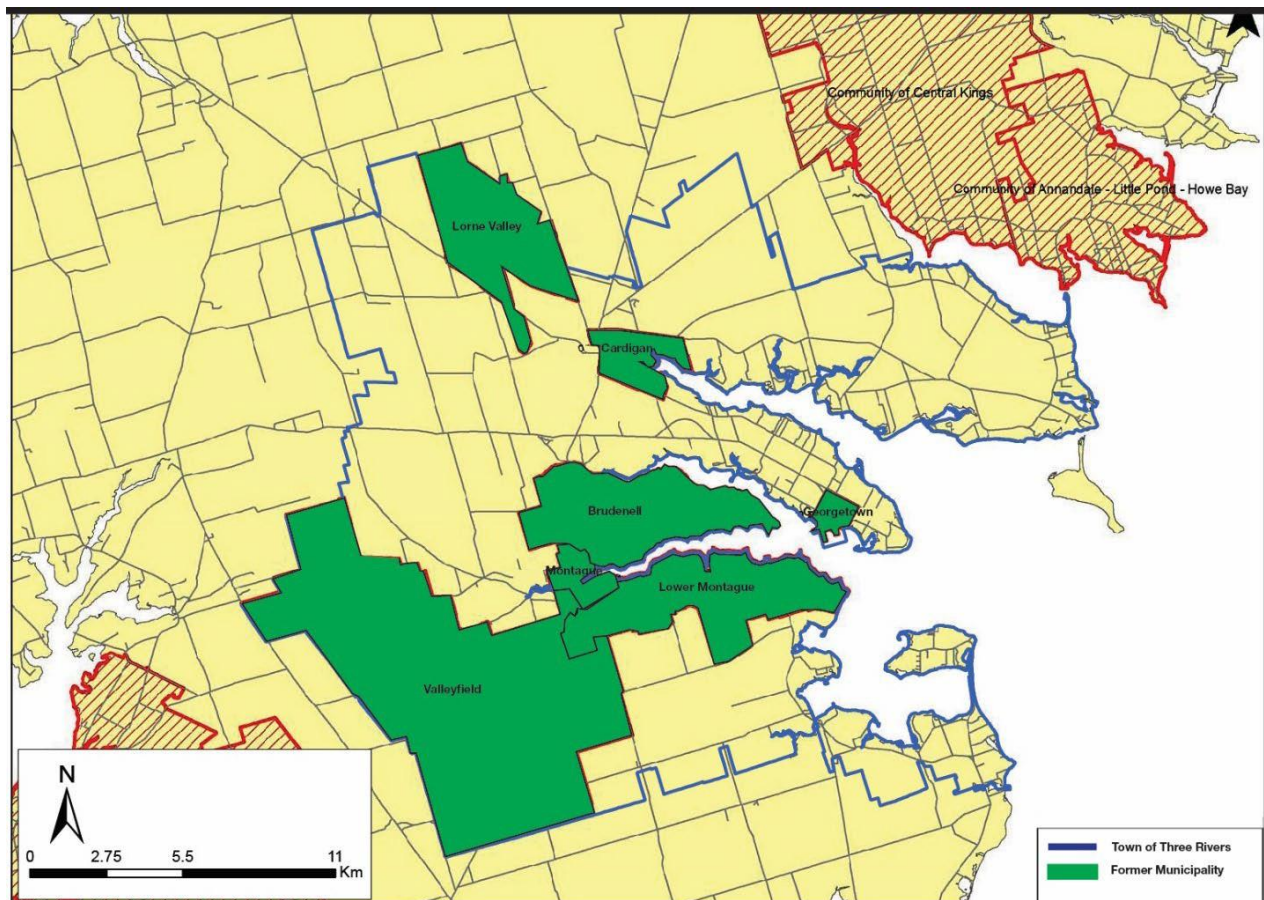


Figure 1: The Town of Three Rivers in regional context

Georgetown, Lorne Valley, Lower Montague, Montague, Valleyfield, as well as surrounding unincorporated areas. As a result of the amalgamation, the Town features the largest land area of any municipality on Prince Edward Island and contains the fourth-largest population in the province, after Charlottetown, Summerside, and Stratford. Figure 1 illustrates the Town of Three Rivers in its regional context, with the seven amalgamated municipalities delineated.

Three Rivers derives its name in part from its setting along the eastern coast of Prince Edward Island at the mouths of the Brudenell, Cardigan, and Montague Rivers. Beyond the symbolism in the Town's name, these three waterbodies also function as major features in the community's landscape, scenery, character, economy, and recreation activities.

The Town is generally bordered by unincorporated rural areas to the south, west, and north, with shoreline along its eastern boundaries. The Rural Municipality of Belfast is located southwest of the Town, with the Rural Municipalities of Central Kings and Annandale-Little Pond-Howe Bay located northeast of the Town along the Boughton River.

The Town is approximately 30 kilometres southeast of Charlottetown, the province's capital and largest city. Driving time between the municipalities is approximately 40 minutes.

1.5.2. History

Prince Edward Island has been inhabited for more than 12,000 years, beginning with the Mi'kmaq Peoples. The traditional Mi'kmaq name for the Island is "Epekwitk," meaning "something lying on the water."

European exploration and settlement of Prince Edward Island began in the sixteenth century, principally by the French, who called the Island "Ile St. Jean." In 1731, King Louis XV of France granted approximately 35,000 acres to the Compagnie d'Est de l'Ile Saint Jean in the southeast part of the Island. The following year, the manager of the company, Jean-Pierre Roma, established a settlement and trading post at Brudenell Point at the nexus of the Montague and Brudenell Rivers. Acadian settlement on the Island began in the mid-eighteenth century, and control of the Island oscillated between the French and British until permanent British control was established through the Treaty of Paris in 1763.

In 1764, Captain Samuel Holland (1728-1801) was granted responsibility for surveying a large portion of British North America. Surveys of the former Ile St. Jean, known as St. John's Island in English, was among the first performed in British North America. Through his survey, Holland divided the land on the Island into 67 lots of approximately 20,000 acres each. Along with Prince and Queens Counties to the west, Kings County in the eastern part of the Island was created as an administrative area, with the new George Town (present-day Georgetown) designated as the County seat.

Once surveyed, the 67 lots were disbursed by the Board of Trade and Plantations in a land lottery in 1767. The land holdings were generally granted to well-connected British politicians, military officers, and commercial merchants who had performed services during the war with France.

By the mid-1770s, many formerly French place names had been re-named in English, including the Brudenell, Cardigan and Montague Rivers replacing the French "Trois-Rivieres" (Three Rivers). Both the Brudenell and Cardigan Rivers were named for James Brudenell, the 5th Earl

of Cardigan, whose brother George Montagu [sic], the 4th Earl of Cardigan is the namesake for the Montague River.

By the late nineteenth century, the traditional agricultural and fishing industries were supplemented with shipbuilding and trading, as well as various commercial and professional services. Manufacturing was also present in the area, particularly in the urban centres. In 1872, train service was established to provide an efficient link across the Island for goods and passengers.

In 1875, the Province of Prince Edward Island passed the Land Purchase Act, which compelled absentee landowners to sell their lands to the provincial government for the purposes of offering purchase of the parcels to local citizens. The Act, aided by financing by the new Government of Canada based on terms for the Province's joining Confederation, enabled land ownership by local residents over the following decade.

As urbanization increased in the nineteenth and early twentieth centuries, settlements on Prince Edward Island began to incorporate as municipalities, reflecting a broader trend across Canada of establishing formal governance structures. Along with other municipalities in Kings County such as Souris (1910), Georgetown and Montague incorporated in 1912 and 1917, respectively. Cardigan was incorporated as a municipality in 1954, with the balance of the former municipalities in Three Rivers incorporated in the 1970s, including Brudenell (1973), Lower Montague (1974), Valleyfield (1974), and Lorne Valley (1978).

The Town of Three Rivers was created in 2018 through an amalgamation of the seven municipalities, along with surrounding rural areas.



1.5.3. Population and Housing Profile

As the Town of Three Rivers was created in 2018, between Census periods, accurate population counts will not be available until the results of the 2021 Census are released.

Through an analysis premised on 2016 Census data, the population of the municipality was calculated at 6,936 people. The highest concentration of this population is generally within settlement areas, with Georgetown, Montague and Lower Montague containing a combined total of 3,702 residents and representing just over 53 percent of the total population of Three Rivers. Population trends for each community through three Census periods are summarized in Table 1 below.

Table 1: Current Population Estimate (Based on 2016 Census Data)

Population Data for the Town of Three Rivers			
Area	2006	2011	2016
Montague	1,802	1,895	1,961
Georgetown	634	675	555
Cardigan	374	332	269
Lot 50	43	43	47
Lot 51	744	723	744
Lot 52 (Lorne Valley)	667	646	599
Lot 53	255	267	284
Lot 54	204	195	150
Lot 55	147	140	147
Lot 57 (Valleyfield)	170	168	166
Lot 59 (Lower Montague)	1,285	1,203	1,186
Lot 61	474	453	425
Lot 66	89	99	107
Lot 63	18	18	16
Kings Royalty	292	291	280
TOTALS	7,198	7,149	6,936

At the time of amalgamation in 2018, the Province provided the Town with a population figure of 7,181 within the municipal boundaries, representing a difference of 245 people from the estimate above.

Table 1 below summarizes the number of private occupied dwellings in Three Rivers, according to 2016 Census data. As shown in the Table, the Town contains approximately 2,936 private dwellings, with over 50 percent of those dwellings located in the former municipalities of Montague, Georgetown and Lower Montague.

Table 2: Private Occupied Dwellings in the Town of Three Rivers

Private Occupied Dwellings in the Town of Three Rivers	
Area	Approximate Number of Private Occupied Dwellings in Boundary Area
Montague	878
Georgetown	236
Cardigan	116
Lot 50	16
Lot 51	299
Lot 52 (Lorne Valley)	255
Lot 53	117
Lot 54	58
Lot 55	61
Lot 57 (Valleyfield)	61
Lot 59 (Lower Montague)	489
Lot 61	185
Lot 66	38
Lot 63	7
Kings Royalty	119
TOTALS	2,936



2. Basis of the Plan

2.1. Community and Stakeholder Engagement

As a collaborative process, the preparation of the Official Plan involves the input of many community members in a variety of roles. In addition to input from the Planning Board and Town of Three Rivers Staff, the following groups were engaged throughout the process, including:

- 1) Town of Three Rivers Council;
- 2) Town of Three Rivers Planning Board;
- 3) Indigenous organizations;
- 4) Local stakeholders; and
- 5) Members of the public.

2.2. Vision

The Town of Three Rivers will encourage sustainable growth of a diversity of residential, commercial, and industrial development that preserves the unique and special features of our communities.

2.3. Guiding Principles

This Official Plan is premised on the following Guiding Principles, derived from consultation with Town Council and the broader community. The Principles envision for Three Rivers:

- 1) Promote sustainable growth that preserves the unique and special features of our communities.
- 2) Create a destination for investment, balancing environmental protection with new development opportunities.
- 3) Prioritize development of a variety of housing types and designs to increase affordable choices for residents.
- 4) Place a special emphasis on agriculture and fisheries.
- 5) Ensure a balanced transportation system that allows residents to choose an appropriate mode for each trip.

2.4. Objectives of the Official Plan

- 1) To maintain the character of the existing communities within the Town of Three Rivers;
- 2) To ensure the orderly, functional, and efficient disposition of land use across Three Rivers;
- 3) To manage growth in a sustainable manner by directing development to areas with existing public services and facilities;
- 4) To enhance the physical, social and economic well-being of residents;
- 5) To protect natural heritage features and cultural heritage resources for their economic use and / or environmental benefit, and for the benefit and enjoyment of present and future residents;
- 6) To respond and adapt to the effects of a changing climate;
- 7) To provide appropriate and effective infrastructure and public service facilities in the Town;
- 8) To permit and enable an adequate supply and diversity of housing for all residents;
- 9) To permit and enable commercial and community services to supply products and services to residents of Three Rivers and the regional market area;
- 10) To provide opportunities for the development of industrial uses in appropriate locations and to foster employment and economic development;
- 11) To maintain and protect public health and safety;
- 12) To establish mechanisms for implementation, including the review of development applications; and
- 13) To ensure that members of the public have opportunities to be engaged and involved in planning decisions.

2.5. Planning Horizon

This Official Plan is prepared on the basis of a 15-year planning horizon to 2036. The goals, objectives, and policies contained within this Plan are intended to respond to the opportunities and challenges for land use planning in Three Rivers during this timeframe, including anticipated population trends.

2.6. Population and Housing Projections

The Official Plan is premised on a population projection prepared for the 15-year planning horizon, from 2021 to 2036. The population projections were developed using a trend analysis, which provides a general estimate of how populations may change based on previous data at 5-year intervals. To reflect current trends, the projections were developed using data from the 2006, 2011 and 2016 Census periods. Census data from 2021 was not available at the time of preparing this Plan.

Based on previous Census periods, the population of Three Rivers has generally declined over time. Extrapolating these previous trends, the population of the Town is projected to decline to approximately 6,437 by 2036, down an estimated 499 people from 2016. Some areas within the Town, including Montague, Lot 53 and Lot 66 are increasing in population, while others remain generally stable or are experiencing varied rates of decline. Table 3 below summarizes the population projections of each individual Census subdivision area within the municipal boundary.

Table 3: Population Projections for the Town of Three Rivers

Population Projections for the Town of Three Rivers							
Area	2006	2011	2016	2021	2026	2031	2036
Montague	1,802	1,895	1,961	2,045	2,125	2,204	2,284
Georgetown	634	675	555	542	503	463	424
Cardigan	374	332	269	220	168	115	63
Lot 50	43	43	47	49	51	53	55
Lot 51	744	723	744	736	736	735	735
Lot 52 (Lorne Valley)	667	646	599	570	537	503	469
Lot 53	255	267	284	298	312	327	341
Lot 54	204	195	150	129	101	74	47
Lot 55	147	140	147	145	145	145	146
Lot 57 (Valleyfield)	170	168	166	163	161	159	157
Lot 59 (Lower Montague)	1285	1203	1186	1126	1076	1027	977
Lot 61	474	453	425	401	376	352	327
Lot 66	89	99	107	116	125	134	143
Lot 63	18	18	16	16	15	14	13
Kings Royalty	292	291	280	276	270	264	258
Total Projected Population	7,198	7,149	6,936	6,831	6,700	6,569	6,437

The Prince Edward Island Bureau of Statistics generally projects an increase in the provincial population, particularly within urban centres. This increase indicates a shift in population towards towns and urban areas where municipal services and amenities are located.

As with many communities of comparable size in Canada, the Town of Three Rivers contains a significant population of those ages 50 and over. Within the municipal boundary, the ages 50 to 65 demographic has remained generally stable, while the population for ages 65 and over has

increased. Combined, people aged 50 and over represent approximately 47 percent of the population. The Official Plan accounts for a general aging of the population and the unique needs of the seniors demographic.

Despite the trendline towards negative population growth in recent years, the Town of Three Rivers may yet experience a population increase during the 15-year planning horizon for the new Official Plan. There are several sources of population growth that may occur naturally, and may be accelerated if encouraged by the Town:

1) General In-Migration and Immigration

As in the majority of Canadian communities, population growth in Three Rivers will largely depend on in-migration and immigration, rather than the natural birth rate. The Official Plan reflects the need for a range of housing types, infrastructure and services to ensure the varied needs of new residents can be met.

Additionally, Three Rivers may benefit from remote workers able to relocate from larger centres, provided the appropriate technological infrastructure is in place. Inspired by the pivot to remote work during the COVID-19 pandemic, workers who are able to continue working from any location may choose to settle in Three Rivers, increasing the working-age population.

2) Growth Among Buddhist Groups

The GEBIS and GWBI campuses both have ambitious plans to accommodate increasing membership during the lifetime of the Official Plan and beyond. Increases among these two organizations will result in an increase to the population within the physical boundaries of the Town. The Official Plan accounts for growth in these two facilities, as outlined in their respective Master Plans.

3) Retirees

With Prince Edward Island becoming an increasingly attractive location for retirees, the expansive and bucolic rural character of Three Rivers may benefit from growth in this population segment. By definition, this group is of advanced age and will generally not participate in the work force, having implications for the economy, demands on local services, and infrastructure requirements. The Official Plan recognizes the potential for new retirement-aged residents, particularly in settlement areas.

4) Growth from Economic Activity

Three Rivers may experience growth from traditional economic drivers, such as a new or existing employer expanding into a new site in Three Rivers. In this scenario, the amount of concurrent population growth will generally depend on the scale of the employment required.

While the full extent of growth from economic activity will be re-evaluated throughout the life of this Official Plan, the policy direction accounts for the potential for modest growth in both scenarios.

2.6.1. Vacant Land Analysis

Table 4 below summarizes the findings of a vacant land analysis. The Table shows that the areas of Three Rivers that have historically experienced the highest degree of urban development continue to accommodate a surplus of vacant lots.

Table 4: Vacant Land Analysis

	Total Area (m ²)	Total Lots	Vacant Residential Lot Area (m ²)	Vacant Residential Lots	Vacant Non- residential Lot Area (m ²)	Vacant Non- residential Lot	Total Lots	Total Vacant Lots
Georgetown	1,689,985	571	456,513	121	218,984	50	571	171
Montague	2,910,601	1,040	466,901	102	323,600	40	1,040	142
Lower Montague	21,324,620	851	576,961	183	56,440	17	851	200
Brudenell	19,695,865	768	544,720	147	415,232	98	768	245
All other areas	376,122,511	5,830	N/A	N/A	N/A	N/A	5,830	411

The findings of the vacant land analysis are tempered by the variety of land conditions, including lots inappropriate for development for reasons of contamination, topography, hazards, threats to natural or built heritage resources, and other factors. Where development is proposed on these vacant lots, the conditions of the lot will be reviewed on a case-by-case basis in accordance with the policies of the Official Plan.



3. Community Structure and Growth Strategy

3.1. Character Areas

The Town of Three Rivers is comprised of several communities, including former municipalities and unincorporated areas. A central objective of this Official Plan is to maintain the character of these communities, while allowing for compatible development in appropriate locations.

To achieve this objective, the Town of Three Rivers shall consider the existing and historic character of its communities in undertaking land use planning activities. The intention of this policy is not to prevent, discourage, or hinder development, but rather to emphasize the importance of compatibility with existing character and ensure that future development remains context-appropriate.

In undertaking land use planning activities, including reviewing development applications, the Town of Three Rivers will ensure compatibility with the character of its former municipalities, as detailed in the descriptions in this section.

3.1.1. Brudenell

Situated between the Montague River to the south and the Brudenell River to the north, the former Rural Municipality of Brudenell features approximately 5,000 acres of rolling farmland and forest. Some expansion of commercial and residential development has occurred along the border with the former Town of Montague, particularly along Route 4 (A.A. MacDonald Highway). Existing highway commercial land uses along Route 4 from Montague to MacDonald Road. Should central water and sanitary services be extended northwards from Robertson Road, it can be expected that this linear corridor will evolve over time to include higher-density commercial and residential development.

The south side of Robertson Road and along the south shore of Brudenell on the Montague River is comprised primarily of residential uses, as well as small-scale hotel (B&B) and commercial uses. Land uses on the north side of Robertson Road and extending north of Brudenell Point Road (Hwy 319) are generally characterized by agricultural farmland and forest. Except for the Great Wisdom Buddhist Institute (GWBI) on the north and south sides of Brudenell Point Road, this Plan anticipates preserving the existing character of these farmlands and forested areas, particularly within the interior of Brudenell. Beyond the existing residential uses and vacant residential lots along the Brudenell River, there are limited opportunities for additional residential subdivisions.

Brudenell Point, located at the confluence of the two rivers, is the site of the Jean Pierre Roma Acadian settlement, the 18th century site of the first French settlement on Prince Edward Island. Roma at Three Rivers is a National Historic Site and a significant tourist attraction. Any new development in proximity to the Historic Site must be evaluated for its impacts on this important community feature.

3.1.2. Cardigan

The community of Cardigan is located on both the north and south banks of the Cardigan River. As a Rural Settlement Area, Cardigan features a compact form of rural development on private

water and sanitary services. While there are limited opportunities for residential and commercial intensification on private services, Cardigan shall continue to offer and permit a range of land uses, including residential and commercial.

As an important community hub within the wider area, Cardigan boasts several businesses, personal services and amenities, including hotels/B&Bs, museums, restaurants, a post office, community centre, recreational uses and parks. Cardigan is also home to Canada's smallest library, a unique attraction for residents and visitors. Together, these uses contribute to making Cardigan a dynamic and charming place for residents and tourists alike.

The Cardigan Wharf originated as an important launching point for the fishing industry, primarily the harvesting of clams and mussels. Today, the Marina remains a major hub in the community, supporting the fishing industry and opportunities for recreational boating. Consequently, the Marina and adjacent lands are a central feature of Cardigan and should be maintained and enhanced where possible.

Cardigan is an important focal point and unique Rural Settlement Area within the Town of Three Rivers. New development should be compatible with the existing character and function of the community.

3.1.3. Georgetown

Historic Georgetown, founded in 1732, is the seat of King's County and one of the first settlements on Prince Edward Island. The initial town site was planned on a street grid system, with many historic and heritage buildings still in existence. Within the expansive street grid system, Georgetown features several vacant or underutilized properties serviced by existing water and sanitary services. As a result, Georgetown has tremendous opportunity for growth, whether by infilling or site redevelopment.

Both Kent and Water Streets include a variety of building typologies and a mix of uses that service residents and visitors. The King's Playhouse has contributed to a thriving arts community and attracts people to Georgetown. Likewise, the A.A. MacDonald Gardens offers a place for people to visit, socialize and learn about Georgetown's history. Appropriately, these streets shall continue to be the focal points for a mix of uses.

Georgetown also offers a beautiful waterfront that offers opportunities for enhancement, where possible. The West Street Park and Beach are unique features within Georgetown, providing the public with unrestricted access to open spaces and the waterfront. Properties along the south side of Water Street should also be encouraged to provide for a mix of uses in appropriate locations along the waterfront.

Georgetown has historically featured extensive industrial uses, with several important employment and industrial uses located along the waterfront. Recognized as one of the deepest harbours in North America, Georgetown once accommodated a major shipyard. The former shipyard should be reserved for potential future industrial use.

Georgetown includes many heritage buildings that are emblematic of the Town's prominent past. These important and historic buildings should be preserved, enhanced and celebrated, where possible, to further establish Georgetown as an exceptional community on Prince Edward Island.

3.1.4. Lorne Valley

The former Rural Municipality of Lorne Valley is located to the north-west of Cardigan in the Town of Three Rivers. Similar to other former rural municipalities and some unincorporated areas, Lorne Valley is a picturesque community comprised of agricultural fields and forest lands. In addition, the former municipality includes a few small locally-oriented commercial and retail uses, as well as community gathering places.

This Plan continues to support the established agricultural land uses as well as the rivers, streams, and wetlands that play an important ecological function within the wider planning area. Generally, new non-agricultural related land uses are discouraged, including new residential subdivisions. While the policies of this Plan are supportive of limited land severances, preservation of the traditional uses of land is prioritized in Lorne Valley, while mitigating impacts caused by conflicting land uses.

Residential uses within Lorne Valley are often clustered together along Route 365 or other local roads. The creation of new residential lots shall generally be within these existing residential areas to preserve and maintain the character of the community.

3.1.5. Lower Montague

Lower Montague is a scenic, rural community located east of Montague, spanning the Valleyfield Dam to the west, St. Andrew's Point to the east and south to Albion. The former municipality continues to hold its strong agricultural and fishing roots, while also offering recreational and seasonal tourist uses.

The south side of Route 17, which offers picturesque views of rolling hills and rich farmland, should generally be retained for agricultural uses. North of Route 17 and along the Montague River and Lower Montague Road, properties are characterized by rural residential and seasonal cottages. The divide between agricultural and residential uses along this road should be generally maintained to preserve the uniqueness of the area. With this direction, Lower Montague can continue to offer opportunities for new residential and rural uses in appropriate locations, while coexisting with agricultural land uses.

3.1.6. Montague

The former Town of Montague functions as a regional hub for Three Rivers and Eastern PEI. Montague offers a range of businesses, services and amenities to service the day-to-day needs of the community.

As one of the main attractions, the Montague Waterfront Marina includes former CN Railway lands and now feature boating berths, public washrooms, a visitors information centre, a playground, an outdoor stage and many shops and restaurants. The waterfront area plays an important role in the history of Montague, with its wooden boardwalk, historical buildings, and scenic views. Montague has a rich history and culture that can be experienced through the renowned Centennial Art Trail and Garden of the Gulf Museum. For many residents and visitors to the area, Montague is also a launching point for the Confederation Trail, linking many communities across PEI.

In general, tourist infrastructure offered in the waterfront area should be maintained and enhanced as important community assets. Where possible, the Town of Three Rivers shall encourage consolidation of lands in this area to expand the function of the marina, while offering residents and visitors places to gather.

Additionally, the Main Street streetscape should be enhanced by promoting a mix of uses, retaining heritage buildings, encouraging excellence in architectural design and by supporting the pedestrian network. Where possible, the Town of Three Rivers shall seek opportunities to prioritize and facilitate active modes of transportation, particularly in areas of high foot traffic.

Automobile-oriented uses shall generally be located north of the Montague core along the A.A. MacDonald Highway. This linear corridor is expected to change over time, providing a mix of land uses, as the Montague continues to grow.

At present, Montague has many vacant or underutilized lots that could offer opportunities for infill and intensification. The Town of Three Rivers shall promote development on these sites to ensure efficient land use patterns and sustain the financial health of the Town.

3.1.7. Valleyfield

The former Rural Municipality of Valleyfield is the largest of the former municipalities in the Town of Three Rivers. As a rural community, Valleyfield features beautiful pastoral views of rolling hills and rich farmland. Traditionally, agriculture has been the primary driver of the local economy in Valleyfield and, on a broader scale, will continue to be a major industry within the Town of Three Rivers.

This Plan continues to support established farming activities as well as the rivers, streams and wetlands that play an important ecological function in maintaining this industry. Generally, new non-agricultural uses are discouraged, including new residential subdivisions. While the policies of this Plan is supportive of limited land severances, the intent is to preserve the traditional use of this land, while also protecting impacts and risks resulting from conflicting land uses.

The Great Enlightenment Buddhist Institute Society (GEBIS) has located a major institutional campus within the Heatherdale community. The GEBIS campus is positioned to accommodate learning retreats and meditation workshops for Buddhist practitioners and is permitted to continue its operation as per the approved Master Plan.

A long segment of Wood Island Road (Route 315) is located in Valleyfield, providing a connection from the Wood Island Ferry with Montague and other parts of Three Rivers. This is an important roadway that will continue to service inter-provincial travel. Any new development along this road should complement the function of this route.

Some existing residential developments are clustered along public roads in Valleyfield. The creation of new residential lots shall generally be located within these clustered areas to preserve the integrity of this scenic community.

3.2. Growth Strategy

Growth in Three Rivers will be planned in a coordinated manner based on sound planning principles and with regard for fiscal responsibility, maintenance of community character, protection of natural features and resources, and to foster an economically strong and socially

vibrant community. The growth strategy of this Official Plan is premised on the following principles:

- 1) Settlement Areas shall be classified as target designations for growth and development.
- 2) Provision of central water and sanitary services shall be limited to Urban Settlement Areas. Higher-density development may only be accommodated in the Urban Settlement Areas.
- 3) Limited lot creation may be permitted on lands under the Agricultural designation.
- 4) Development shall be directed away from natural heritage features.
- 5) Development shall be directed away from hazards and incompatible uses.
- 6) Development shall ensure protection of valuable cultural heritage resources, including historical and archaeological sites and buildings.

3.3. Settlement Areas

3.3.1. Types of Settlement Areas

Among a diversity of community types in Three Rivers, the Official Plan recognizes two types of Settlement Areas, as designated on Schedule A.

- 1) **Urban Settlement Areas** are densified areas with a mix of residential, commercial, industrial, institutional, recreation, and open space uses that are intended to be serviced with central water and sanitary services. While agriculture and other rural uses may exist in the Urban Settlement Area in the short-term, the long-term intention is to replace such low-density and land-intensive uses with urban uses. The provision of central services allows for smaller properties and higher densities of development, enabling land uses to be located in close proximity to each other to encourage clustered developments. Infrastructure to allow and encourage active modes of transportation, such as walking and cycling, are feasible in the Urban Settlement Area, along with public roads that are generally paved and maintained year-round.
- 2) **Rural Settlement Areas** are areas with a mix of residential, commercial, industrial, institutional, recreation, and open space uses that are serviced on private well and septic services. Agricultural uses are possible in the Rural Settlement Areas and may continue over the long-term. Rural Settlement Areas are focal points for rural communities, typically centred around a prominent intersection or historic settlement. The need for private services results in larger lots, lower overall densities, and development at greater distances apart than Urban Settlement Areas. In contrast to the broader rural area, however, Rural Settlement Areas feature a wider range of land uses and community services in relatively close proximity. While walking and cycling are

possible in these areas, private vehicles are the predominant mode of transportation.

3.3.2. General Policies for Settlement Areas

- 1) Urban Settlement Areas and Rural Settlement Areas are shown on Schedule A. Land use policies for each land use designation are included in Section 5 of this Plan.
- 2) Settlement Areas may be expanded through an Official Plan Amendment, subject to the following conditions:
 - a) There are insufficient opportunities to accommodate projected development inside the existing Settlement Area boundary;
 - b) The proposed expansion lands are reasonably contiguous with the existing Settlement Area, to create a continuous designation with no unnecessary gaps or breaks in the boundary line;
 - c) The proposed expansion lands are deemed to be the preferred location for expansion following an evaluation of other candidate lands, with consideration for the conditions in this policy;
 - d) The proposed expansion lands comprise a land area appropriate to accommodate projected growth, and do not represent an unnecessarily large or extensive expansion;
 - e) The proposed expansion lands can be efficiently and functionally added to the Settlement Area, with consideration for the road network and central water and sanitary services, where applicable;
 - f) In Urban Settlement Areas, central water and sanitary services shall be extended to service all properties within the expansion lands;
 - g) The proposed expansion lands are appropriate to accommodate the range of uses envisioned for Settlement Areas; and
 - h) The proposed expansion lands shall avoid sensitive natural environmental features or high-quality agricultural areas.
- 3) New Settlement Areas may be established through a full review of this Plan. A new Settlement Area shall be established only when the following criteria are satisfied:
 - a) Existing Settlement Areas are unable to accommodate projected growth, including through a possible expansion of these areas;
 - b) The area to be designated features an existing concentration of a mix of land uses, or sufficient demand exists to generate an appropriate concentration of land uses during the planning horizon of this Official Plan;
 - c) The area to be designated aligns with the amount of projected growth and does not unnecessarily extend further than warranted;
 - d) The lands to be designated create a continuous designation with no unnecessary gaps or breaks in the boundary line;

- e) Where a new Urban Settlement Area is proposed, central water and sanitary services shall be provided to all properties within the new designation;
 - f) The road network in and around the new Settlement Area is sufficient to accommodate the planned growth;
 - g) The characteristics of the lands are appropriate to accommodate the new designation, including topography, soil quality, drainage, contamination, current land use(s), and consideration of surrounding land use designations; and
 - h) The designated lands avoid sensitive natural environmental features or high-quality agricultural areas.
- 4) When proposed through a full review of this Official Plan, the criteria noted in Policy 3 shall apply to conversions of Rural Settlement Areas to Urban Settlement Areas.

3.4. Intensification Within Settlement Areas

Intensification, also known as “densification,” refers to the development of a property or area at a higher density than currently exists. Intensification can generally occur through redevelopment of a property, the development of a vacant site, infill development, or the expansion or conversion of an existing building.

Prioritizing intensification in a community growth strategy represents a sound planning approach, as it encourages growth in areas with existing infrastructure and community facilities, rather than building new facilities as a result of physical expansion. By capitalizing on these existing public investments, intensified development contributes to sound fiscal management, while creating compact communities where residents can conveniently meet their daily needs. Directing growth to existing Settlement Areas also protects agricultural and natural resource lands, which are spared from development as a result of growth.

- 1) The Town of Three Rivers encourages intensification of lands within Settlement Areas, where development can be reasonably accommodated.
- 2) Intensification may take the form of new development, redevelopment, infill, expansions or conversions.
- 3) Development proposals in Settlement Areas shall be located on sites appropriate to the proposed use and design, and shall conform with the applicable policies of this Plan.
- 4) Where development is proposed on lands within an Urban Settlement Area, approval will only be granted where sufficient capacity is available in the central water and sanitary service systems.
- 5) Council may establish specific density targets for each Settlement Area, which will reflect area-specific servicing constraints, historic development patterns, and Town-wide development goals.



4. General Policies

4.1. Generally Permitted Uses

4.1.1. Public Uses

As the three levels of government provide vital services for residents of Three Rivers, the Official Plan recognizes the necessity of these works and the legal authority to provide them.

- 1) Public uses owned by the Town of Three Rivers, the Province of Prince Edward Island, the Government of Canada, or any board or agency thereof, are permitted in all land use designations. Such public uses may include, but are not limited to:
 - a) Buildings to fulfill government functions;
 - b) Public infrastructure, including:
 - / Linear utilities;
 - / Electricity generation, transmission, and distribution;
 - / Land, sea, or air-based transportation infrastructure; and
 - / Communications infrastructure.
 - c) Parks, landscaped areas, recreation facilities, and conservation areas.

4.1.2. Accessory Uses

References to land uses in this Plan imply primary land uses or buildings. However, other uses, buildings or structures that may be incidental to the normal use may be permitted, where appropriate.

- 1) Accessory uses, buildings, and structures shall be permitted in all land use designations, subject to the provisions of the Development Bylaw.
- 2) The Development Bylaw shall establish provisions for accessory uses, including definitions, setbacks and size limitations.
- 3) In recognition of the importance of the industry to Three Rivers, the storage of equipment and vessels shall be permitted, subject to the provisions of the Development Bylaw.
- 4) Where accessory to a residential use, boathouses and docks shall be permitted on waterfront properties, subject to the provisions of the Development Bylaw.

4.1.3. Home-Based Business as an Ancillary Use

Some community members may choose to undertake economic activities in their place of residence. Home-based businesses are generally service-based operations, such as day care operations, offices, barber shops or hair salons, beauty parlours, low-impact artisan workshops,

and at-home IT services. Home-based business can also involve activities such as small-scale manufacturing, mechanical, or repair operations that generally hold the potential for greater impacts on neighbouring properties.

- 1) Where a dwelling is permitted by the Development Bylaw, a home-based business may also be permitted, subject to the policies of this Plan.
- 2) The Development Bylaw will contain appropriate regulations to ensure functional and visual compatibility with surrounding residential areas. The provisions will address elements such as size, number of employees, parking, signage, physical changes to the dwelling, limitations on mechanical equipment, outdoor storage, and other factors related to safety, convenience or enjoyment of neighbouring residents.

4.1.4. Day Care Facilities

Day care facilities are centres that provide daily temporary care of children, seniors and / or the disabled. These facilities provide vital services to community members and are generally of greatest benefit when located in central, accessible, and convenient locations.

- 1) These facilities may be located outside of a residential dwelling, or may exceed the standards established for home-based businesses.
- 2) Day care facilities are permitted in the Urban Settlement Area, Rural Settlement Area, Rural Area, and Agricultural Area designations.
- 3) Day care facilities applications shall be evaluated based on anticipated impacts related to:
 - a) Parking supply;
 - b) Traffic generation;
 - c) Noise;
 - d) Water and sanitary servicing requirements; and
 - e) Site suitability.
- 4) The Development Bylaw will contain provisions specifying appropriate locations for day care facilities.

4.1.5. Agricultural Uses

Agriculture is a foundational industry in Three Rivers and will continue to be a prominent land use in the future. Agricultural uses are generally found in rural areas.

- 1) Existing agricultural uses are permitted to continue in all land use designations.
- 2) Proposals to establish new agricultural infrastructure may be subject to the policies of this Plan.
- 3) Harvesting of trees is permitted in all land use designations.
- 4) Community gardens will be regulated by the Development Bylaw and are not classified as an agricultural use.

4.1.6. Cemeteries

Historic and modern cemeteries are located throughout the Town of Three Rivers in both rural and urban contexts. The policies of this section recognize the diversity of locations, while restricting the location of new cemeteries.

- 1) The Town of Three Rivers recognizes existing cemeteries in a range of contexts throughout the municipality. Existing cemeteries shall be permitted in all land use designations.
- 2) New cemeteries shall be permitted subject to Council and Provincial approval.

4.2. Economic Development

A central purpose of the Official Plan is to describe and facilitate objectives and strategies for economic development through land use planning. With a diversity of business and resource sectors united in a single municipality, the Town of Three Rivers is positioned to be one of the primary economic centres of eastern Prince Edward Island. Council will build on these strengths and advance creative initiatives to enhance economic opportunities.

4.2.1. Regional Economic Development

The economy of Three Rivers will continue to be integrated with regional economic activities, including in the eastern Island and across the province. Economic development in the Town can be achieved through coordinated efforts with other groups and governments, as well as consideration of regional economic trends.

- 1) The Town of Three Rivers will work with neighbouring municipalities and the Province of Prince Edward Island to advance regional economic development through land use planning.
- 2) The Town of Three Rivers offers numerous attractions, accommodations, and service facilities that comprise the Three Rivers Discovery Drive within the Points East Coastal Drive tourist network. In making land use decisions, Council will recognize the importance of these sites to local tourism and seek to advance opportunities to enhance these destinations.
- 3) Council will explore opportunities to create and enhance transportation and economic connections with communities elsewhere on Prince Edward Island, including Charlottetown.
- 4) The Town of Three Rivers will work with the Province of Prince Edward Island, telecommunications service providers and neighbouring municipalities to advance installation and expansion of the 5G fibre-optic network.

4.2.2. Local Economic Development

With a diverse and vibrant economic base, Three Rivers can build on its position and further enhance its economy across multiple sectors.

- 1) With input and guidance from the Economic Development Committee, Council will consider the preparation of an Economic Development Plan to encourage investment in the Town and enhance overall economic opportunities.
- 2) Council will encourage the establishment of Business Improvement Areas (BIA) in the Town, where requested by a majority of local business owners in a defined area.
- 3) The Town will work with Innovation PEI and the Community Business Development Corporation (CBDC) on land use planning-related matters to facilitate the establishment and growth of new businesses in Three Rivers.

- 4) The Town will encourage local opportunities for tourism and recreation, including boating, parks and pathways, beaches, sports tourism, and cultural features and programming. Council will consider the economic and social value of these facilities in making decisions on land use planning matters.
- 5) The Town of Three Rivers recognizes the important role that agriculture plays in the community, including crop harvesting, livestock, forestry, aquaculture, agri-tourism, and supporting retail and industrial operations. In accordance with the policies of this Official Plan, Council will have regard for the economic value of the agricultural industry to the community in its land use planning decision-making.
- 6) The Town of Three Rivers recognizes the important role that the fishing industry plays in the community, including harbour facilities, seafood processing, and supporting retail and industrial operations. In accordance with the policies of this Official Plan, Council will have regard for the economic value of the fishing industry to the community in its land use planning decision-making.
- 7) The Town will promote the Poole's Corner Business Park as a convenient and effective location to accommodate new businesses and industries.
- 8) Council recognizes and supports existing and future retail and industrial operations throughout the municipality, many of which serve markets within and beyond the Town of Three Rivers.
- 9) The Town of Three Rivers will encourage innovative solutions to enhance soil quality, including natural local product development.
- 10) Recognizing the unique economic contributions of the Mi'Kmaq people throughout the history of Three Rivers, Council will encourage economic initiatives that benefit Indigenous peoples as a pathway to advance local and national goals of Reconciliation.

4.3. Housing

4.3.1. Unit Mix

Providing a range of housing types is a key ingredient in healthy, sustainable communities. While not all housing types are appropriate everywhere, the policies in this section are intended to ensure that housing choices are available to residents within the municipality.

- 1) The Town encourages the development of a variety of dwelling types to accommodate the needs of all households.
- 2) The Town encourages a range of housing tenures, including ownership, rental, condominium, cooperatives, seasonal dwellings, group homes, and public housing. The tenure of housing shall not influence land use planning decisions, unless explicitly referenced in this Plan.

- 3) Council will encourage the development of housing for seniors within Settlement Areas, to ensure adequate accommodations for older residents. Permissions for these housing developments will be established in the Development By-law.

4.3.2. Housing Typologies

This Official Plan recognizes the following densities and their corresponding housing typologies:

- 1) “Low-density” housing refers to single-detached dwellings.
- 2) “Medium-density” housing refers to semi-detached dwellings, duplex dwellings, row dwellings, and triplex dwellings.
- 3) “High-density” housing refers to multi-unit dwellings with four units or more.

4.3.3. Affordable Housing

The affordability of housing options is essential to ensure that residents can secure appropriate housing that meets their needs, while offering choice in both the rental and market housing sectors. New affordable housing development should provide for a mix of dwelling size, type and tenure that meet the housing needs of the area. To help residents meet these challenges the Town will continue to support a range of housing options and delivery incentives. The policy aims of part 4.3.3.1 will be complimentary to the development of a detailed Affordable Housing Policy document that will look to secure the delivery from development through continued engagement with the private and non-profit sectors.

- 1) Council will encourage development a range of affordable housing directed toward the delivery of:
 - a) Housing units specifically priced for ownership below the market average for the area;
 - b) housing units allocated for rental below the average market rent of comparable units.
 - c) Utilizing municipally owned land for affordable housing, or where appropriate requiring affordable housing as a condition of land disposal.
 - d) The promotion of municipal led incentives to bring new housing development across Three Rivers.
 - e) To continue to work with the Prince Edward Island Housing Corporation to provide new affordable housing projects in Three Rivers to meet the housing needs of residents.
- 2) The Town will consider the following measures to encourage the development of housing projects that meet the definitions of affordability in Policy 1:
 - a) Where appropriate, the Town may enter into a Development Agreement with the applicant of a development that includes affordable housing units, which will establish terms and conditions to ensure that the units remain affordable for a defined period of time or in perpetuity.
 - b) Updating policies and Tariff of Fees bylaws to waive fees and charges for projects that feature affordable housing;

- c) Considering the provision of affordable housing when evaluating development applications that propose to increase permitted density; and
 - d) Direct provision of municipally-owned land for the purpose of providing affordable housing, or requiring affordable housing as a condition of land disposal.
- 3) Council will work with the Prince Edward Island Housing Corporation to provide new affordable housing projects in Three Rivers to meet the housing needs of residents.

4.3.4. Accessory Dwelling Units

Accessory dwelling units are dwelling units that are supplementary to a primary dwelling unit on a lot. The provision of accessory dwelling units can achieve multiple planning goals, including increasing housing stock, expanding affordable housing options, and providing low-impact forms of intensification. The policies of this section are intended to permit accessory dwelling units to encourage the achievement of these planning goals.

- 1) The Development Bylaw shall permit accessory dwelling units to be developed on properties with a primary single-detached, semi-detached, or townhouse dwelling. The Development Bylaw will also contain additional provisions to regulate the location and scale of accessory dwelling units.
- 2) Accessory dwelling units may be located attached to a dwelling or in a detached building. Where an accessory dwelling is detached from the primary dwelling, the accommodating building or structure must be located in a side or rear yard.
- 3) Development of an accessory dwelling unit shall be subject to:
 - a) A maximum of one accessory dwelling unit is permitted per lot;
 - b) The property complies with the lot area requirements in the Development Bylaw;
 - c) Adequate parking facilities are provided;
 - d) The exterior access door to the accessory dwelling unit is not located on the front façade of the primary dwelling;
 - e) The accessory dwelling unit is of a modest size, and does not exceed the floor area of the primary dwelling; and
 - f) The accessory dwelling unit shall not be severed from the primary dwelling.
- 4) For the purpose of this Plan, accessory dwelling units shall be defined as dwellings in permanent buildings. Trailers and other moveable recreational vehicles shall not be classified as accessory dwelling units and shall be subject to separate provisions in the Development Bylaw.

4.3.5. Group Homes

- 1) Group homes shall be permitted in all designations that permit residential uses.
- 2) Group homes shall only be permitted in single-detached, semi-detached, or row dwellings.
- 3) The Development Bylaw shall establish group homes as a permitted use in all zones, subject to the policies of this Plan.

4.3.6. Bed and Breakfast Operations

Bed and breakfast operations, also known as “tourist homes” or “guest homes,” are common on Prince Edward Island and make a valuable contribution to the local tourism industry. Bed and breakfast operations are generally compatible in a range of contexts.

- 1) Bed and Breakfast operations shall be permitted wherever single-detached, semi-detached, or row dwelling units are permitted.
- 2) The Development Bylaw shall contain specific provisions for Bed and Breakfast operations. The provisions shall regulate such elements as:
 - a) Dwelling types in which bed and breakfast operations are permitted;
 - b) The maximum number of rooms available for guests;
 - c) Regulations for signage;
 - d) Parking requirements; and
 - e) Other compatibility considerations, as required.
- 3) An expansion to the number of rooms available for guests in a Bed and Breakfast operation may be permitted through a Zoning Amendment, provided that the proposal is compatible with existing and planned uses on neighbouring properties, and that all other criteria for bed and breakfast operations are met.

4.3.7. Short-Term Rentals

The Town of Three Rivers recognizes the valuable role that short-term rentals play in the community. The ability for local residents to lease dwelling space to tourists and business travellers on a short-term basis expands accommodation options for visitors in the community, generating economic benefits for those offering the service, as well as other businesses in Three Rivers. However, experiences across Prince Edward Island have shown that offering entire dwellings exclusively to short-term rental tenants restricts housing options for existing and future residents, resulting in increased housing costs. The policies in this section are intended to address these concerns.

- 1) Residents offering short-term rental accommodations shall follow all regulations and procedures established by the Province of Prince Edward Island, including the requirement to obtain a Tourism Establishment License from Tourism PEI.
- 2) The Town of Three Rivers will monitor trends in the short-term rental and housing market and may amend the Development Bylaw to introduce regulations, including but not limited to:
 - a) Restricting short-term rental offerings to primary residences as classified for tax purposes;
 - b) Regulations to permit short-term rentals within Accessory Dwelling Units;
 - c) Permitting short-term rentals within a portion of a dwelling;
 - d) Defining the length of stay that constitutes a short-term rental; and
 - e) Requirements for public notification for short-term rentals.

4.4. Subdivisions and Condominiums

The subdivision process includes lot creation or lot consolidation and may involve any number of land parcels. The purpose of the policies below is to establish policies for subdivisions in Three Rivers.

4.4.1. Establishing New Subdivisions

- 1) The design of new subdivisions shall be based on sound planning, engineering and environmental principles. The Town of Three Rivers will evaluate subdivisions against factors including:
 - a) Compatibility with surrounding uses, including agricultural uses;
 - b) The topography of the site;
 - c) Surface drainage on the site and its impact on adjacent parcels of land;
 - d) Access to adjacent public roads and the capacity of those roads to absorb traffic generated from the proposed subdivision;
 - e) Availability, adequacy and the economical provision of utilities and services;
 - f) The ability to further subdivide the land or adjoining land;
 - g) The provision of lots suitable for the intended uses;
 - h) Wastewater management;
 - i) Water supply; and
 - j) Natural features.
- 2) Where a proposed subdivision includes six or more lots, one lot shall be dedicated for landscaped open space for the use and enjoyment of residents in the subdivision. The size of the open space lot shall be up to 10 percent of the overall land to be subdivided. In larger subdivisions, the open space allocation may be divided between multiple lots.

- 3) The Town shall review the transportation network in proposed subdivisions with consideration of the following:
 - a) Where there is an opportunity to create a connection with the road network of an existing subdivision on adjacent land, the Town shall ensure that new connections are established, where feasible.
 - b) Where a future subdivision is possible on adjacent land, subdivision applications shall include road allowances to create road connections;
 - c) The Town shall prioritize full-movement road connections, but may also consider walkways or other infrastructure to enhance pedestrian connections.
 - d) Where subdivisions are proposed adjacent to an existing recreational pathway, including the Confederation Trail, the Town may require applicants of subdivisions to include new pathway connections in the subdivision design to enhance the broader pathway network. Pathways shall connect to a point of public access, which may include a public right-of-way.
 - e) Applications for subdivisions shall conform with the policies of this Plan, including the policies for roads in the Infrastructure and Public Facilities Section of this Plan.
- 4) Where a subdivision is proposed along a shoreline, the subdivision may include a right-of-way easement to be dedicated to the Town of Three Rivers that enables public pedestrian access to the waterfront, subject to the following conditions:
 - a) The easement shall lead directly to the water, or to an area of public ownership with connection to the water;
 - b) The easement is of a sufficient width to enable reasonable access, as regulated by the Development Bylaw;
 - c) The easement leads to an area of land that is generally flat, unencumbered and suitable for the purpose of passage; and
 - d) Any vegetation or rock features in the easement that would hinder pedestrian access can be removed without causing significant environmental damage or generating undue potential for erosion.

4.4.2. Legacy Lots

Legacy lots are vacant lots that were legally established under a previous planning regime, either municipal or provincial, but do not meet current standards for servicing by private well and septic systems. The following policies establish conditions under which such lots may be developed.

- 1) Properties that were legally established but do not meet the lot area requirements of the Development Bylaw shall be recognized as existing lots of record;
- 2) Legally established legacy lots may be developed conditional upon satisfying the following criteria:

- a) The provision of safe access and egress;
 - b) A demonstrated ability to provide for water and sanitary services, either by means of central or private services;
 - c) Development of the lot will not generate undue impacts on natural heritage features, in accordance with the policies of this Plan;
 - d) The lot is not affected by any natural hazards, in accordance with the policies of this Plan; and
- 3) The Development Bylaw shall contain additional regulations for legacy lots, including special setbacks and maximum lot coverage requirements.

4.4.3. Condominiums

- 1) The Town of Three Rivers recognizes condominium ownership arrangements established under the Prince Edward Island Condominium Act R.S.P.E.I. 1988, C-16. Any policy in this Plan referring to subdivisions shall also apply to condominiums, with the necessary modifications, as applicable.
- 2) As stipulated in the Condominium Act R.S.P.E.I. 1988, C-16, developments proposing a condominium ownership structure are not exempt from policies and regulations established under the Official Plan and implementing bylaws.
- 3) For further clarity, the Town of Three Rivers shall review development applications that propose a condominium ownership structure against the criteria for subdivision review established in Policy 1 of Section 4.4.1.
- 4) As an ownership structure, condominiums do not constitute a distinct land use. All development applications will be evaluated on the merits of the proposed land use, without regard for the condominium ownership tenure. Neither the Development Bylaw nor any other implementing bylaw will construe condominiums as a distinct land use.

4.5. Community Design

Community design refers to the process of ensuring that development is attractive, compatible and functional. The guidelines in this section are intended to guide the form of development, such as the placement of buildings on a lot, built form, landscape patterns, and the location of elements associated with development.

This section presents design guidelines for different contexts in Three Rivers. The guidelines are not intended to be mandatory requirements, but best practices for design that the Town can use to evaluate development proposals.

4.5.1. Design Guidelines for Rural Areas

- 1) Ensure development respects the natural topography of land and avoid alteration of the terrain.

- 2) Maintain naturalized and vegetated areas as much as possible.
- 3) Plant additional trees and other landscaping elements to complement existing and proposed development.
- 4) Conservation and adaptive re-use of existing buildings is encouraged.
- 5) Where fencing is provided, limit heights and choose compatible and safe construction materials. Hedges may also be used as fencing.
- 6) Limit the extent of driveway materials to maintain natural drainage patterns.

4.5.2. Design Guidelines for Settlement Areas

- 1) Ensure development respects the natural topography of land.
- 2) Avoid looping or circuitous roadway patterns in favour of integrating with the existing road network and creating opportunities for additional road connections.
- 3) Consider designing for active modes of transportation, such as walking and cycling, by including sidewalks, walkways and bicycle parking. Direct and accessible connections between buildings are particularly encouraged.
- 4) Consider opportunities to expand housing options, including the provision of a range of lot sizes, dwelling types, and dwelling sizes.
- 5) Where a proposed building features larger massing than existing adjacent development, incorporate a transition in the massing down to the existing condition through setbacks and lower building elements.
- 6) Design buildings to be consistent with architectural styles in the area, including building forms, materials and colours.
- 7) Avoid blank walls and encourage generous window coverage, where possible.
- 8) Orient buildings to frame the public street to enhance sociability and community safety.
- 9) In designing buildings, prioritize doors and windows by avoiding garages that project ahead of main entrances or front building façades.
- 10) When siting buildings, consider views and vistas from public spaces to important buildings, landscapes, and community landmarks.
- 11) Locate parking behind or beside buildings, with landscaping and pedestrian facilities in the front.

- 12) To encourage a community feel and reduce travel distances, contribute to a healthy mix of uses within Settlement Areas, subject to Official Plan policies.
- 13) Where possible, preserve and re-use older buildings to conserve existing cultural assets.
- 14) Preserve opportunities for public art, where feasible.
- 15) Seek opportunities to reduce the carbon footprint of development, including through solar orientation, building materials, and high albedo (highly-reflective) colours.
- 16) Keep utilities and storage areas behind or interior to buildings, or screened by landscaping, fencing, or similar features.
- 17) Include lighting on buildings and in parking areas that enhances visibility and safety without impacting adjacent properties.

4.5.3. Design Guidelines for Mainstreets

- 1) To create a lively streetscape, a mix of uses is encouraged, either in separate buildings or together in single buildings.
- 2) Reduce building setbacks from the street to create better interaction with the public realm.
- 3) Limit building heights along street frontages to match the prevailing character of the street. Where additional height is proposed, set back the taller elements away from the street.
- 4) Provide ample pedestrian facilities, including widened sidewalks, to create connections to and between buildings.
- 5) Design commercial signage to be of a modest size, with high-quality materials and limited lighting impacts on neighbouring properties.
- 6) Drive-through facilities are encouraged to be located away from the street, with adequate queuing spaces to prevent spillover.
- 7) Encourage the use of weather-protected architectural elements such as awnings or colonnades.
- 8) Provide landscaping elements suitable to the scale of the site, which may include planter boxes, shrubs, or trees.



BRUDENELL SCHOOL

5.Designations and Land Use Policies

All lands in Three Rivers are subject to land use designations, as illustrated on Schedule A. In this section, policies are established for each land use designation, describing the vision for land use, growth, servicing, compatibility, and other considerations. Development must conform to the policies of each designation.

5.1. Agricultural

Agricultural uses, including crops, livestock, and forestry operations, is an important part of the economy of Three Rivers. Agriculture covers approximately 33 percent of the planning area and represents an important resource within the Town of Three Rivers. The majority of agricultural lands are classified as Class 2 on the 7-Class Canada Land Inventory scale, requiring moderate conservation practices as the soils are deep and hold moisture well, and under good management, are generally high in productivity for a wide range of crops.

The Town's agri-economy is a valuable industry which plays an important role for local employment as well as ensuring food security in the region. The Town will support diversification of farming operations to increase local supply of goods and services within the regional economy, while also protecting farmland from uses that would impede productive farming operations. Accordingly, the policies of this Plan seek to preserve and maintain a suitable supply of agriculturally designated lands throughout the Town of Three Rivers.

5.1.1. Protection of Agricultural lands

1. The Town of Three Rivers shall consider the removal of Agricultural land to allow for the expansion of a Settlement Area only through a full review of the Plan.

5.1.2. Permitted Uses

1. Council shall establish an Agricultural Zone in the Development Bylaw to permit agriculture and agriculture-related uses, as well as residential uses.
2. Agri-tourism and on-farm supportive uses such as breweries, wineries, places of assembly, bed and breakfast operations, home-based businesses, home-

based industries, and agriculture-related educational facilities. Such uses shall be limited in scale and be secondary to a primary agricultural operation.

3. In addition to general permissions established in Section 4.1, the storage of fishing vessels and equipment is permitted in the Agricultural designation.
4. The processing of agricultural products shall be permitted in the Agricultural designation.
5. Larger-scale processing of agricultural, forestry and aquacultural products shall be permitted in the Agricultural designation, subject to a Zoning Amendment.
6. Limited unserviced residential uses are permitted in the Agricultural designation, subject to the policies of this Plan.

5.1.3. Compatibility with Sensitive Land Uses

1. Development in the Agricultural designation shall ensure adequate separation between livestock and sensitive uses, including residential uses, day care services, retirement residences, educational facilities, parks and other uses in which outdoor amenities and recreation spaces are provided.
2. The Town of Three Rivers will evaluate the compatibility of agricultural uses that include livestock operations against the policies in the Development Hazards and Land Use Compatibility section of this Plan.

5.1.4. Land Division in the Agricultural Designation

A principal objective of this Official Plan is to preserve the character and viability of agricultural areas in the Town of Three Rivers. However, lot creation in agricultural areas can allow for a healthy range of agriculture-supportive and compatible land uses, support farmers, and create housing opportunities for residents.

5.1.5. Aquaculture

Agricultural activities in Three Rivers are deemed to include aquaculture, typically for mussels, oysters and trout. As municipal land use plans do not regulate uses in water bodies, the policies of this section reference provincial zoning systems and associated land-based activities.

1. Aquaculture activities shall be subject to the PEI Aquaculture Zoning.
2. Any land-based activities related to aquaculture, such as storage or staging of equipment, are permitted in the Agricultural designation.

5.1.6. Forestry

Agricultural activities in Three Rivers are deemed to include forestry operations.

1. Forestry uses are permitted in the Agricultural designation, subject to all

policies of this Official Plan.

5.1.7. Resource Excavation Pits

1. Council shall establish a Resource Excavation Zone in the Development By-law. Resource excavation pits are permitted in the Agricultural designation, subject to a Zoning Amendment. Applications to establish a new excavation pit shall comply with the provisions and regulations of the Environmental Protection Act R.S.P.E.I. 1988, E-9. Zoning Amendment applications shall consider:
 - a) Surrounding land uses and the proximity of the excavation pit to those uses;
 - b) The extent and duration of the proposed operation;
 - c) Vehicle circulation patterns and haul routes;
 - d) Requirements for water use;
 - e) Proposed rehabilitation measures; and
 - f) Mitigation measures to address potential impacts.

5.2. Rural

The Rural land use designation is intended to accommodate a variety of land uses that are appropriate for a rural location while ensuring that the character of the rural area is preserved and enhanced. As an important component of the local economy, the policies of this Plan aim to strengthen and support the local rural economy by permitting a diversity of uses. A large portion of the Rural land use designation will continue to be farmed for agricultural- related purposes, yet there are existing residential developments located within coastal areas and found in smaller pockets throughout the Town of Three Rivers. The policies of the Rural designation are meant to recognize this existing situation while also offering opportunities for seasonal and full-time dwellings.

5.2.1. Permitted Uses

- 1) The Rural designation is intended to apply to lands that may feature agricultural uses, but may be developed with other appropriate uses.
- 2) Council shall establish a Rural Zone to permit land uses appropriate to a rural setting.
- 3) Council shall establish a Rural Residential Zone to permit low-density residential and supporting uses appropriate for a rural setting.
- 4) Medium-density residential dwellings may be permitted provided that:
 - a) Adequate water and sanitary servicing can be provided; and
 - b) Parking facilities are made available for each unit.
- 5) High-density residential developments may be permitted in the Rural designation.
- 6) Council shall establish Community, Light Industrial and Highway Commercial Zones within the Rural designation. Subject to a special use permit application, the following uses may be permitted:
 - a) Outdoor recreational and tourism uses;
 - b) Small-scale Community, Light Industrial and Highway Commercial uses where the following criteria are met:
 - / The uses are necessary to serve the local rural community and the travelling public (i.e. general store, restaurant);
 - / The use being proposed can be supported by water and septic services according to the applicable provincial regulations;
 - / The scale of the development is appropriate for a rural context;
 - / Access and egress to the development can be safely provided; and
 - / The proposed development is compatible with surrounding land uses or impacts can be reasonably mitigated.
 - c) Animal and veterinarian services, including boarding, breeding and training.
- 7) In addition to general permissions for accessory uses established in Section 4.1, the storage of fishing vessels and equipment is permitted in the Rural designation.

- 8) Subdivisions are permitted in the Rural designation, subject to the policies of this Plan. The Development Bylaw shall establish minimum lot sizes and minimum lot frontage for both the Rural and Rural Residential Zones.

5.3. Settlement Areas

A Settlement Area is defined as a built-up geographic area with a concentration and mix of land uses. This Plan identifies two types of Settlement Areas: Urban Settlement Areas and Rural Settlement Areas. While both Settlement Areas are a focus of growth and development, they differ in intensity, primarily due to different forms of water and sanitary services. The presence of central water and sanitary services in Urban Settlement Areas, including Georgetown and Montague, offers greater opportunities for the development of a mix of uses within a compact form. By contrast, Rural Settlement Areas, including Cardigan and Poole's Corner, will feature less intensive development forms due to private water and sanitary services, while providing a range of land uses.

5.3.1. Policies for Residential Uses in Settlement Areas

- 1) Council shall establish the following zones to support residential development in Settlement Areas:
 - a) An R1 zone to permit low-density residential and supporting uses;
 - b) An R2 zone to permit medium-density residential and supporting uses;
 - c) An R3 zone to permit high-density residential uses;
 - d) A Residential Mobile Home Park zone to permit mobile homes and associated land uses.
- 2) Low-density housing forms shall be generally permitted in appropriate locations within both the Rural and Urban Settlement Area, provided they meet the following criteria:
 - a) The property can adequately provide for private or central water and sanitary services;
 - b) The property has frontage on a road; and
 - c) The proposed development is designed to meet the applicable setbacks of the corresponding zone provisions.
- 3) Medium-density housing forms shall be generally permitted in appropriate locations within Settlement Areas, provided they meet the following criteria:
 - a) The property has frontage on a public road; and
 - b) The proposed development is designed to meet the applicable setbacks of the corresponding zone provisions.
- 4) High-density housing forms shall generally be permitted in appropriate locations within the Urban Settlement Area, provided they meet the following criteria:

- a) The property is serviced with central water and sanitary services;
 - b) The property is located on or near a road with capacity to safely absorb the anticipated increase in traffic;
 - c) The proposed development will not result in undue shadowing impacts on adjacent land uses; and
 - d) The proposed development is designed to feature appropriate setbacks and architectural features that reduce impacts on adjacent properties.
- 5) New mobile home parks may be established only through a Zoning Amendment process. All new mobile home parks must be serviced with central water and sanitary services, provided that sufficient capacity to support the proposed development is available.

5.3.2. Policies for Community Uses in Settlement Areas

Community uses are community-serving retail, commercial and small-scale institutional uses. These uses are commonly found in community hubs and on prominent streets, but may also be appropriate in other contexts.

- 1) Council shall establish the following zones in Settlement Areas:
 - a) A Mixed-Use Zone to permit a range of retail, commercial and tourism-oriented uses;
 - b) A Highway Commercial Zone to permit automobile-oriented commercial uses on major roadways; and
 - c) A Community Zone to permit community-serving institutional uses such as municipal offices, post offices, fire halls, schools, places of worship, cultural facilities and similar uses.
- 2) Applications for a Zoning Amendment to change the zoning on a property, establish a use not permitted by the applicable zone, or exceed building envelope limitations shall be evaluated against the following criteria:
 - a) The potential for the use to generate undue traffic impacts;
 - b) Whether water and sanitary servicing requirements can be met;
 - c) Whether adequate setbacks are incorporated into the development design; and
 - d) Whether adequate measures are proposed to mitigate noise, lighting or other impacts on adjacent properties.

5.3.3. Policies for Industrial Uses in Settlement Areas

- 1) New heavy industrial uses are prohibited within Settlement Areas, except where permitted through a Zoning Amendment application. Council shall evaluate applications for Zoning Amendments against the following criteria:
 - a) The property may be adequately serviced with water and sanitary services;

- b) The property has access to public roads that can accommodate vehicular traffic, including delivery trucks;
 - c) The property is located outside of any Wellfield Protection Areas;
 - d) The property is located an adequate distance from residential and other sensitive land uses, or any potential impacts may be mitigated, subject to the policies of this Plan; and
 - e) The development of the property with industrial uses will not impact sensitive environmental features.
- 2) Existing heavy industrial uses shall be permitted as legal non-conforming uses. Expansions to these uses shall be permitted, subject to the Development Hazards and Land Use Compatibility section of this Plan.
- 3) New industrial uses within Settlement Areas shall be limited to light industrial uses where Council is satisfied that there are no adverse impacts on adjacent uses. New light industrial uses shall conform with the Development Hazards and Land Use Compatibility policies of this Plan.
- 4) Within the Georgetown Urban Settlement Area, the former location of oil storage tanks near the corner of Glenelg and Fitzroy Streets is identified for high density residential uses, which are deemed compatible with abutting residential areas.
- 5) Within the Georgetown Urban Settlement Area, existing heavy industrial uses are located along the waterfront. Notwithstanding the policies of this section, the former East Isle Shipyard shall be reserved for future heavy industrial uses provided it can be adequately serviced and potential impacts can be mitigated.

5.3.4. Policies for Waterfronts in Settlement Areas

- 1) The Town encourages a range and mix of uses along the waterfront to serve residents and visitors. Harbours and marinas shall be permitted in Settlement Areas.
- 2) The Town of Three Rivers will encourage the consolidation of waterfront lands, where feasible, to facilitate comprehensive, coordinated development of community and tourist facilities.
- 3) Development along waterfronts in Settlement Areas shall recognize and respect the jurisdiction of the Government of Canada, where applicable.
- 4) The Town shall maintain and enhance the system of sidewalks, trails, boardwalks, parks, open spaces, where applicable. Accessible pedestrian connectivity and facilities shall be prioritized in these waterfront areas, including pedestrian routes to access these areas from other destinations.

5.3.5. Policies for Mainstreets in Settlement Areas

Mainstreets make an important contribution to the vibrancy and success of Settlement Areas. The Mainstreets referenced in this section include: Water Street and Kent Street in the Georgetown Settlement Area; Main Street in the Montague Settlement Area; and Wharf Road and Water Street in the Cardigan Settlement Area.

- 1) Over time, Mainstreets shall develop in a compact built form offering a mix of uses, including commercial and retail uses at grade and residential uses above.
- 2) New developments and buildings shall be designed to address the public street in the following ways:
 - a) Orient the primary façade of the building towards the Mainstreet;
 - b) Achieve shallow setbacks from the Mainstreet;
 - c) Designing buildings to include a large amount of window glazing; and
 - d) Locate vehicular parking away from view of the Mainstreet.
- 3) Preserve existing, older buildings and integrate them into new developments, where feasible.
- 4) Provide for a continuous sidewalk along the Mainstreet, with direct, accessible entrances to ground-level uses.
- 5) Preserve existing trees and integrate them into new developments, where feasible. New trees should be considered along Mainstreets, where conditions allow. New trees should be native species with shallow root systems to protect underground infrastructure.
- 6) When evaluating new development proposals, Council shall take into consideration the Community Design Guidelines in Section 4 of this Plan.
- 7) Council may consider adopting a specific set of design guidelines for development along Mainstreets across Three Rivers.

5.4. Industrial

The Industrial land use designation is characterized by traditional industrial activities and uses, including, but not limited to: manufacturing, processing, distribution, warehousing, construction and related trades, outdoor storage, light and heavy industrial uses and other uses requiring a range of parcels sizes. Due to the nature of these uses, there may be adverse impacts on adjacent sensitive land uses due to its day-to-day operations (i.e. odours and emissions, effluent, smoke, dust, traffic, light and noise). As a result, industrial land uses should be separated from sensitive land uses, and where possible clustered together to minimize their overall impacts.

- 1) Council shall create the following zones to accommodate Industrial land uses:

- a) A Light Industrial Zone to permit a wide range of low-impact light industrial uses and office-type uses, including showrooms and display areas; and
 - b) A Heavy Industrial Zone to permit a wide range of industrial uses including uses which, among others, generate noise, fumes, or odours that can be considered hazardous or obnoxious.
- 2) Council may apply the Industrial designation to new areas subject to the following considerations:
 - c) The property may be adequately serviced with water and sanitary services;
 - d) The property has access to public roads that can accommodate vehicular traffic, including delivery trucks;
 - e) The property is located outside of any Wellfield Protection Areas;
 - f) The property is located an adequate distance from residential and other sensitive land uses, or any potential impacts may be mitigated, subject to the policies of this Plan; and
 - g) The development of the property with industrial uses will not impact sensitive environmental features.
- 3) Heavy industrial uses that may result in noise, odour, dust, fungi, smoke, emissions, effluent, or other impacts may be established through a Zoning Amendment, subject to consideration of the following:
 - a) Where the lands are not designated Industrial on Schedule A, the lands shall be redesignated to the Industrial designation through an Official Plan Amendment;
 - b) Whether adequate measures are proposed to mitigate anticipated impacts on neighbouring land uses and properties, including lighting, noise, and other impacts or nuisances related to the industrial operation;
 - c) The impact of the proposed use on traffic volumes on the surrounding local road network, as well as traffic circulation, sightlines, and vehicular access points;
 - d) Whether the design enables adequate on-site traffic circulation of vehicles;
 - e) Whether water and sanitary services can be adequately and safely provided;
 - f) Whether adequate setbacks are incorporated into the development design;
 - g) The property is located outside of the Wellfield Protection Area;
 - h) Whether adequate space is allocated for loading and deliveries; and
 - i) Whether adequate screening is provided for outdoor storage, loading areas, and other unsightly features of the development.
- 4) Developments containing industrial uses shall include landscaping abutting streets or property lines to provide visual screening and amenity for the public realm and surrounding development. The Development Bylaw shall include landscaping requirements for industrial development.

- 5) Council shall explore a potential future industrial park at the Wood Islands Road and Commercial Road intersection. If determined to be appropriate for industrial uses, the affected lands will be redesignated to the Industrial land use designation through an Official Plan Amendment.

5.5. Institutional

The Institutional land use designation is intended to accommodate certain special land uses at a regional scale, including, but not limited to hospitals, colleges and major sports, recreational and cultural facilities. Typically these large sites and land use is distinguished by a number of unique characteristics such as a special demand on the transportation network as well as water and wastewater infrastructure. To varying degrees, these uses can also impact adjacent land uses and therefore need to be developed in a built form that is compatible within its existing environment.

5.5.1. General Policies

- 1) The Town of Three Rivers shall consider requests for new institutional land uses on an individual or case-by-case basis through an implementing Official Plan Amendment and Zoning Amendment;
- 2) Proposed institutional land uses will be evaluated on the basis of the following criteria:
 - a) Evidence that the property is suitable for the proposed use;
 - b) It is supported by a transportation study;
 - c) Water and sanitary services can be adequately provided; and
 - d) An assessment of all potential impacts of the proposed land use upon adjacent land uses and mitigation measures are considered acceptable.

5.6. Parks and Open Space

The Parks and Open Space land use designation identifies large parks and open space corridors in public or private ownership. The Parks and Open Space land use designation also includes historic sites (e.g. Roma at Three Rivers), Federally- or Provincially-recognized parks (e.g. Panmure Island Provincial Park), recognized woodlots, wildlife sanctuaries (e.g. Harvey Moore Wildlife Sanctuary) as well as development along the waterfront, including harbours and marinas. Parks and opens spaces contribute significantly to the quality of life within the Town of Three Rivers, as well as the integrity of the natural environment.

5.6.1. General Policies

- 1) The Parks and Open Space land use designation is identified on Schedule A to identify and protect large open spaces and recreational areas, generally to be available for public benefit and enjoyment.
- 2) The Parks and Open Space land use designation is intended to recognize existing and future greenspaces in the Town, including parkland, open spaces, waterfronts, beaches, cemeteries and environmental areas. Lands under this designation serve multiple purposes, including recreation, stormwater retention, pathway connectivity, and protection of natural features.
- 3) Council shall establish an Open Space Zone to reserve land for public parks, green spaces, trails and environmental areas.
- 4) Through its land use planning activities, Council shall encourage the creation of new trail development and connections between parks and open spaces to establish a linked greenspace network in the Town of Three Rivers.
- 5) The Town of Three Rivers shall encourage public access to all waterfronts, and shall promote the development of recreational trails for public use along these waterfronts.
- 6) The following land uses and activities are permitted on lands designated Parks and Open Space where they do not adversely impact the natural environment, cultural heritage or general characteristics of the area:
 - a) Recreation, sport, leisure and cultural facilities;
 - b) Activities that involve scientific or educational study, conservation, interpretation or restoration of natural or cultural heritage resources or archaeological resources within the area or within adjacent waterways;
 - c) Small-scale commercial activities and community uses which are ancillary to the uses identified in a) and b) above.
- 7) Privately-owned lands designated Parks and Open Space can only be used and accessed by the public with the consent of the property owner(s).

5.6.2. Special Policy Areas

- 1) This Plan recognizes the importance of Native Council of PEI Cultural Park on Panmure Island Road (Route 347) as the site of the Abegweit Pow Wow, an annual two-day cultural celebration. Land uses adjacent to the Cultural Park shall be compatible with the Park's role and operations.



6. Protection of Natural and Built Heritage Resources

A central principle of this Official Plan is the protection of natural and built heritage resources. The policies of this section are intended to ensure that development does not adversely impact these unique features.

6.1. Natural Heritage

Natural heritage features include forests, wetlands, waterbodies, and wildlife habitat. These features provide the basis of healthy ecosystems, as well as benefits to humans, such as maintaining clean air and groundwater. The policies of this section are intended to protect these features.

- 1) All development shall comply with the provisions of the Environmental Protection Act R.S.P.E.I. 1988, E-9 and the Wildlife Conservation Act 1998 c.107 R.S.P.E.I. 1988, W-4.1 of Prince Edward Island.
- 2) Natural heritage features shall be conserved as much as possible to maintain ecological integrity and public amenity for future generations, subject to the policies of this Plan.

6.1.1. Development Adjacent to Shorelines, Waterbodies and Wetlands

- 1) The Town of Three Rivers recognizes the importance of protecting surface water resources, including streams, springs, creeks, brooks, rivers, lakes, ponds, bays, estuaries, coastal bodies and wetlands. Development shall be prohibited within 15 metres of a waterbody or wetland, unless permission is granted by the Province under the Environmental Protection Act.

6.1.2. Trees and Forests

- 1) Where development is proposed in the Settlement Area, the Town may require submission of a Landscape Plan to ensure that development has an

appropriate amount of natural vegetation, including conservation of existing landscape features.

6.1.3. Wildlife Habitat

- 1) The Town of Three Rivers recognizes the need to protect Species At Risk on Prince Edward Island. Council shall not make any land use planning decisions that would result in a clear threat to Species At Risk, unless permits are issued under the Federal Species At Risk Act or the Provincial Wildlife Conservation Act.
- 2) In making land use planning decisions, Council shall be mindful of potential wildlife habitat, including forests, wetlands, sand dunes, beaches, and shorelines.

6.2. Built Heritage and Archaeology

6.2.1. Designated Buildings

The Town of Three Rivers honours and respects its heritage, including special buildings and places that bestow meaning and define the community. In accordance with the Heritage Places Protection Act, this Official Plan recognizes the importance of designated buildings in Three Rivers. The policies of this section are intended to ensure appropriate development in relation to designated heritage buildings.

- 1) Development in and around designated heritage resources shall comply with all applicable federal and provincial legislation and guidelines, as applicable. Council recognizes that Development Permits on sites with heritage designations must be authorized by the Minister of Economic Growth, Tourism and Culture before taking effect.
- 2) The Town of Three Rivers recognizes the federally- and provincially-designated heritage sites within the municipal boundaries:
 - a) Jean-Pierre Roma / Roma Settlement (National Historic Site of Canada)
 - b) Garden of the Gulf Museum (Designated Historic Place)
 - c) Government of Canada Building, Montague (Designated Historic Place)
 - d) Kings County Courthouse (Designated Historic Place)
 - e) Panmure Lighthouse (Designated Historic Place)
 - f) The Goff House (Designated Historic Place)
- 3) Development applications within 50 metres of a property containing a designated heritage site, the development shall be reviewed for compatibility with the heritage resource. The Town may require submission of a Heritage Impact Study to assist in the evaluation, which shall contain an assessment of the impact of the development on heritage value and any mitigation measures needed to ensure compatibility.

- 4) The Town of Three Rivers recognizes the value to the community of Registered Historic Places. While registered sites do not enjoy the equivalent levels of protection as Designated sites, development in proximity to Registered sites shall be reviewed for compatibility, where feasible.
- 5) Where a Heritage Impact Statement is prepared for a designated heritage resource under the Heritage Places Protection Act as part of a development application, the report shall be forwarded to the Town of Three Rivers as part of a complete application.

6.2.2. Heritage Rivers

- 1) Council recognizes the Canadian Heritage River designation applied collectively to the Brudenell, Cardigan, and Montague Rivers.
- 2) While recognizing that various forms of development have always existed along these special waterbodies, Council shall ensure that development does not adversely affect the heritage value of these rivers.

6.2.3. Archaeology

- 1) All development shall proceed in accordance with the provisions of the Archaeology Act 2006 c.2 R.S.P.E.I. 1988, A-17.1.
- 2) Where an Archaeological Impact Statement is prepared under the Archaeology Act 2006 c.2 R.S.P.E.I. 1988, A-17.1 for an archaeological site as part of a development application, the report shall be forwarded to the Town of Three Rivers as part of a complete application.



7. Development Hazards and Land Use Compatibility

The purpose of this section is to establish policies to ensure that development is compatible with adjacent land uses and protects the health and safety of residents and visitors. The policies seek to avoid or mitigate the inherent conflicts or challenges presented by certain land uses, natural features, or site conditions. In this section, “compatibility” concerns the impacts on other properties generated from the normal practices associated with a land use. “Sensitive land uses” refers to land uses in which people will be particularly impacted by hazardous development, such as residential dwellings, retirement residences, day cares, educational facilities, and parks.

7.1. Climate Change Impacts

- 1) The Town of Three Rivers will consider the anticipated impacts of climate change in its land use planning decisions, including municipal projects and review development applications. In addition to other policies of this Plan, considerations may include:
 - a) Reducing greenhouse gas emissions;
 - b) Actions to reduce impacts of extreme heat, including increased tree planting and the creation of shaded areas in publicly-accessible spaces;
 - c) Rising sea levels in coastal areas;
 - d) Increased potential for flooding and extreme precipitation events;
 - e) Increased potential for erosion as a result of stronger, more frequent winds; and
 - f) Intrusion of saltwater into aquifers supplying drinking water, as a result of rising sea levels.

7.2. Land Use Compatibility

7.2.1. Agriculture / Livestock

- 1) Development of, or in proximity to, livestock operations shall be designed with consideration of the Prince Edward Island Guidelines for Manure Management, as amended.
- 2) The Town of Three Rivers shall require a development applicant to submit a Minimum Separation Distance (MSD) and Sketch Sheet as part of a complete development application, where:
 - a) A new livestock operation is proposed in proximity to other land uses; or
 - b) New land uses are proposed in proximity to a livestock operation; and
 - c) Where the land use in proximity to the livestock operation is not an agricultural or industrial use.

- 3) Policies (1) and (2) shall not apply to expansions of existing livestock operations.

7.2.2. Industrial Uses

- 1) Heavy industrial uses that will generate noise, dust, odours, pollution or other impacts shall not be permitted within 100 metres of a sensitive land use including residential uses, day care services, retirement residences, educational facilities, parks and other uses in which outdoor amenities and recreation spaces are provided.
- 2) Where development of new sensitive land uses is proposed within 100 metres of a heavy industrial use generating noise, dust, odours, pollution, or other impacts:
 - a) The Town shall require submission of a Land Use Compatibility Study prepared by a qualified professional that demonstrates that the proposed sensitive use will not experience undue negative impacts from the industrial use.
 - b) Where a Land Use Compatibility Study recommends mitigation measures, the Town may require applicants of development to enter into a Development Agreement to ensure that mitigation measures are applied.

7.3. Coastal Shoreline Development

7.3.1. Coastal Shoreline Erosion

The purpose of this section is to establish policies to protect people and property from shoreline erosion, while protecting the natural integrity of the coastal shoreline against disturbances from development. The coastline of Prince Edward Island is currently eroding at an average rate of 30 centimetres per year, although losses of more than 8 metres have been recorded as a result of a single storm event. Where applicable, the policies of this section apply to both primary and accessory structures.

- 1) The Development Bylaw will include regulations to mitigate shoreline erosion.
- 2) The Town of Three Rivers may permit new coastal stabilization armouring infrastructure and encourage where appropriate, natural forms of erosion control and protection of property, including:
 - a) Adequate setbacks;
 - b) Protection of trees and their critical root systems; and
 - c) Preservation of existing rock formations.
- 3) Where shoreline stabilization armouring exists, the Town encourages the restoration of the land to a naturalized condition over time, including through development activities.
- 4) Where coastal armouring infrastructure already exists, the Town shall

consider reduced building setbacks from shorelines, provided that:

- a) The development applicant obtains all necessary provincial permits under the Environmental Protection Act;
- b) There is a demonstrated need or benefit from the reduced setback;
- c) The reduced setback will not result in impacts on adjacent land uses or natural features;
- d) The development can be adequately serviced with central or private water and sanitary services; and
- e) Drainage can be managed appropriately.

7.3.2. Dunes and Beaches

- 1) Development proposed on, or in proximity to, sand dunes and beaches shall comply with the Prince Edward Island Environmental Protection Act R.S.P.E.I. 1988, E-9, as amended.
- 2) Where a new lot is proposed adjacent to a sand dune, the lot shall be set back a minimum of 60 metres (196.6 ft.) from the sand dune, measured from the inland boundary of the dune. Exceptions may be granted where a study prepared by a qualified expert demonstrates that the setback to the dune may be reduced without negative impacts.
- 3) Where a new building is proposed adjacent to a sand dune, the building shall be set back a minimum of 30.5 metres (100.1 ft.) to the sand dune, measured from the inland boundary of the dune. Exceptions may be granted where a study prepared by a qualified expert demonstrates that the setback to the dune may be reduced without negative impacts.
- 4) Where a new building is proposed adjacent to a beach, the building shall be set back a minimum of 22.9 metres (75.1 ft.), or 60 times the rate of erosion, whichever

is greater, measured from the top of bank. Exceptions may be granted where a study prepared by a qualified expert demonstrates that the setback to the beach may be reduced without negative impacts.

- 5) Notwithstanding the policies of this section, in no case shall a road be constructed on a sand dune.
- 6) The Development Bylaw may contain additional regulations for development adjacent to sand dunes and beaches.

7.3.3. Climate Change Adaptation

The Town of Three Rivers recognizes the threat of rising sea levels as a result of a changing climate. Sea levels are generally expected to rise approximately 15 centimetres (.49 ft.) from their current elevations over 20 years, and 80 centimetres (2.6 ft.) by 2100. The rising sea levels presents a threat to public safety and property through flooding damage, erosion impacts, loss of protective vegetation, and saltwater intrusion into groundwater.

- 1) To adapt to changing conditions and ensure public health and safety, development shall take into account the Rising Sea Level Impact Overlay, as shown on Schedule B.
- 2) The Town of Three Rivers will consider increased potential for erosion as a result of climate change and rising sea levels when evaluating applications for development adjacent to coastal shorelines.
- 3) To maintain public safety, applications for new and to expand existing development within the Rising Sea Level Impact Overlay shall be required to demonstrate that:
 - a) The new or expanded building is designed to not reduce the setback of the building to the shoreline;
 - b) The expansion does not exceed 50 percent of the floor area of the existing building;
 - c) The expansion does not add any dwelling units or bedrooms to the building; and
 - d) The new or expanded building will not result in any drainage or erosion impacts that may further exacerbate the hazard.

7.4. Wellfield Protection Area

This Plan establishes Wellfield Protection Areas on Schedule B. Within these areas are time-dependent capture zones, including 250 days (Area A), 25 years (Area B) and 50 years (Area C). The degrees of protection cascade from Area A (most protected) to Area C (lesser degree of protection).

- 1) The Town of Three Rivers will protect high capacity wells and well fields used for the central water supply by Georgetown Water Utility and the Montague Water and Sewer Corporation, as shown on Schedule B.

- 2) Applicants of commercial, industrial or other development within the Wellfield Protection Area that has the potential to adversely affect groundwater may be required to submit a Wellfield Impact Study. Development shall not proceed unless the Town of Three Rivers is satisfied that the proposed development will not generate adverse impacts to groundwater.
- 3) All unused wells shall be appropriately capped to reduce risks to groundwater.
- 4) Council shall prioritize connecting all existing development within the 250-day wellfield capture zone (WPA zone) to the wastewater collection system, where such services are available.
- 5) Council shall not expand the wastewater collection system in the Georgetown Urban Settlement Area until all existing residents within the WPA are provided service, or until a plan to achieve this goal has been approved by Council.
- 6) Where feasible, the Town of Three Rivers will seek to acquire vacant commercial and agricultural properties within the Wellfield Protection Area overlays shown on Schedule B to ensure protection of groundwater resources.
- 7) Existing industrial uses are located on lands north of the Georgetown Urban Settlement Area. As these lands are identified within the Wellfield Protection Area, the Town of Three Rivers shall work with the Georgetown Water Utility Corporation to ensure activities do not negatively impact the Wellfield Protection Area.

7.5. Contaminated Sites

Some properties in Three Rivers may have been contaminated through previous land uses, such as industrial uses. While administration and control of contaminated sites is generally governed by the Province under the Environmental Protection Act, this section is intended to supplement those regulations.

- 1) Development on properties with contamination from landfills, metals, petroleum, or other chemicals shall comply with regulations established in the Environmental Protection Act.
- 2) Where a property listed on the provincial Contaminated Sites Registry is proposed to be developed with sensitive uses such as residential, retirement residences, recreation, day care, education facilities or parkland, the Town may require applicants of development to enter into a Development Agreement to ensure that contamination is remediated. In these cases, a Development Agreement may contemplate phasing of a portion of the development prior to remediation, where appropriate.

7.6. Resource Excavation Pits

- 1) Development of sensitive land uses shall not be permitted within 300 metres of a resource excavation pit operation, unless approved through a permit under the Environmental Protection Act..

7.7. Landfills

- 1) New landfills may be permitted in the Town of Three Rivers where approved by the Province of Prince Edward Island.



8. Infrastructure and Public Facilities

Infrastructure and public facilities provides important and valued services to community members. These services support economic and social activities, protect public safety, and improve quality of life. This section establishes planning policies for infrastructure and public facilities.

8.1. Transportation and Mobility

Successful communities rely on strong transportation networks. As with most communities on Prince Edward Island, Three Rivers features a network of provincially-owned and -operated roads that connect residents to destinations throughout the municipality. With consideration for provincial ownership of the road network, this section establishes policies for transportation and mobility within municipal jurisdiction.

8.1.1. Public Roads

The road network in Three Rivers is planned to be transferred to Provincial jurisdiction, similar to most communities on the Island. Under the proposed ownership structure, the Province will be responsible for approval and maintenance of all roads.

- 1) The Town of Three Rivers shall categorize all streets, roads and highways in the Town in alignment with designations under the Roads Act R.S.P.E.I. 1988, R-15.
- 2) New roads shall be designed to Provincial standards in accordance with the Roads Act R.S.P.E.I. 1988, R-15.
- 3) Where a new subdivision is proposed on a parcel of land that abuts and requires access to an arterial, collector, local or seasonal highway, all roads or entranceways must meet the minimum sight distance standards established in the Roads Act Highway Access Regulations.
- 4) The Town of Three Rivers will work with the Province of Prince Edward Island to identify, protect, and secure dedication of lands to achieve right-of-way width requirements, as classified in the Roads Act R.S.P.E.I. 1988, R-15.
- 5) The Town will work with the Province to make safety improvements and upgrades to problematic intersections that present hazards to motorists and pedestrians, such as Victoria Cross.
- 6) The Town will work with the Province on issues of traffic management, including the identification of designated Truck Routes in appropriate locations.

8.1.2. Private Roads

- 1) Where permitted, all private roads serving 6-20 residential lots must be designed to meet Provincial standards for local highways. Roads shall be

designed and constructed under the supervision of a professional engineer. Road designs for private roads shall be required as part of a complete application for subdivision.

- 2) Where permitted, all private roads serving 1-5 residential lots must be designed to meet Provincial width standards for local highways.
- 3) Private roads shall be governed by a Homeowners Association or Condominium Corporation, delivered through a development agreement.
- 4) Subdivisions containing 21 or more lots established after March 21, 2009 shall be serviced by public roads regardless of land use.
- 5) Notwithstanding the policies of this section, existing private roads shall be permitted to continue under current design and ownership arrangements, subject to the following:
 - a) A maximum of five new lots shall be permitted to be created on existing private roads. Where more than two new lots are proposed to be accessed by the private road, the Town shall require that the road be improved to Provincial standards for local highways.
 - b) New development on existing lots of record accessed by a private road is permitted without a requirement for improvements to the private road.
 - c) In all cases, existing private roads will be encouraged to be improved to Provincial standards for local highways over time.

8.1.3. Active Transportation Infrastructure

Active modes of transportation include walking and cycling. A healthy, active community depends on sufficient infrastructure to support these modes, which also reduces dependence on private vehicles. While active transportation infrastructure is often found in urban areas, opportunities to enhance facilities in rural areas are also encouraged.

- 1) Using the Confederation Trail as a base for a network, Council will explore opportunities to enhance connections within and between communities in Three Rivers by means of active modes of transportation.
- 2) The Town of Three Rivers will undertake streetscape beautification projects in strategic locations, subject to availability of funding. Improvements may include landscaping, street furniture, wayfinding signage, banners, and similar features.

8.1.4. Waterways / Ferry Service

With their historical orientation towards waterbodies, many communities in Three Rivers have always been connected by water-based modes of transportation. Given the close proximity of

some communities, creating water-based connections may yield efficiencies over vehicle travel, particularly during the tourism season.

- 1) Council shall explore opportunities to establish a ferry or water taxi service between important destinations. Examples of destinations may include Georgetown, the Roma Historic Site, Panmure Island, and other waterfront locations.

8.1.5. Public Transit

The Town of Three Rivers currently does not operate a public transit network, but recognizes the value of alternative transportation options for residents and visitors. On a broader scale, the Province of Prince Edward Island operates an affordable bus transit route linking Three Rivers with Charlottetown and other destinations on the Island.

- 1) Council will explore options for a public transit service to provide residents, workers, and visitors with efficient, affordable, and accessible transportation options. Public transit services may include a combination of land-based and water-based transportation options. Any future public transit system should offer connections between the multiple communities within Three Rivers.
- 2) Council will continue to work with the Province of Prince Edward Island and providers to ensure safe, frequent, and affordable transit service to destinations beyond Three Rivers.
- 3) In considering public works and private development applications, the Town of Three Rivers will ensure that adequate infrastructure is available to support any local or Island-wide transit services, including:
 - a) Flat, clean and accessible surfaces at transit stops;
 - b) Opportunities for weather-protected shelter for riders;
 - c) Sufficient lighting at transit stops;
 - d) Adequate lane, aisle, or driveway widths for bus circulation;
 - e) Adequate setbacks to buildings, where applicable.

8.2. Alternative Energy Infrastructure

As awareness of the impacts of fossil fuels increases and the capital costs of manufacturing and installing alternative energy infrastructure decreases, facilities generating energy from renewable sources such as wind, solar, and biomass are becoming more common. The intent of these policies is to apply development controls to these facilities.

- 1) All proposals for renewable energy systems shall comply with the provisions of the Renewable Energy Act 2004 c.16 R.S.P.E.I. 1988, R-12.1. Wind energy projects with generation capacity of greater than 100 kilowatts are not permitted in Three Rivers, except with permission from the Minister of Transportation, Infrastructure, and Energy.
- 2) The Development Bylaw shall contain provisions for renewable energy facilities. Renewable energy facilities shall generally be permitted in Industrial,

Institutional, Rural, and Agricultural designations, subject to regulations controlling the number, size, and location of the infrastructure.

- 3) One windmill may be considered in a residential subdivision as a sustainability initiative, subject to approval of a Zoning Amendment. Where proposed, the applicant shall be required to enter into a Development Agreement with the Town.

8.3. Servicing Policies

8.3.1. Central Water and Sanitary Services

- 1) In Urban Settlement Areas, central water and sanitary services are the preferred form of servicing.
- 2) Development that features intensive water and/or sanitary demands may be subject to additional servicing requirements, where assessed and deemed necessary.

8.3.2. Communal Services

- 1) Where central water and sanitary services are not available, communal services are encouraged for development featuring clusters of buildings under single ownership.
- 2) Communal services systems shall be adequate to service the proposed development and will be reviewed to ensure they do not impact the private servicing potential of surrounding properties.

8.3.3. Private Services

- 1) Where public services are available to service a new development, but connection to public services are not proposed, the applicant shall provide the Town with a rationale for why connection to public services is not feasible. Development proposals without reasonable grounds for use of private services will be refused. A preference to not pay utility fees will not be considered to be valid grounds for use of private services.
- 2) Partial services, defined as servicing a lot with a combination of public and private services, shall generally not be permitted. Exceptions may be granted by Council on a case-by-case basis, such as to rectify failing services that present an immediate threat to health and safety.

- 3) Development proposals featuring private well servicing shall be designed to locate the well in accordance with provincial standards, and shall consider:
 - a) A location inland as far as possible;
 - b) At a high elevation, where applicable;
 - c) At a higher elevation than nearby septic systems; and
 - d) At an appropriate distance from other site features, such as driveways or trees.
- 4) Development proposals featuring private septic servicing shall be designed to locate the septic system in accordance with provincial standards, and shall consider locating the system:
 - a) At a sufficient distance from property lines, shorelines, buildings, and other features; and
 - b) At a lower elevation than nearby well systems.

8.3.4. Grading and Drainage

- 1) The Town of Three Rivers may require a Grading and Drainage Plan for all new development in Urban Settlement Areas to ensure that surface water is directed to an appropriate outlet.

8.4. Parks and Community Facilities

- 1) The Town of Three Rivers shall provide parks, playgrounds, and recreational facilities for residents.
- 2) In programming existing and future parks, the Town shall consider the needs of a wide range of demographics, and will contemplate the inclusion of elements including, but not limited to:
 - a) Playgrounds;
 - b) Sports fields;
 - c) Community gardens;
 - d) Outdoor fitness equipment;
 - e) Benches and seating areas;
 - f) Landscaping features; and
 - g) Splash pads.
- 3) Council shall seek opportunities to expand the recreational trail network, with priority placed on establishing new connections to the Confederation Trail.

- 4) The Town of Three Rivers shall keep parks and community facilities to a reasonable standard of maintenance to ensure continued enjoyment by residents.
- 5) In cases where existing community facilities are vacant or underutilized, Council shall seek alternative uses for these facilities. Council shall prioritize other public or community-based uses for these facilities, but may also consider renting of these facilities for private uses.
- 6) In planning for public works, Council shall consider the creation of new recreation facilities, including a dog park, outdoor performance venues, and strengthening of waterfront facilities. Council may consider the purchase of existing private buildings for these purposes, where feasible. Consideration should also be given to winter activities, including outdoor rinks and ski trails.
- 7) Council shall develop and ensure the continued maintenance of safe playground areas adjacent to existing and future residential neighbourhoods.
- 8) The lands immediately north and west of the Montague Regional High School shall be reserved for recreational uses and designated Parks and Open Space.



9. Implementation

9.1. Administration

- 1) In accordance with the Planning Act R.S.P.E.I. 1988, P-8, the Three Rivers Planning Board shall be responsible for administration of the Official Plan, including:
 - a) Prepare and recommend to Council proposed alterations and additions to the Official Plan;
 - b) To recommend to Council implementing bylaws in respect of the Official Plan;
 - c) To hold public meetings;
 - d) When requested by Council, to prepare estimates of the cost of any public work, improvement, or other project; and
 - e) To perform such other duties of a planning nature as may be requested by Council.
- 2) Council shall appoint a Development Officer to administer this Plan and review development applications. The role of the Development Officer shall be detailed in a Development Bylaw described in Section 9.3 below.
- 3) The Town shall ensure that technical expertise is available to assist with the implementation of necessary elements of this Plan, including the review of development applications, the undertaking of public works, enforcement activities, and related matters. The necessary expertise may be secured through direct employment with the Town, or through a contract with a qualified consultant.
- 4) The Town of Three Rivers recognizes the importance to landowners of timely implementation of the principles, objectives, and policies of this Plan. Council, the Planning Board, and Staff commit to:
 - a) The timely and efficient processing of applications for development;
 - b) Providing courteous and professional assistance to development applicants and residents;
 - c) Transparency in decision-making, as guided by the provisions of the Planning Act R.S.P.E.I. 1988, P-8; and
 - d) Promotion of opportunities for public input in planning activities.
- 5) In preparing annual budgets for the Town of Three Rivers, Council shall ensure that adequate funding is made available for the proper administration of the Official Plan, as described in the policies above.

9.2. Amendments and Review

9.2.1. Plan Review

As required by the Planning Act R.S.P.E.I. 1988, P-8, Council will review this Plan at intervals no shorter than five years to evaluate the extent to which the goals and objectives are achieved. Following the review, Council will by resolution confirm or amend the Plan.

9.2.2. Trigger for Review

Where Council is considering a major expansion to sewer or water servicing beyond the boundaries contemplated in this Plan, Council shall initiate a review of the Official Plan. With consideration for the expanded infrastructure, the Plan review shall consider:

- a) Amending land use designations in the vicinity of the proposed infrastructure;
- b) Whether amendments are required to servicing policies;
- c) Whether adjustments to settlement areas are required, as applicable;
- d) Necessary adjustments to implementing bylaws, including the Development Bylaw, for the properties eligible to connect to the expanded servicing infrastructure.

9.2.3. Criteria for Amendments

Policies in this section are intended to provide guidance to Council and the Planning Board for evaluating Official Plan Amendment applications.

- 1) Amendments to this Official Plan shall be evaluated against the following criteria:
 - a) Conformity with the provisions of the Planning Act R.S.P.E.I. 1988, P-8 and associated Regulations;
 - b) Conformity with the Guiding Principles and Objectives of this Official Plan;
 - c) That the proposed development will not create undue negative impacts on adjacent properties; and
 - d) That the proposed development will not generate unreasonable or undesirable financial burdens on the Town of Three Rivers.

9.3. Development Bylaw

Council shall enact a Development Bylaw as an implementation mechanism for the goals, objectives, and policies of this Official Plan. In accordance with the Planning Act R.S.P.E.I. 1988, P-8, the Development Bylaw may address elements including:

- 1) Regulate development to advance the general welfare, health, safety and convenience of persons in the municipality;
- 2) Define the areas to be regulated;
- 3) Establish land use zones, including permitted uses of land and structures;

- 4) Subdivision of land;
- 5) Development and services;
- 6) Development charges;
- 7) Building standards, addressing fire suppression and architectural controls;
- 8) Development permits;
- 9) Environmental protection, including that issuance of a permit is conditional upon compliance with the Environmental Protection Act;
- 10) Access to highways;
- 11) Mobile homes;
- 12) Parking areas;
- 13) Summer cottages;
- 14) Fees; and
- 15) Enforcement.

9.3.1. Rezoning Applications

Every landowner has the opportunity to apply to the Town of Three Rivers for a change in zoning on a property, or to change provisions within the applicable zone.

- 1) Applications for rezoning will be evaluated against the following criteria:
 - a) Conformity with the provisions of the Planning Act R.S.P.E.I. 1988, P-8 and associated regulations;
 - b) Conformity with the policies of this Official Plan, including the applicable policy designation;
 - c) That the proposed development will not create undue negative impacts on adjacent properties; and
 - d) That the proposed development will not generate unreasonable or undesirable financial burdens on the Town of Three Rivers.

9.3.2. Variances

- 1) The Town of Three Rivers may consider variances to zoning provisions in the Development Bylaw where strict compliance would represent an inappropriate burden to the landowner. The Town may authorize such variance from the provision of the zoning regulations as, in its opinion, is desirable and consistent with the general intent and purpose of the Official Plan and the regulations to which the variance applies.

9.4. Application Procedures

- 1) The Development Bylaw shall establish standards for application procedures, including required processes for applicants, timelines, and other requirements related to the receiving and processing of applications.
- 2) Development applicants may be required to submit supporting materials to comprise a complete application. A list of materials that may be requested is included in this Plan as Appendix 1.

9.5. Other Plans and Bylaws

9.5.1. Servicing Master Plan

The Servicing Master Plan prepared for the Town of Three Rivers summarizes existing central water and sanitary infrastructure in the municipality, as well as the functional and financial requirements for expansion. The Servicing Master Plan is intended to be coordinated with this Official Plan and is anticipated to be completed in 2022.

- 1) The Town of Three Rivers will ensure that the Servicing Master Plan is kept current as improvements are made in the future.
- 2) On the occasion of a full review of this Official Plan, the Town will also review the Servicing Master Plan to ensure consistency between the two documents.

9.5.2. Heritage Plan

- 1) Council will consider establishing a Heritage Plan for the Town of Three Rivers to request delegated powers from the Minister of Economic Growth, Tourism and Culture for planning controls for heritage sites.
- 2) Where a Heritage Plan is prepared, Council will ensure compliance with the Heritage Places Protection Act 1992 c.31 R.S.P.E.I. 1988, H-3.1, including outlining objectives, policies, and programs for conservation of heritage resources.
- 3) Where a Heritage Plan is approved by the Minister of Economic Growth, Tourism and Culture, Council shall explore opportunities for designation of additional heritage resources, including buildings, landscapes, districts, trails or corridors.

9.5.3. Asset Management Policy

Asset Management Policies are guiding statements adopted by Council that provide a consistent framework for decision-making regarding municipal assets. Such policies can clarify the roles and responsibilities of the Town for municipal infrastructure and other assets.

- 1) The Town of Three Rivers shall maintain an Asset Management Policy to provide a consistent framework for decision-making regarding municipal assets.

- 2) The Town shall consider the policies of this Official Plan when preparing or updating its Asset Management Policy.

9.5.4. Development Charge Bylaw

- 1) Council may enact a Development Charge Bylaw in accordance with the provisions of the Planning Act R.S.P.E.I. 1988, P-8 to recover eligible costs for specified facilities and services. Before enacting a Development Charge bylaw, Council will order or commission a background study to determine the need for a cost recovery program and to which facilities and services it would apply. Where a bylaw is enacted, the bylaw will address:
 - a) Eligible on-site and off-site costs, or portions of them, that a development charge may be levied to fund;
 - b) Rules to calculate a development charge for an eligible cost;
 - c) Prescribing development charges;
 - d) Means of payment of development charges;
 - e) The amount and type of security a developer may be required to provide to ensure the payment of development charges;
 - f) Authorizing the Town to negotiate and enter into development charge agreements with developers and other parties;
 - g) Registration of development charge agreements;
 - h) Any other matters necessary or desirable to effect a development charge agreement.

9.5.5. Tree Bylaw

Trees are critical to healthy ecosystems, including in urban areas. Regulations to ensure preservation of trees can help to maintain the many associated environmental benefits.

- 1) Council will consider enacting a bylaw to regulate removal of trees across Three Rivers. At Council's discretion, such a bylaw may contain different regulations for urban areas and rural areas.
- 2) Any Tree Bylaw shall balance the need to preserve existing trees with the requirements of the forestry industry.
- 3) As part of a Tree Bylaw, Council may consider requirements to replace removed trees with new plantings.
- 4) As part of a Tree Bylaw, Council may consider a credit system in which new tree plantings may be considered as offsets to felled trees, while remaining mindful of the value of older trees to ecosystems.

9.5.6. Nuisance and Noise Control Bylaw

- 1) The Town of Three Rivers may enact a Noise Bylaw under the Municipal Government Act 2016 c.44 R.S.P.E.I. 1988, M-12.1

- 2) Where a Noise Bylaw is enacted, the bylaw shall address the noise impacts of stationary noise sources described under the Development Hazards and Land Use Compatibility section of this Plan.

9.5.7. Dangerous, Hazardous and Unsightly Premises Bylaw

The Municipal Government Act 2016 c.44 R.S.P.E.I. 1988, M-12.1 permits municipalities to pass bylaws to control dangerous, hazardous and unsightly elements on private lands. The Town of Three Rivers recognizes the value of this tool in ensuring community safety and beautification.

- 1) Council shall enact a Dangerous, Hazardous and Unsightly Premises Bylaw for the entire Town of Three Rivers.

9.6. Development Agreements

- 1) The Town of Three Rivers may, at its discretion, enter into Development Agreements with landowners in accordance with the provisions of the Planning Act R.S.P.E.I. 1988, P-8 and the policies of this Plan. Development Agreements will contain all conditions applied to the Development Permit or Subdivision Approval, as applicable. The terms of Development Agreements shall be binding on both parties.
- 2) Development Agreements may be used for subdivisions, large developments, and developments that feature unique conditions that require additional scrutiny by the Town following approval of a Development Permit. Such Agreements can address items including, but not limited to, the following:
 - a) Phasing of development;
 - b) Provision of infrastructure;
 - c) Protection of natural features;
 - d) Functional considerations, including access, vehicle circulation, snow storage, landscaping, fencing, and related matters; and
 - e) Protection of Town assets and other infrastructure.
- 3) Where Development Agreements were entered into by former municipalities within the Town of Three Rivers, or by the Province of Prince Edward Island in formerly unincorporated areas, the Town of Three Rivers shall assume party status in the Agreements in lieu of the former municipality or Province of Prince Edward Island.

9.7. Local Improvements

As a municipality with responsibilities for certain local infrastructure assets, the Town of Three Rivers has the ability to undertake improvements, as required.

- 1) Where deemed appropriate by Council to fulfill the land use planning goals of this Plan, the Town of Three Rivers may undertake local improvements, subject to the provisions of the Planning Act R.S.P.E.I. 1988, P-8 and Municipal Government Act 2016 c.44 R.S.P.E.I. 1988, M-12.1.

9.8. Acquisition and Expropriation of Land

Where deemed necessary by Council to fulfill the goals of this Plan, the Town of Three Rivers may acquire or expropriate land, subject to the provisions of the Municipal Government Act 2016 c.44 R.S.P.E.I. 1988, M-12.1 and any other applicable legislation.

9.9. Funding and Resource Supports

Opportunities for funding and other resource supports are available to support certain undertakings envisioned by this Official Plan. This section enables the Town to seek and utilize these resources.

- 1) Council will seek funding and resource support from other levels of government and organizations to fulfill the land use planning goals of this Plan. The Town will consider seeking supplementary resources from the following:
 - a) The Government of Canada, including through the Atlantic Growth Strategy;
 - b) The Atlantic Canada Opportunities Agency (ACOA);
 - c) The Province of Prince Edward Island; and
 - d) Private sector and non-profit sources.
- 2) Where Council identifies an area or ecosystem as warranting additional protection from development and other damaging activities, Council will work with the Province of Prince Edward Island to designate the identified area or ecosystem as a Natural Area in accordance with the Natural Areas Protection Act R.S.P.E.I. 1988, N-2. Where a Natural Area is designated, this Plan shall be amended to recognize the designation.
- 3) The Town of Three Rivers will encourage landowners with forest assets to participate in the Provincial Forest Enhancement Program for landowners to secure funding for the creation of a Sustainable Forest Management Plan.

9.10. Indigenous Engagement

The Town of Three Rivers is committed to engaging with Indigenous peoples and organizations on land use planning matters of mutual interest. Specifically, the Town recognizes L'nuey, the consultation unit of Mi'Kmaq governance on Prince Edward Island, as the first point of contact for such engagement activities. The following policies shall apply:

- 1) The Town of Three Rivers shall circulate L'nuey on all development applications or projects that receive funding from Provincial and / or Federal governments.
- 2) The Town of Three Rivers shall engage with L'nuey or any other Indigenous organization on land use planning matters of mutual interest, including development on or in proximity to the PowWow site at the causeway to Panmure Island in Gaspereaux.

9.11. Public Engagement

Public engagement is an important part of the planning process. Residents of Three Rivers know their community best and can share valuable insights on planning matters and development applications. This section is intended to encourage opportunities for public engagement in the planning process.

- 1) The Town of Three Rivers shall follow the public engagement requirements of the Planning Act R.S.P.E.I. 1988, P-8 for development applications and other planning matters.
- 2) Council shall work with the Planning Board to encourage public forums and “town hall”-style meetings to provide opportunities for the public to provide feedback on planning matters.
- 3) Council shall utilize other forms of public engagement, where appropriate, including:
 - a) Use of online videoconferencing for non-Statutory public meetings, where deemed appropriate;
 - b) Postings on the Town’s website;
 - c) Postings to social media channels; and
 - d) Posting notifications in key destinations across the Town.

9.12. Southeast Environmental Association

The Southeast Environmental Association (SEA) is community-based, charitable organization intended to protect, maintain and enhance the ecology of Prince Edward Island. The SEA manages the largest watershed region on the Island, among a network of similar groups across the province. The SEA is uniquely positioned to play a role in land use planning and environmental protection in Three Rivers and can provide valuable insight into certain planning matters. This section recognizes that unique role in the application circulation process.

- 1) Council will work with the SEA to protect, enhance and map the trail network in the Town of Three Rivers.



10. Land Use Schedules

Schedule A - Land Use and Road Network

Schedule B – Environmental Features & Hazards



LORNE VALLEY

MONTAGUE

TTER TURE



LORNE VALLEY



GAS

THREE

VIBRANT

Rural

PEREAUX

PEI



Appendix 1: Required Plans and Studies

The following materials may be requested as part of a complete application for Development Permit:

Plans

- 1) Survey Plan
- 2) Site Plan
- 3) Subdivision Plan
- 4) Site Servicing Plan
- 5) Grading and Drainage Plan
- 6) Erosion Control Plan
- 7) Landscape Plan
- 8) Architectural Drawings
- 9) Parking Lot or Parking Garage Plan

Studies

- 1) Site Suitability Assessment
- 2) Site Servicing Study
- 3) Wellfield Impact Study
- 4) Coastal Hazard Assessment / Flood Risk Assessment / Geotechnical Study
- 5) Transportation Study
- 6) Noise Study
- 7) Land Use Compatibility Study
- 8) Planning Justification Report
- 9) Heritage Impact Study
- 10) Archaeological Assessment
- 11) Environmental Impact Study



Three Rivers
• WHERE HISTORY IS MADE •

Tab 2.



Development Bylaw #2023-02

March 2023



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Appendices

Appendix A: Minimum Lot Area and Lot Width Requirements for Lots on Partial or Private Services

Town of Three Rivers -
Bylaw #2023-02 March 23, 2023

1. Scope

1.1. Title

- 1) This Bylaw is known as the “Development Bylaw” of the Town of Three Rivers.

1.2. Purpose

- 1) The purpose of the Development Bylaw is to establish:
 - a) Regulations with respect to planning and land use matters affecting the general welfare, health, safety and convenience of persons in the Town of Three Rivers;
 - b) Regulations with respect to the subdividing or consolidating of land parcels; and
 - c) Regulations and procedures with respect to administration of planning permits.

1.3. Area Defined

- 1) The provisions of this Bylaw shall apply to all lands within the physical boundaries of the Town of Three Rivers.

1.4. Authority from the Province of Prince Edward Island

- 1) This Zoning Bylaw is enacted under the authority of the Planning Act, R.S.P.E.I. 1988, Cap. P-8, referred to here as the “Planning Act” and the Municipal Government Act, 2016 c.44 R.S.P.E.I. 1988, Cap. M- 12.1.

2. Definitions

In this Bylaw,

“Accessory” means a use, building or structure customarily incidental and subordinate to the principal use and located on the same lot with such principal use.

“Accessory apartment” means a secondary dwelling accessory to a Single-Unit Dwelling within the same building that is equipped as an independent living facility and accessed by a private entrance from outside of the building or from a common hallway or stairway inside the building.

“Accessory building” means a separate subordinate building, not used for human habitation, that is used or intended for the better or more convenient enjoyment of the main building to which it is accessory and located upon the lot upon which such main building is.

“Accessory use” means a use subordinate and naturally, customarily and normally incidental to and exclusively devoted to a main use of land or building and located on the same lot.

“Agricultural use” means a use of land and buildings for farming, dairying, pasturage, agriculture, aquaculture, apiculture, floriculture, horticulture, and animal and poultry

husbandry and the necessary accessory uses for packing, storing, treating or selling the produce.

“Alter” means

- a) with reference to a building or part thereof, to change any one or more of the external dimensions of the building.
- b) with reference to a lot, to change the area, frontage or depth thereof; to change the width, depth or area of any required yard, landscaped open space or parking area; or to change the location of any boundary of such lot with respect to a street, whether such alteration is made by conveyance or alienation of any portion of such lot or otherwise, and “altered” and “alteration” shall have corresponding meanings.

“Animal hospital” means a building or part of a building used by a veterinary surgeon where companion domestic animals (household pets) and birds are kept for treatment including surgery, and where veterinary drugs and other related products, including pet food, may be sold.

“Auction establishment” means the offering for sale of new and used goods by means of request or invitation for bids, includes a livestock auction sales barn and vehicle or liquidation auction.

“Automobile body shop” means an establishment where motor vehicle bodies, exteriors or undercarriages are painted or repaired. Accessory uses may include a towing service and the rental of motor vehicles to customers whose motor vehicles are being repaired. This definition shall not include a salvage yard as defined herein.

“Automobile dealership” means a place where new or used passenger or family vehicles such as cars, vans, motorcycles and trucks, are leased, rented, sold or auctioned at retail. Accessory uses may include enclosed and/or exterior showroom and areas for display; car wash; automobile service; automotive parts sales/distribution; automobile body and structural work and painting; storage and parking areas for vehicles which are for lease, rent, sale or auction and for those being serviced by the dealership; office space; and restricted eating establishment.

“Automobile service station” means a building where gasoline, propane, diesel fuel or oil is kept for sale including alternative sources of fuel or electrical charging stations, where only minor or emergency repairs essential to the actual operation of motor vehicles may also be performed, where grease, anti-freeze, tires, spark plugs and other automobile accessories may be sold incidentally, and where motor vehicles may also be oiled, greased, or washed, but where no other activities of a commercial garage are carried on.

“Automotive store” means an establishment primarily engaged in the retail sale of vehicle parts, accessories and tools. Accessory uses may include service bays for performing maintenance and repair operations on motor vehicles. This definition shall not include any establishment otherwise defined herein or specifically named elsewhere in this Bylaw.

“Bed and breakfast” means a dwelling occupied by the owner and used incidentally to provide accommodation and meals to transient travellers but does not include a boarding house, rooming house, hostel, group home, hotel, motel, restaurant or lounge.

“Boat house” means an accessory building or structure intended for use to house, shelter, or protect a boat or other form of water transportation. When constructed in association with a dwelling, a boat house shall be deemed to be an accessory building.

“Building” means any structure having a roof supported by columns or walls intended for the shelter, housing or enclosure of any person, animal or chattel.

“Building height” means the highest allowable distance from the ground level next to the main entrance of the building to the highest point of the building, exclusive of any accessory roof construction.

“Business or professional office” means a premises where professional services are offered, but does not include premises used for the retailing, wholesaling, manufacturing or conversion of goods.

“Campground” means a tract of land, managed as a unit, providing short-term accommodation for tents, tent trailers, travel trailers, recreational vehicles, campers and cabins.

“Cemetery” means a property used for interring dead persons or in which human bodies have been buried. A cemetery may include facilities for storing ashes of human remains that have been cremated or the interment of the dead in sealed crypts or compartments but shall not include crematoriums. Cemeteries may also be provided for domestic pets exclusive to human burial places.”

“Club” means an association of persons, whether incorporated or not, united by some common interest, meeting periodically for cooperation or conviviality. Club shall also mean, where the context requires, premises owned or occupied by members of such association within which the activities of the club are conducted.

“Commercial Use” means the use of a building or lot for the storage, display or sale of goods or services, and includes hotels, motels, inns, or rental cottages.

“Community care facility” – see “Residential Care Facility.”

“Community centre” means a multi-purpose facility that offers a variety of programs of a recreational, cultural, day care, social, community service, informational or instructional nature, and may include, as a portion of it, a medical facility.

“Community garden” means a garden for plants, including vegetables, fruits, grains, flowers, or herbs, maintained for the benefit of the community.

“Convenience store” means a retail store where a range of day-to-day items such as newspapers, confections, food, and other such household items are sold in small quantities.

“Contractor's shop or yard” means a place of business for persons employed in building trades such as painting, plumbing, electrical work, masonry, metal working and carpentry, or truck, bulldozer, loader and backhoe operating and such place of business may be used for the storage of equipment, materials and vehicles which are used on construction sites and may include such related uses as office space, or maintenance facilities, and may also include a retail business, sales counter or a wholesale business as an accessory use.

“Council” means the Council for the Town of Three Rivers.

“Day care facility” means any institution, agency or place that receives individuals, including children, for temporary care, with or without stated educational purposes, for a period not exceeding 24 hours, and includes a day nursery, nursery school, kindergarten, or play school.

"Demolition" means to remove, pull down or destroy a building and/or structure.

“Developer” means a person who, directly or indirectly, is authorized to apply for approval of a development or subdivision or to enter into an agreement regarding a development or subdivision.

"Development" means:

- a) site alteration, including but not limited to altering the grade of the land, removing vegetation from the land, excavating the land, depositing or stockpiling soil or other material on the land, and establishing a parking lot;
- b) locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land;
- c) placing temporary or permanent mobile uses or structures in, under, on or over the land; or
- d) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building.

"Development Officer" means the person(s) appointed by Council with the duty of administering the provisions of this Bylaw.

“Development Agreement” means an agreement between a developer and a council, or between a developer and a Minister of the Government of Prince Edward Island, or a tripartite agreement between a developer, a council and a Minister, respecting the terms and conditions under which a development may be carried out.

"Development Permit" means a permit issued for a development pursuant to this Bylaw, but does not include a Building Permit issued under the Building Codes Act 2017 c.61 R.S.P.E.I. 1988, B-5.1.

“Drive-through facility” means a premises used to provide or dispense products or services through an attendant or a window or an automated machine, to persons remaining in vehicles that are in a designated queuing space, and may be in combination with other land uses.

"Dwelling" means a building or portion thereof designated or used for residential occupancy, but does not include hotels and motels.

- a) **"Dwelling unit"** means one or more habitable rooms designed or intended for use by one or more individuals as an independent and separate housekeeping establishment in which separate kitchen and sanitary facilities are provided.
- b) **“Apartment dwelling”** means a residential use building that contains four or more dwelling units, other than a row dwelling.

- c) **"Duplex dwelling"** means a dwelling divided horizontally into two dwelling units.
- d) **"Grouped dwellings"** means two or more residential use buildings containing dwellings of any type, except accessory dwellings, located on a single lot.
- e) **"Micro dwelling"** means a dwelling designed or used for occupancy as one dwelling unit and that has a floor area of 37 sq.m (398.3 sq.ft) or less.
- f) **"Mobile home"** means a residence that is designed and manufactured to be transported on its own chassis and is equipped for year-round occupancy.
- g) **"Modular dwelling"** means any dwelling that is designed and built in more than one unit and is designed to be mobile on a temporary basis and constructed or manufactured off-site to provide a permanent residence for one or more persons.
- h) **"Multiple-unit dwelling"** means a building containing three or more dwelling units.
- i) **"Row dwelling"** means a dwelling that is divided vertically into three or more dwelling units.
- j) **"Semi-detached dwelling"** means a dwelling that is divided vertically into two separate units.
- k) **"Single-unit dwelling"** means a dwelling designed or used for occupancy as one dwelling unit and includes Micro Dwellings and Modular Dwellings, but does not include a summer cottage.

"Entertainment Facility" means a facility where the primary function is the provision of entertainment to the public, either exclusively or in combination with other activities and may, without restricting the generality of the foregoing, include a movie theatre, live theatre, night club, cocktail lounge, arena or sports complex.

"Erect" means to build, construct, reconstruct, alter or relocate and, without limiting the generality of the foregoing, shall be taken to include any preliminary physical operation such as excavating, filling or draining.

"Equestrian establishment" means a commercial establishment where horses are housed or boarded and are available for riding, riding instruction, agility training or jumping.

"Excavation pit" means any excavation in the ground opened for the purpose of searching for or removing clay, gravel, sand, shale, subsoil, topsoil, rock or any other surface or subterranean deposit, but does not include an excavation made within the boundaries of a highway.

"Farm market" means a building in which farm produce comprises the major portion of goods offered or kept for sale directly to the public at retail value.

"Farmer's market" means an establishment or premises where the farm products of a local farming community are sold at retail.

"Fishing vessel" means any watercraft, engaged on a part-time or full-time basis for use in a commercial fishery.

"Floor area" means:

- a) With reference to a residential building or dwelling, the area contained within the outside walls, excluding any private garage, porch, veranda, sunroom, greenhouse, unfinished attic, unfinished basement, and other rooms not habitable at all seasons of the year.
- b) With reference to a commercial building or use, the total usable floor area within a building used for commercial purposes excluding washrooms, utility rooms and common halls between stores.
- c) With reference to an Accessory Building, the area contained within the outside walls.

"Food truck park" means more than three mobile food businesses that congregate at an established private property location to offer food or beverages for sale to the public.

"Forestry use" means commercial silviculture and the production of timber or pulp and any uses associated with a forestry use, including sawmills, shingle mills, vehicle and equipment storage and maintenance buildings and yards and retail and wholesale outlets for wood and wood products.

"Garden centre" means land, building, structure or part thereof or an outdoor area primarily used for the retail sale of gardening equipment, landscaping products and planting materials.

"Grade" means the lowest elevation of the finished surface of the ground, paving or sidewalks between the building and a line 1.5 metres (4.9 feet) from the building.

"Greenhouse" means a premises, or any land used primarily to raise and store trees, shrubs, flowers, and other plants for sale or for transplanting.

"Gross floor area" – see "Floor Area."

"Group home" means a residence for the accommodation of four or more persons, exclusive of staff, living under supervision in a single housekeeping unit and who, by reason of their emotional, mental, social or physical condition or legal status, require a group living arrangement for their well-being. A group home does not include a Day Care Facility, or a halfway house or a facility for the temporary use of transient and homeless persons.

"Heavy industrial use" means a use that, from its nature or operation, creates a nuisance or is offensive by the creation of noise or vibration or by reason of the emission of gases, fumes, dust, and any objectionable odour, or by reason of the unsightly storage of goods, wares, merchandise, salvage, refuse matter, waste or other material.

"Highway" means all the area within the boundary lines of every road, street or right-of-way that is vested in the Province of Prince Edward Island or the Town and used or intended for use by the general public for the passage of vehicles and includes any bridge over which any such road, street or right-of way passes.

"Home-based business" (as an ancillary use) means the accessory use of a dwelling unit for gainful employment involving the production, sale, or provision of goods and services.

“Hobby farm” means the keeping, breeding, raising and grazing of livestock, and/or poultry, other than domestic pets, for the personal use of the household operating the hobby farm and excludes an agricultural use as defined herein which is operated for commercial purposes.

“Hotel” means a building other than a motel occupied or intended to be occupied as the temporary lodging place for any individual for a fee.

“Inn establishment” means a tourist establishment where the tourism operator provides personal service to guests, the majority of guests have access to rental units from within the establishment, each rental unit has at least a three-piece private bathroom, the main entrance and common areas of the establishment used by guests are separate from the entrances and areas used exclusively by the tourism operator, and breakfast and dinner are served in the establishment.

“Institutional Use” means any educational or religious use (with or without dormitory accommodation), museum, public library, fire or police station, public works, Hospital, Community Building, recreational, cultural or Open Space use.

“Kennel” means a building or structure where more than four domestic animals, excluding livestock, are kept, bred or raised for profit or gain.

“Landscaping” means any combination of trees, shrubs, flowers, grass, other horticultural elements, paving, or other architectural elements, all of which are designed to enhance the visual amenity of a property.

“Light Industrial” means use of land or buildings for fabrication, manufacturing, assembly, treatment or warehousing of goods, but does not include industrial processing or other process which may result in the creation of hazardous or offensive conditions related to noise, odour, smoke or effluent.

“Livestock” means horses, cattle, sheep, swine, goats, poultry, fox, mink, chinchilla and rabbits.

“Loading space” means an unencumbered area of land provided and maintained upon the same lot or lots upon which the principal use is located and which area is provided for the temporary parking of one commercial motor vehicle while merchandise or materials are being loaded or unloaded-

“Lot” means any discrete portion of land described in a deed or as shown in a registered subdivision or survey plan.

- a) **“Corner lot”** means a lot situated at an intersection of and abutting on two or more streets.
- b) **“Interior lot”** means a lot other than a corner lot.
- c) **“Through lot”** means a lot bounded on two opposite sides by streets.

“Lot area” means the total area included within the lot lines.

“Lot depth” means the shortest depth from the front lot line to the rear lot line.

"Lot line" means any boundary of a lot.

- a) **"Front lot line"** means the line dividing the lot from the street or private right-of-way. In the case of a corner lot or a lot with more than one line abutting a single street or private right-of-way the shorter boundary line abutting the street private right-of-way shall be deemed the front lot line. In the case of a through lot, either lot line may be considered the front lot line.
- b) **"Flankage lot line"** means the lot line, other than the front lot line, that abuts the street or private right-of-way on a corner lot.
- c) **"Rear lot line"** means the lot line furthest from and opposite to the front lot line.
- d) **"Side lot line"** means a lot line other than a front, rear or flankage lot line.
- e) **"Common Lot Line"** means a development wherein a semi-detached building may be located on two lots with the common side lot line coincident with the party wall between the two units.

"Lot Frontage" means the straight distance between the points where the side lot lines of a lot intersect the front lot line of that lot. If the side lot lines are not parallel, Frontage means the straight distance between the two points on the side lot lines located a distance of 6 metres (19.7 ft.) from where the side lot lines intersect the front lot line. Lot width shall be measured as the lot frontage.

"Lot coverage" means the percentage of lot area covered by the ground floor area of all buildings located thereon.

"Marina" means a building, structure or place containing docking facilities and located on or abutting a waterbody, where boats and boat accessories are berthed, stored, serviced, repaired or kept for sale or rent and where the facilities for the sale of marine fuels and lubricants may be provided.

"Marine facility" shall mean a non-commercial accessory building or structure having a maximum height of 5.0 metres (16.4 ft.) which is used to moor, berth or store a boat. This definition may include a boat launching ramp, boat lift., dock or boathouse but does not include any building used for human habitation or any boat service, repair or sales facility.

"Motel" means a building occupied in whole or in part as a temporary lodging place for an individual and for which there is an exit for any room or suite of rooms directly to the outdoors with access to grade level.

"Municipality" means the Town of Three Rivers or the Corporation of the Town of Three Rivers.

"Non-complying" means a lot, building, or structure that does not meet the regulations of the Zone in which it is located as of the date of passage of this Bylaw.

"Non-conforming" means an existing use or activity on any land, building, or structure that is not a permitted use for the Zone in which it is located as of the date of passage of this Bylaw.

"Nursing home" – see "Residential care facility."

- “Outdoor storage”** means the storage of merchandise, goods, inventory, materials or equipment or other items which are not intended for immediate sale, by locating them outside.
- “Outdoor display”** means an area of land where goods are displayed and which are available for sale to the general public from a retail outlet located on the same lot.
- “Open space”** means that portion of a lot which may be used for landscaping, recreational space or leisure activities normally carried on outdoors; but does not include space used for service driveways or off-street parking.
- “Park”** means land owned or leased by the Town or some other level of government used or intended for use by members of the public.
- “Parking lot”** means an area or structure other than a street, used or intended to be used for the temporary storage of motor vehicles and includes drive aisles, driveways, and parking spaces.
- “Parking space”** means an area of land that is suitable for the parking of a vehicle and accessible to vehicles without the need to move other vehicles on adjacent areas.
- “Personal service shop”** means a building or part of a building in which services are provided for the individual and personal needs of persons, and without limiting the generality of the foregoing, may include such establishments as barber shops, beauty parlors, automatic laundry shops, hairdressing shops, tanning salons, tattoo parlours, shoe repair and shoe shining, tailoring, and dry-cleaning collection depots, but excludes the manufacturing or fabrication of goods for retail or wholesale distribution.
- “Planning Board”** means a Board appointed by Council, as established in the Planning Act R.S.P.E.I. 1988, P-8, which provides recommendations on matters related to land use planning.
- “Place of worship”** means a place or building that is used for the regular assembly of persons for the practice of religious worship, services or rites, which may accommodate the assembly of persons for community events and may include a cemetery.
- “Private road”** means a private right-of-way over private property which affords access to at least two abutting lots and which is not maintained by the Province of Prince Edward Island or the Town of Three Rivers.
- “Property”** – see “Lot.”
- “Recreational use”** means use of land for parks, playgrounds, tennis courts, lawn bowling greens, athletic fields, golf courses, picnic areas, swimming pools, day camps, campgrounds, recreational vehicle park, but does not include a tract for the racing of animals or any form of motorized vehicles.
- “Recycling facility”** means a facility or place where recyclable material is: (i) accepted and stored; and (ii) handled, collected, sorted or prepared for transport for the purposes of the use, reuse or incorporation of the material in the manufacture of secondary products.
- “Renewable energy generation facility”** means a facility for generating electric energy

from any renewable energy source, and includes structures, ancillary equipment or other things used for that purpose, and includes a Solar Collector System and a Wind Energy System.

“Resource Use” means the use of land or buildings for the production and harvesting or extraction of any agricultural, forestry, or fisheries product.

“Residential care facility” means a building or premises licensed by the Province of Prince Edward Island, where accommodation and supervisory and/or personal care is provided or made available for three or more persons.

“Restaurant” means buildings or structures or part thereof where food and drink is prepared and offered for sale to the public within or off the premises.

“Restaurant, Drive-through” – see “Drive-through facility”

“Retail Store” means a building or part thereof in which foods, goods, wares, merchandise, substances, articles or things are offered or kept for sale directly to the public at retail.

“Retirement home” means premises where lodging is provided primarily for retired persons and may include common facilities for eating, recreation and other such activities and may also include limited medical care and other services.

“Road” – see “Highway.”

“Salvage yard” means an area of land used for the storage, handling or processing of and sale of scrap material, and without limiting the generality of the foregoing, may include wastepaper, rags, bones, used bicycles, vehicles, tires, metals or other scrap material or salvage, but shall not include a hazardous waste material storage or disposal site or recycling depot.

“Secondary suite” means a detached dwelling accessory to, and subordinate to, a principal dwelling unit.

“Setback” means the horizontal distance between the specified lot line or feature and the nearest main wall of any building or structure.

“Shopping centre” means a group of commercial uses that have been designed and developed as a continuous unit and characterized by shared parking facilities and may or may not have enclosed common walkways.

“Sight triangle” means the triangular space formed by the street lines of a corner lot and a line drawn from a point in one street line to a point in the other street line. Where the two street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be the intersection of the projection of the street lines or the intersection of the tangents to the street lines.

“Sign” means any structure or device used to advertise or draw attention to any product, place, person, business, institution, organization, or event, including any directional or wayfinding purpose and that is intended to be seen from off the premises or from a parking lot.

- a) **"Ground sign"** means a sign supported by one or more posts, poles or braces placed in or upon the ground.
- b) **"Mobile sign"** means a sign designed and intended to be moved from one site to another and is not permanently affixed to the ground or a building, but shall not include the side, body, trailer of a commercial motor vehicle.
- c) **"Projecting sign"** means a sign that projects from and is supported by the wall of a building.
- d) **"Sandwich board sign"** means a sign consisting of two surfaces attached to each other at the top and designed so as to stand temporarily without foundation or other support on a lot or sidewalk without electrical or other service connection.

"Solar collector system" means a structure or array of structures, and ancillary equipment, designed to collect solar radiation and convert it to useable forms of energy. Without restricting the generality of this definition, solar collector system may include evacuated tubes, flat plate collectors, concentrating mirrors, and building integrated photovoltaic materials but does not include windows or greenhouses.

"Special Permit Use" means those proposed uses of land, buildings, and structures which are deemed compatible amongst existing land uses and sympathetic to the overall character of a specific zone. A Special Exception Development will not already be permissible in any other zone, and it shall be subject to the approval of Council and any conditions imposed."

"Storey" means that portion of a building between any floor and ceiling or roof next above, provided that any portion of a building partly below grade level shall not be deemed a storey unless its ceiling is at least 1.8 metres (5.9 ft.) above grade and provided also that any portion of a building between any floor and ceiling or roof next above exceeding 4.2 metres (13.8 ft.) in height shall be deemed an additional storey.

"Street" – see "Highway."

"Structure" means anything that is erected, built, or constructed of parts joined together or any such erection fixed to or supported by the soil or by any other structure.

"Subdivision" means:

- a) the division of a parcel of land to create two or more new parcels of land;
- b) the consolidation of two or more contiguous parcels of land to create a new parcel of land; or
- c) the attachment of a part of a parcel of land to another parcel of land contiguous to that part to create a new parcel of land; by means of a plan of subdivision, a plan of survey, an agreement, a deed or any other instrument, including a caveat, that transfers or creates an estate or interest in the new parcels of land created by the division, or in the new parcel of land created by the consolidation or the attachment, as the case may be.

“Subdivision agreement” means an agreement between a council and a developer whereby the developer undertakes to provide basic services in order to develop a plan of subdivision.

“Subdivision plan” means an appropriately scaled and detailed drawing of a subdivision, certified by a Prince Edward Island Land Surveyor.

“Survey” means an appropriately scaled drawing of survey details, certified by a Prince Edward Island Land Surveyor.

“Town” – see “Municipality.”

“Use” means any purpose for which a building or other structure or parcel of land may be designed, arranged, intended, maintained or occupied, and includes any activity, occupation, business or operation carried on, or intended to be carried on, in a building or other structure or on a parcel.

“Utility” means any public or private system, works, plant, building, equipment, or services that are provided to or for the use of the general public, including but not limited to telephone, electric power, public water supply or sewage services, and includes a Utility Building.

“Variance” (including Minor Variance (up to 10%) and Major Variance (over 10%)) means an authorized relaxation from the standards imposed by regulations made under this by-law within the limits specified with respect to lot size or dimensions, setbacks, area or the height or size of a structure.

“Warehouse” means a building used for the storage and distribution of goods, wares, merchandise, substances or articles and may include facilities for a wholesale or retail commercial outlet.

“Watercourse” means an area which has a sediment bed and may or may not contain water, and without limiting the generality of the foregoing, includes the full length and width of the sediment bed, bank and shore of any stream, spring, creek, brook, river, lake, pond, bay, estuary or coastal body, any water therein, and any part thereof, up to and including the watercourse boundary, but does not include an irrigation channel.

“Water lot” means land, including land covered by water.

“Wetland” means:

- a) an area which contains hydric soil, aquatic or water-tolerant vegetation, and may or may not contain water, and includes any water therein and everything up to and including the wetland boundary; and
- b) without limiting the generality of the foregoing, includes any area identified in the Prince Edward Island Wetland Inventory as open water, deep marsh, shallow marsh, salt marsh, seasonally flooded flats, brackish marsh, a shrub swamp, a wooded swamp, a bog or a meadow.

“Wind energy system” means a structure that converts the kinetic energy in wind to electrical energy.

“Yard” means an open, uncovered space on a lot pertinent to a building and unoccupied by buildings or structures except as specifically permitted in this bylaw, and:

- a) **"Front yard"** means a yard extending across the width of a lot between the front lot line and nearest wall of any building or structure on the lot.
- b) **"Rear yard"** means a yard extending across the width of a lot between the rear lot line and the nearest wall of any building or structure on the lot.
- c) **"Side yard"** means a yard extending from the front yard to the rear yard of a lot between a side lot line and nearest wall of any building or structure on the lot.
- d) **"Flankage yard"** means the side yard of a corner lot which side yard extends from the front yard to the rear yard between the flankage lot line and the nearest main wall of any building or structure on the lot.

“Zone” means a designated area of land shown on the zoning map of the Bylaw within which land uses are restricted to those specified by this Bylaw, in the below table.

Zone	Symbol
Agricultural	AG
Rural	RU
Rural Residential	RR
Low Density Residential	R1
Medium Density Residential	R2
High Density Residential	R3
Residential Mobile Home Park	RM
Mixed Use	MU
Highway Commercial	HC
Community	C
Heavy Industrial	HI
Light Industrial	LI
Parks and Open Space	OS
Institutional	I

3. Administration

3.1. Administration

- 1) The Development Officer shall administer this Bylaw. The Development Officer shall have authority to approve or deny development permits in accordance with this Bylaw, except for the following classes of development, which shall be determined by Council:
 - a) New buildings or structures for commercial uses over 371.6 sq.m in floor area (4000 sq.ft.);
 - b) New buildings or structures, or expansions to existing buildings or structures, for industrial uses;
 - c) New residential development containing seven or more units;
 - d) New buildings or structures, or expansions to existing buildings or structures, for institutional uses;
 - e) Subdivision of six or more lots.
- 2) The authority to approve or deny development permits by the Development Officer shall be extended to applications for severance, consolidation and a change of use within an existing building, which may require minor structural alterations, provided that the new use is permitted within this bylaw.

3.2. Development Permits

3.2.1. General Requirements

- 1) Unless otherwise stated in this Bylaw, no person shall undertake development or subdivision of land on a lot within the Town of Three Rivers without first obtaining a Development Permit from the Development Officer.
- 2) The Development Officer shall only issue a Development Permit for developments in compliance with the provisions of this Bylaw.
- 3) Development Permit applications proposing development that does not comply with the provisions of this Bylaw will be refused.
- 4) Notwithstanding provisions (2) and (3) above, a Development Permit may be issued where a variance or rezoning is granted.
- 5) The Development Officer may revoke a Development Permit in cases where information provided on the application is found to be inaccurate.
- 6) The Development Officer may waive decision making authority for any proposal and refer it to Town Council for a decision.

3.2.2. Development Permit Not Required

- 1) Unless otherwise specified, no Development Permit is required for:

- a) A fence or wall that does not exceed 1.83 metres (6.0 feet) in height or where the relevant boundary is adjacent to a commercial lot, not exceeding 2.44 metres (8ft.)
 - b) A sign less than 0.4 sq.m (4.3 sq.ft) in area;
 - c) A temporary use subject to Section 5.20;
 - d) Public and private utilities located within a street right-of-way;
 - e) Roofing;
 - f) Siding;
 - g) Repainting;
 - h) Chimney maintenance or rebuilding;
 - i) Replacement of windows and doors;
 - j) Other routine maintenance that has the effect of maintaining or restoring a structure or any of its elements to its original state or condition;
 - k) Installing clotheslines, poles and radio and television antennae or satellite dishes less than 0.6 sq.m (2 feet in diameter);
 - l) Making a garden;
 - m) Making landscaping improvements or constructing ornamental structures less than 9.3 sq.m (100.1 sq.ft);
 - n) Laying paving material for patios, sidewalks and driveways;
 - o) Accessory buildings up to 20 sq.m in floor area (215.3 sq/ft.), where the eaves height of that building shall be no higher than 3.0 metres (11.2 ft.).
 - p) Roof mounted solar arrays subject to the following:
 - (a) the solar PV or solar thermal equipment would not protrude more than 0.2 metres beyond the plane of the wall or the roof slope when measured from the perpendicular with the external surface of the roof slope.
 - (b) it would not result in the highest part of the solar PV or solar thermal equipment being higher than the highest part of the roof (excluding any chimney).
 - q) A deck of up to 37.2 sq.m (400 sq.ft) and 0.6m (2 ft.) high shall be permitted in all zones. The deck shall be subject to a setback of 1.2m (4ft.).
- 2) All classes of development listed in provision (1) above must comply with the applicable provisions of this Bylaw.

3.2.3. Applications for Development Permit

- 1) All applications for a Development Permit must include a completed Development Permit Form signed by the registered owner of the lot or by the owner's agent, duly authorized in writing to act for the owner.
- 2) Every application for a Development Permit shall be accompanied by a plan, drawn to an appropriate scale and showing:
 - a) The shape and dimension of the lot to be used;
 - b) The distance from the lot boundaries, dimension and height of the building or structure proposed to be erected;
 - c) The distance from the lot boundaries and size of every building or structure already erected on the lot and the general location of the buildings on abutting lots;
 - d) The proposed location and dimension of any parking space, loading space, driveway, drive aisles and landscaped area;
 - e) The stormwater drainage pattern plan and stormwater management and management plan;
 - f) The proposed use of the lot and any building or structure; and
 - g) The measures undertaken to demonstrate flood resilient design, where development is located within the Rising Sea Level Impact Overlay (RSLIO);
 - h) Any other information the Development Officer deems necessary to determine whether or not the proposed development complies with the requirements of this Bylaw.
- 3) Where a Development Permit application is submitted for a building or structure, the application must be accompanied by a floor plan of the proposed building and exterior elevation drawings of all four sides.
- 4) Provision (3) applies to applications for new construction and to applications for additions exceeding 30 percent of the floor area of the existing building.
- 5) A Survey certified and stamped by a Prince Edward Island Land Surveyor shall be required where:
 - a) The area of the lot to be developed is less than 4 hectares (9.9 acres); or
 - b) In the opinion of the Development Officer, a Survey Plan is required to evaluate the development proposal to ensure compliance with the provisions of this Bylaw.
- 6) An application for Development Permit shall remain active for 12 months from the date of successful payment of the application fee.

3.2.4. Timelines for Development Permit Applications

- 1) Where all required submission materials and required payment has been received, the Development Officer shall provide a Notice of Application Deemed Complete within seven business days of receipt of the materials by the Town.

- 2) Where authority to approve a Development Permit is vested in the Council of Three Rivers, the Development Officer shall, within 15 business days of issuing the Notice of Application Deemed Complete, inform the applicant:
 - a) If the Development Permit is proceeding to a meeting of the Planning Board for consideration; or
 - b) If additional information is required from the applicant.

3.2.5. Conditions

- 1) Approved Development Permits may be issued subject to conditions.
- 2) Receipt by the developer of permits from the Province of Prince Edward Island may be required as conditions of approval.

3.2.6. Timelines for Approved Development Permits

- 1) A Development Permit shall expire within 12 months from the date issued.
- 2) If the development has not commenced a permit extension may be granted by the development officer, for an additional 12 months, subject to receipt of a written request from the developer.
- 3) For the purpose of provision (2), the following activities shall be deemed to represent commencement of development:
 - a) Excavation of the proposed foundation area; or
 - b) Installation of water or sanitary servicing infrastructure; or
 - c) Installation of utility infrastructure; or
 - d) Application of surfacing materials for the purpose of a driveway or parking lot; or
 - e) Erection of a building or structure.
- 4) Where a Development Permit has expired, a developer may submit a written request to the Town to reinstate the original approval within 12 months of the expiration of the Development Permit.

3.3. Development Agreement

- 1) As a condition of granting a Development Permit, a developer may be required to enter into a Development Agreement with the Town of Three Rivers.
- 2) The following classes of development may require a Development Agreement as a condition of Development Permit:
 - a) Residential developments containing seven or more dwelling units;
 - b) Residential developments on properties that do not have frontage on a public road;
 - c) Commercial uses;
 - d) Institutional uses; and

- e) Industrial uses.
- 3) Development Agreements may govern matters including, but not limited to:
 - a) Streets or roads;
 - b) Central or private water or sanitary services;
 - c) Open space and/or recreational areas;
 - d) Refuse collection and refuse storage facilities;
 - e) Sidewalks;
 - f) Storm sewers;
 - g) Curbs and gutters;
 - h) Phasing of the development; and
 - i) Any other services that Council deems appropriate and required.
- 4) Development Agreements may contain conditions or schedules requiring a developer to post a performance bond, cash bond, or other financial guarantee satisfactory to the Town of Three Rivers, to ensure the development proceeds in accordance with the conditions established in the Development Agreement.
- 5) All Development Agreements shall be registered in the office of the Registrar of Deeds.

3.4. Demolition Permits

- 1) A Demolition Permit may be issued by the Development Officer for a building or structure or parts thereof.
- 2) A Demolition Permit shall be valid for 60 days.

3.5. Zoning Amendments

- 1) A developer or owner seeking to rezone a parcel of land or to request site-specific amendments to provisions of this Bylaw shall complete and submit a completed zoning amendment Form in Appendix C, authorized by the Development Officer.
- 2) All applications for a zoning amendment or bylaw amendment shall be submitted to the Planning Board for review and recommendation to Council.
- 3) An application for a zoning amendment or bylaw amendment shall include such information as may be required by the Development Officer and Planning Board for the purpose of evaluating the application, including:
 - a) The names and addresses of the owner(s) of the property and, if the applicant is not the owner, a statement as to the applicant's interest in the property.
 - b) One of the following:

- i. A plot plan showing the location of the property to be rezoned, accompanied by a legal description of the property; or
- ii. A Survey Plan prepared by a Prince Edward Island Land Surveyor.

3.6. Variances

- 1) Where a development proposal detailed in a Development Permit application does not meet the minimum standards of this Bylaw, the Development Officer may approve a minor zoning variance, provided:
 - a) The degree of variance is within 10 percent of the zoning requirement.
 - b) The need for the variance is due to particular site conditions or unique attributes of the property or development that generate undue hardship in meeting the zoning requirement;
 - c) The proposed variance is consistent with the intent of the Official Plan;
 - d) The proposed variance is consistent with the intent of this Bylaw; and
 - e) The proposed variance will result in a desirable condition.
- 2) Where an objection to a zoning variance is received as a result of the public notification requirements of this Bylaw, the Development Officer shall refer the request for variance to the Planning Board to make a recommendation to Council.
- 3) Notwithstanding any other section of this Bylaw, Council in its discretion may authorize variances in excess of ten percent (10%) from the provisions of this Bylaw. A proposal will be considered against the criteria of 3.6.1 (b)(c)(d) & (e) and where Council deems such a variance appropriate, and if such variance is in keeping with the general intent and purpose of this Bylaw and the Official Plan for the Town of Three Rivers, a variance may be granted.

3.7. Application Fee & Payment

- 1) Every application for a Development Permit, Demolition Permit, Zoning Amendment, Variance, or Amendment to Development Agreement shall be accompanied by payment for the required fee in accordance with the Town of Three Rivers Municipal Fees Bylaw.

3.8. Public Notification

- 1) In accordance with the Planning Act R.S.P.E.I. 1988, P-8, where a Zoning Amendment application is received, the Town shall:
 - 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.
- 2) In addition to the notification requirements in provision (1), the Town of Three Rivers will provide notice of development applications as follows:

- a) Where an application for a Zoning Amendment is received, the Town shall provide notice of the application to property owners within 150 metres (492.1 ft.) of the property subject to the application.
- b) Where an application for major Zoning Variance is received, the Town shall provide notice of the application to property owners within 100 metres (328.1 ft.) of the property subject to the application.
- c) Where an application for minor Zoning Variance is received, the Town shall provide notice of the application to property owners within 30.5 metres (100 ft.) of the property subject to the application.
- d) Where an application to amend a Development Agreement is received, the Town shall provide notice of the application to property owners within 100 metres (328.1 ft.) of the property subject to the application.
- e) No public meeting is held, where the development officer has not received written objections for minor variances submitted under part 3.2.8(c) 3) The notices described in provisions (1) and (2) shall contain:
 - a) A description of the property, including address and location;
 - b) Details of the proposed development, variance or amendment;
 - c) The date, time and place of the meeting at which the application will be considered;
 - d) Details of where more information can be obtained during normal business hours; and
 - e) Details on how the Town will receive public comments.
- 4) A general “Public Notice” of all decisions respecting all applications received under the requirements of this Bylaw shall be given by posting the decisions in a conspicuous place in the Town of Three Rivers Town Hall or Administrative Office. The date of posting shall be displayed along with a statement advising the public of its right to appeal the decision, in accordance with the Planning Act R.S.P.E.I. 1988, P-8, within 21 days from the date of posting.

3.9. Bylaw Appeal

- 1) Any person who is dissatisfied by a decision of the Town of Three Rivers in respect of the following may appeal the decision to the Island Regulatory and Appeals Commission:
 - a) An application by the person, or any other person, under this Bylaw for:
 - i. A Development Permit;
 - ii. A preliminary approval of a subdivision;
 - iii. A final approval of a subdivision; or
 - b) The adoption of an amendment to this Bylaw, including:

- i. An amendment to a Zoning map established in this Bylaw; or
 - ii. An amendment to the text of this Bylaw.
- 2) The appellant shall file a Notice of Appeal with the Commission within 21 days after the date of the decision being appealed.
- 3) For the purposes of provision (2), where an appeal is filed in respect of an amendment to this Bylaw, the 21-day period for filing a notice of appeal commences on the date that the Council of Three Rivers gave final reading to the amendment to the Bylaw.
- 4) The Notice of Appeal under provision (2) shall be made in writing and shall state the grounds for the appeal and the relief sought.
- 5) A person filing an appeal under provision (2) shall, within seven days of filing an appeal with the Commission, serve a copy of the Notice of Appeal to the Council of the Town of Three Rivers.
- 6) Despite the provisions of this section, no appeal may be filed respecting a decision of Council respecting:
 - a) The final approval of a subdivision where the grounds for the appeal are matters that could have been heard and determined at the stage of preliminary approval of the subdivision; or
 - b) The final approval of a subdivision or Development Permit within a resort development, where the grounds for the appeal are matters that could have been heard and determined at the stage of preliminary approval of that subdivision or development.

3.10. Licenses, Permits and Compliance with Other Bylaws

- 1) Nothing in this Bylaw shall exempt any person from complying with the requirements of any other Bylaw in force within the Town, or from obtaining any license, permission, permit, authority, or approval required by any other Bylaw of the Town, or statute or regulation of the Province of Prince Edward Island or the Government of Canada.
- 2) Where the provisions of this Bylaw conflict with those of any other Town of Three Rivers Bylaw or any regulations or codes of the Province of Prince Edward Island, the higher or more stringent requirement shall prevail.

3.11. Enforcement

- 1) The Development Officer, or Designate, is authorized, with cause, to enter any land, building, or structure in the Town, provided that:
 - a) Such entry is not excessive or by force;
 - b) The entry occurs at a reasonable time; and
 - c) The entry is for the purpose of making an inspection or examination relating to this Bylaw.

- 2) The Development Officer may issue a Stop Work Order to a developer or contractor in instances where a development has commenced without a valid Development Permit.
- 3) The Town may enforce the provisions of this Bylaw in accordance with the procedures established in Part IV of the Planning Act R.S.P.E.I. 1988.
- 4) In addition to, or instead of, the penalties referred to in this Bylaw, the Supreme Court of Prince Edward Island may, upon application by the Town, cease or prohibit by injunction any development which does not comply with the provisions of this Bylaw.
- 5) The Town, its Officers or employees shall not be liable for any damage caused to any property when acting under the authority of this section.

3.12. Offences

- 1) Any person who, being the owner or occupant of any land, building, or structure to which this Bylaw applies, fails to perform any of the following actions in contravention of this Bylaw is guilty of an offence and liable under conviction to a fine and, in default of payment, to a term of imprisonment:
 - a) Remove any sign;
 - b) Comply with provisions;
 - c) Obtain a permit; or
 - d) Cease work on, and restore to its original condition, any property on which a development has been undertaken.
- 2) Any person who impedes, attempts to impede, refuses or does not permit inspection of a property pursuant to this Bylaw shall be guilty of an offence.
- 3) Where a person convicted under this section fails to commence the restoration ordered within 60 days after the order has been made, the Town may take such steps as it deems necessary to restore or remove the subject matter of the offence at the expense of the owner or occupier.
- 4) When an offence under this Bylaw is committed or continued for more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

3.13. Penalties

- 1) A person, contractor or owner who violates this Bylaw is guilty of an offence and liable on summary conviction to a fine not exceeding two thousand dollars (\$2,000.00) in each case, together with the cost of prosecution.
- 2) Where the offence is a continuing offence in addition to the penalties provided in this section, such person shall be liable for all costs in immediate removal of such an offence, and the Provincial Judge may impose a penalty not exceeding four hundred dollars (\$400.00) for every day the said offence continues.
- 3) Where there is default of payment, any person or corporate officer is liable to be imprisoned in accordance with the Summary Convictions Act.

3.14. Effective Date

- 1) This Bylaw shall take effect upon the date of approval by the Minister.

4. Interpretation

4.1. Symbols

- 1) The symbols used on the zoning maps refer to the corresponding zones established in the Bylaw:
 - Schedule A - Land Use and Road Network (Key Map)
 - Schedule A1 – Montague Settlement Area
 - Schedule A2 – Georgetown Settlement Area
 - Schedule A3 – Cardigan Settlement Area
 - Schedule A4 – Poole’s Corner Settlement Area

4.2. Units of Measure

- 1) This Bylaw generally uses metric units of measurement, unless otherwise specified. Imperial measurements are shown.
- 2) In the event of a conflict between figures using different units of measurements, the metric figure shall prevail.

4.3. Interpretation of Zone Boundaries

- 1) The extent and boundaries of zones are shown on the Zoning map and the applicable provisions of this Bylaw shall apply to all zones.
- 2) Boundaries between zones shall be determined as follows:
 - a) Where a zone boundary is indicated as following a street, the boundary shall be the centre line of the street, unless otherwise indicated;
 - b) Where the zone boundary is indicated as approximately following lot lines, the boundary shall follow the lot lines;
 - c) Where a right-of-way or a watercourse shown on a Zoning map serves as a zone boundary, the centre line of the right-of-way or watercourse shall be considered the boundary between the zones, unless otherwise indicated;
 - d) Where a zone boundary is indicated as following the edge of a watercourse, the zone shall follow any change in the boundary of that watercourse;
 - e) Where none of the above applies, the zone boundary shall be scaled from the Zoning map and if there is disagreement as to where the boundary line rests on the Zoning map, the decision shall rest with the Town.

4.4. Interpretation of Certain Words

- 1) In this Bylaw,

- a) Words used in the present tense include future;
- b) Words in the singular number include the plural;
- c) Words in the plural include the singular;
- d) The word “used” includes “arranged to be used,” “designed to be used,” or “intended to be used”; and
- e) The word “shall” indicates a compulsory requirement.
- f) The word “may” indicates a discretionary requirement.

4.5. All Land to be Zoned

- 1) All lands within the Town shall be zoned.

4.6. Permitted Uses

- 1) In this Bylaw, any use not listed as a permitted use in a zone is prohibited in that zone unless otherwise indicated.
- 2) Where a permitted use within any zone is defined in this Bylaw, the uses permitted in the zone include any similar uses that satisfy such definition, except where a definition specifically excludes any similar use.

4.7. Conflict

- 1) In the case of any conflict between the text of this Bylaw and any maps or drawings used to illustrate any aspect of this Bylaw, the text shall prevail.
- 2) In the case of any conflict between a number written in numerals and a number written in letters, the number written in numerals shall prevail.

4.8. Severability

- 1) If any provision of this Bylaw is held to be invalid by a decision of a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this Bylaw.

4.9. Schedules

- 1) All schedules, figures and appendices attached to this Bylaw are deemed to form part of this Bylaw.

5. General Provisions for All Zones

5.1. Permitted Uses in All Zones

- 1) The following uses are permitted in all zones:

- a) Temporary construction facilities such as sheds, scaffolds and equipment incidental to building on the premises for so long as work is in progress or for a maximum period of six months, whichever is the shorter period.
- b) Buildings and structures intended for public uses and owned by the Town of Three Rivers, the Province of Prince Edward Island, or the Government of Canada.

5.2. Accessory Buildings and Structures

- 1) An accessory building or structure is permitted in any zone.
- 2) For greater certainty, an electric vehicle charging station is permitted in any zone.
- 3) An accessory building or structure may be used only as accessory to the main building or use.
- 4) An accessory building or structure shall not:
 - a) Be used for human habitation, except where an accessory dwelling unit is permitted;
 - b) Be located in the front yard or flanking side yard of any lot;
 - c) Be located closer than 1.2 metres (3.94 ft.) to an interior side or rear lot line, except:
 - i. Common garages for semi-detached dwellings may be centred on a mutual side lot line; and
 - ii. Boat houses and docks may be located on a lot line, where the lot line corresponds with the water's edge; and
 - d) Be located within 1.8 metres (5.9 ft.) of a principal building.
- 5) The following elements shall be exempt from the provisions of this this section:
 - a) Awnings;
 - b) Clothesline poles;
 - c) Flag poles;
 - d) Garden trellises;
 - e) Retaining walls
 - f) Signs; and
 - g) Fences.
- 6) Accessory Buildings and Structures shall comply with the following performance standards:

Performance Standard	Requirement

Maximum Floor Area	Zone R1, R2 & R3: aggregate total of up to 80 sq.m (861.1 sq.ft.) or 50% of the total floor area of the dwelling, whichever is the greater
Maximum Floor Area for all other zones	No maximum
Maximum Building Height	6.7 metres (22ft.)
Maximum number of accessory buildings	Zone R1, R2 & R3: Two (2)
	All other zones: no maximum

- 7) No accessory building or structure shall be constructed:
 - a) Prior to the time of construction of the principal building to which it is accessory; or
 - b) Prior to the establishment of the main use of the land, where no principal building is proposed in the development.
- 8) Notwithstanding the above provisions, the Council may issue a Development Permit for an Accessory Building located within the Front Yard or Flanking Side Yard of a Lot of any Zone, or prior to the construction of the main building, where the Council is satisfied the Accessory Building will have the general standard, use and appearance compatible with adjacent buildings or structures subject to conditions as the Council may impose.
- 9) Any maximum height restriction set out in this Bylaw shall not apply to steeples, spires, lightning rods, water tanks, monuments, elevator enclosures, mechanical enclosures, silos, barns, grain elevators, flag poles, lighting standards, television or radio antennas, telecommunications towers, ventilators, skylights, chimneys, clock towers, power transmission towers, cupolas, wind turbines, or utility poles.
- 10) Ground Mounted Solar Arrays shall be permitted in all Zones, subject to the following:
 - a) The minimum setback to adjacent Lot Lines for Ground Mounted Solar Arrays shall be 4.57 m (15 ft.) or the height of the Ground Mounted Solar Array, measured from grade, whichever is greater. The setback shall be measured across grade from highest point of the Solar Array to the nearest lot lines.
 - b) Ground Mounted Solar Arrays may be placed in the front, rear, or side yards.

- c) The owner of the ground mounted solar array shall remove the ground mounted solar array and associated equipment sufficient to return the land to its previous use within two years of ground mounted solar array inactivity.
- 11) The installation of a swimming pool, of permanent construction, shall follow the setback requirements for accessory buildings & structures and be permitted in any zone in accordance with the following provisions:
 - d) A 1.8 metre (5.9 ft.) fence shall be constructed in such a manner as to impede unauthorized persons from entering over or under said fence;
 - e) A self-closing and self-latching gate shall be installed.

5.3. Buildings to be Erected on a Lot

- 1) No building shall be erected or used unless it is erected upon a single lot of record.

5.4 Buildings to be Moved

- 1) No building shall be moved to a lot within the Town without the owner first obtaining a Development Permit to relocate the building.

5.5. Calculation of Lot Frontage

- 1) Lot frontage for a lot with a regular shape shall be measured as a distance between the side lot lines where they meet the front lot line.
- 2) Lot frontage for a lot with an irregular shape shall be measured as the straight distance between the two points on the side lot lines located a distance of 6 metres (19.7 ft.) from where the side lot lines intersect the front lot line.

5.6. Conforming with Existing Front Yards

- 1) Notwithstanding the minimum front yard requirements established in this Bylaw, in any zone where a building is erected between two existing buildings within 60 metres (196.9 ft.) of the proposed building, the minimum front yard requirement shall be no less than that of the adjacent building that is closest to the street, but in no case shall the front yard requirement be less than 3 metres (9.8 ft.) and need be no greater than the front yard requirement prescribed for that zone.

5.7. Driveway Access

- 1) Where an Entranceway Permit is required under the Regulations of the Roads Act R.S.P.E.I. 1988, R-15, its issuance shall be a precondition of the approval of a Subdivision or Development Permit.

5.8. Drive-Through Facilities

- 1) Where a drive-through is a permitted use, and is provided on a lot, off-street motor vehicle queuing space must be provided for that drive-through leading both to and from each service bay, window, kiosk or booth.
- 2) All queuing spaces shall be a minimum 3 metres (9.8 ft.) in width and 5.7 metres (18.7 ft.) in length.
- 3) No queuing line, drive-through window or order board may be located within 5 metres (16.4 ft.) from a residential or mixed use building and may require screening from view from that use by an opaque screen with a minimum height of 1.5 metres (4.9 ft.).

5.9. Frontage on a Street

- 1) All development must be located on a lot that abuts an approved public or private highway or Street.
- 2) Notwithstanding provision (1), a lot that fronts onto a private road shall be deemed to have frontage on a street, provided the private road is legally established.

5.10. Existing Undersized Lots

- 1) A lot held in separate ownership from adjoining parcels on the effective date of this Bylaw that has less than the area or frontage required may be used for a purpose permitted in the zone in which the lot is located, and a structure may be erected on the lot.
- 2) Notwithstanding provision (1), an existing lot that has less than the area or frontage required shall continue to be classified as an existing undersized lot for the purpose of this section if, after enlargement, it remains undersized.
- 3) In addition to other provisions of the zone applicable to an existing undersized lot, a maximum permitted lot coverage of 30 percent shall apply to development.

5.11. Landscaping

- 1) New non-residential developments within the Industrial (LI, HI), Institutional (I), Mixed Use (MU), and Highway Commercial (HC) Zones shall require a minimum 4.5 metre (14.8 ft.) landscaped buffer in the interior side and rear yard when the property abuts a residential use or residential zone.
- 2) Landscaped buffers shall consist of hard and soft landscaping materials including, grass, trees, shrubs and flowers, or a combination thereof.

5.12. Illumination

- 1) No person shall erect any illuminated sign or illuminate any area outside any building which impacts upon adjoining properties or streets.

5.13. Multiple Uses

- 1) In any zone, where any land or building is used for more than one purpose, all provisions of this Bylaw relating to each use shall be satisfied. Where there is a conflict, the more restrictive zoning provisions shall apply.

5.14. One Main Building on a Lot

- 1) No person shall erect more than one main building on any lot except:
 - a) Within the Highway Commercial (HC) zone;
 - b) Within the Heavy Industrial (HI) zone;
 - c) To permit a grouped dwelling within a Residential zone;
 - d) Within the Agricultural (AG) Zone for uses other than residential uses,
 - e) Within an Environmental Protection (EP) zone and;
 - f) Mixed Use (MU), Light Industrial (LI) and Highway Commercial (HC) zones.
 - g) Recreational uses where related to tourism within Agricultural (AG), Rural Residential (RR) and Rural (RU) zones.

5.15. Accessory Dwelling Units

5.16.1. Accessory Apartments

- 1) An accessory apartment shall be permitted attached to a single-unit dwelling, a semidetached dwelling, or a row dwelling.
- 2) Accessory apartments shall not exceed 40 percent of the floor area of the dwelling unit.
- 3) An accessory apartment shall share the same water and sanitary services as the dwelling.

5.16.2. Secondary Suites

- 1) One secondary suite shall be permitted on a lot accommodating a single-unit dwelling.
- 2) Ingress and egress to the secondary suite shall be provided by the driveway serving the dwelling unit.
- 3) The secondary suite shall share the same water and sanitary services as the dwelling unit.
- 4) The secondary suite shall not be greater than 60 sq.m (645.8 sq.ft) in floor area.
- 5) One parking space shall be required for a secondary suite, in addition to the parking requirements for the dwelling unit.

5.17. Municipal Government Service Facilities

- 1) Notwithstanding the provisions of this Bylaw, services and facilities provided by the municipality, including but not limited to: sewage treatment plants, pumping stations,

water storage reservoirs and stormwater management facilities, and those temporary buildings and/or temporary structures associated with social, recreational and cultural events may be located in any zone and no development permit shall be required and no zone provisions shall apply.

5.18. Non-Conforming Structure or Use

- 1) Where a building or structure has been erected prior to adoption of this Bylaw on a lot having less than the minimum frontage or area, or having less than the minimum setback or side yard or rear yard required by this Bylaw, the building may be enlarged, reconstructed, repaired or renovated provided that:
 - a) the enlargement, reconstruction, repair or renovation does not further reduce the non-complying yard(s); and
 - b) all other applicable provisions of this Bylaw are satisfied.
- 2) Subject to the provisions of this Bylaw, a building or structure, or use of land, lawfully in existence prior to adoption of this Bylaw may continue to exist.
- 3) A Building or Structure shall be deemed to exist on the effective date of approval of this Bylaw if:
 - a) it was lawfully under construction, or
 - b) the permit for its construction was subject to the provisions of this Bylaw.
- 4) No structural alterations that would increase the exterior dimensions, except as required by statute or bylaw, shall be made to a building or structure while a non-conforming use thereof is continued.
- 5) If a building that does not conform to provisions of this Bylaw is destroyed by a fire, natural weather event, flood, or similar event, it shall only be rebuilt or repaired in a manner that does not exceed the original non-conforming character of the building in question.
- 6) Any change of tenants or occupants of any premises or Building shall not of itself be deemed to affect the use of the premises or building for the purposes of this Bylaw;

5.19. Public and Private Utilities

- 1) Notwithstanding the provisions of this Bylaw, public and private utilities located within the street right-of-way or underground may be placed in any zone, and no Development Permit shall be required and no zone provisions shall apply.

5.20. Temporary Uses, Buildings and Structures

- 1) Nothing in this Bylaw shall prevent the temporary use of land or the temporary use of a building or structure incidental to a construction project provided that a Development Permit has been issued for the main construction project and the temporary use is discontinued and removed within 30 days following completion of the main construction project.

- 2) A building or structure may be erected, or an area of land used for a special occasion or holiday, provided that no such building or structure shall remain in place for more than 20 consecutive days.

5.21. Through Lots

- 1) Notwithstanding the provisions of this Bylaw, a building on a through lot may be erected facing either abutting street. For the purposes of determining yard setbacks, the front yard setback provision shall apply to both streets.

5.22. Watercourse Separation Distance

- 1) Where a development is proposed adjacent to a waterbody, watercourse, or wetland, the development shall obtain all necessary permits under the Environmental Protection Act R.S.P.E.I. 1988, E-9 as a precondition of approval.

5.23. Water and Sewage Systems

- 1) No land shall be used or the intensity of any use of land expanded or any building placed, erected, altered, enlarged, or used within the Town of Three Rivers unless the development can be adequately serviced by central or private water and central or private sanitary services or;
- 2) Where special circumstances are demonstrated that the above provision is not required to service a development due to the unique nature of that proposal, or alternative means of provision have been demonstrated to the satisfaction of the Council, a development permit may be granted subject to conditions the Council may impose.

5.24. Permitted Encroachments in Yards

- 1) Except for accessory buildings, every part of any yard required by the Bylaw shall be open and unobstructed by any structure from the ground to the sky, provided however, that those structures listed in the following table shall be permitted to project for the specific distances as indicated:

Structure	Permitted Yard	Maximum Projection from Main Wall
Sills, belt courses, cornices, eaves, gutters or chimneys	Any yard	0.6 m (2 ft.)
Bay windows	Any yard	1.0 m (3.3 ft.)
Fire escape and exterior staircase	Rear and side yards only	1.22 m (4 ft.)
Balconies	Any yard for all residential of mixed use buildings	1.22 m (4 ft.)

Open, roofed porches not exceeding one storey in height, uncovered terraces	Any yard	1.22 m (4 ft.); including eaves

5.25. Corner Sight Triangle

- 1) On a corner lot, a fence, sign, hedge, shrub, bush or tree or any other structure or vegetation shall not be erected or permitted to grow to a height greater than 0.6 metres (2 ft.) above the grade of the streets which abut the lot within the triangular area indicated by the street boundary lines for a distance of 6 metres (19.7 ft.) from their point of intersection.

5.27. Recreational Trailers or Vehicles

- 1) No person shall use or occupy a Recreational Trailer or Vehicle other than in an approved Campground, unless Council has issued a Development Permit for such use.
- 2) A permit issued in accordance with provision (1) shall be valid for a period of not more than 120 days, but may be renewed by Council.
- 3) A Recreational Trailer or Vehicle placed in accordance with these Regulations shall be removed from the lot immediately following expiry of the Development Permit.

5.28. Bed and Breakfast

- 1) Bed and breakfast establishments shall be permitted to operate in any Single-Unit Dwelling, Semi-Detached Dwelling, or Row Dwelling in any Agricultural, Rural, or Residential Zone subject to the following:
 - a) the dwelling shall be occupied as a residence by the principal operator;
 - b) not more than three (3) rooms shall be offered for overnight accommodation;
 - c) adequate off-street parking, in accordance with this Bylaw, separate from that required for the dwelling, shall be provided; and
 - d) there shall be no other signage, open storage or visible display area.

5.29. Day Care Facilities

- 1) A Day Care Facility may be established as a Home-Based Business, subject to the provisions of this Bylaw.

5.30. Kennels

- 1) Notwithstanding the provisions of this Bylaw, no kennel shall be erected or established, after the day of the passing of this Bylaw, within 300 metres (984.3 ft.) of a dwelling located on another lot.
- 2) Notwithstanding provision (1), a dwelling may be constructed within 300 metres (984.3 ft.) of an existing kennel if the dwelling complies with all other provisions of this Bylaw.

5.31. Petroleum Storage

- 1) Petroleum storage shall comply with the Petroleum Storage Tank Regulations under the Environmental Protection Act R.S.P.E.I. 1988, E-9, or successor legislation.
- 2) Underground storage tanks may be permitted in any zone and subject to Wellfield Protection Zone regulations.
- 3) The installation of any underground storage tanks shall require a Development Permit.

5.32. Storage of Commercial Fishing Vessel and Related Equipment

- 1) The storage of fishing vessels and related equipment shall be permitted in any zone, subject to the following:
 - a) Related fishing equipment shall be stored in an organized manner including, but not limited to, the orderly stacking and harvesting of traps and other related paraphernalia.

5.33. Home-Based Business as an Ancillary Use

- 1) A home-based business may be located in a residential dwelling or its accessory building as an ancillary use in any zone, subject to specific provisions within zones R1, R2 & R3:
 - a) The owner of the business lives in the dwelling.
 - b) Not more than two (2) employees live outside the dwelling.
 - c) Not more than 25% of the total floor area of the dwelling or less than 100 sq.m (1076.4 sq.ft) floor area of an accessory building may be used in conjunction with the business.
 - d) Adequate off-street parking is provided for both the dwelling and the business.
 - e) No outdoor storage of materials or product display is used in conjunction with the business.
 - f) No mechanical equipment shall be used except for what is reasonably consistent with the use of the dwelling.
- 2) Within all other zones:
 - a) The owner of the business lives in the dwelling.
 - b) Not more than four (4) employees live outside the dwelling.
 - c) Not more than 25% of the total floor area of the dwelling or less than 100 sq.m (1076.4 sq.ft) floor area of an accessory building may be used in conjunction with the business.
 - d) No mechanical or electrical equipment shall be used except that reasonably consistent with the use of a dwelling.

- e) One parking space per 20 sq.m (215.3 sq.ft) of floor area used for the Home-Based Business or Occupation and one parking space for an employee shall be provided in addition to the required parking for the residential use.
- f) An accessory structure not more than 20 sq.m (215.3 sq.ft) in floor area may be used as storage.

2) General provisions for all zones:

- a) Premises signs shall follow the requirements of Section 9 of this bylaw.
- b) Retail sales shall be limited to products produced on site.
- c) Outdoor storage required in conjunction with the business shall not be located closer than 15 metres (49.2 ft.) from any lot line and not within any front yard area of the dwelling and or accessory building.
- d) The home-based business shall not operate to the detriment of neighbouring properties by reason of noise, odour, vibration, traffic or parking impacts.
- e) The external appearance of the dwelling is not altered.
- f) Any sewage requirements deemed necessary are satisfied.

6. Zoning Provisions

6.1. Agricultural Zone (AG)

6.1.1. General

- 1) Except as provided in this Bylaw, all development and land used in the AG Zone shall comply with the provisions of this section.
- 2) The Agricultural Zone is intended to:
 - a) Recognize and permit agricultural uses and agriculture-related uses in the Agricultural Official Plan designation;
 - b) Regulate uses in a manner that respects the character of the area and minimizes land use conflicts.

6.1.2. Permitted Uses

- 1) Accessory apartment;
- 2) Agricultural use;
- 3) Auction establishment;
- 4) Bed and breakfast;
- 5) Boat house;
- 6) Cemetery;

- 7) Day care facility;
- 8) Farm market;
- 9) Farmer's market;
- 10) Forestry use;
- 11) Greenhouse;
- 12) Group home;
- 13) Home-based business;
- 14) Hobby farm;
- 15) Kennel;
- 16) Park;
- 17) Plant nursery;
- 18) Resource use;
- 19) Single-unit dwelling;
- 20) Secondary suite;
- 21) Solar collection system;
- 22) Wind energy system;
- 23) Resource Use;
- 24) Single Family dwellings;
- 25) Duplex dwellings;
- 26) Multi-unit dwellings.

6.1.3. Provisions

Performance Standard	Requirement
Minimum Lot Area	As per Appendix A
Minimum Lot Width	
Maximum Building Height	11 metres (36.1 ft.)
Minimum Front Yard Setback	Livestock building: 45 metres (147.6 ft.) All other buildings: 15 metres (49.2 ft.)

Minimum Flankage Yard Setback	Livestock building: 45 metres (147.6 ft.) All other buildings: 15 metres (49.21 ft.)
Minimum Interior Side Yard Setback	Livestock building: 15 metres (49.2 ft.) All other buildings: 4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	Livestock building: 15 metres (49.2 ft.) All other buildings: 7.5 metres (24.6 ft.)

6.1.4. Special Permit Use

- 1) The following special permit uses have been identified as compatible with the Agricultural Zone (AG). Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed:
 - a) Warehouse
 - b) Club
 - c) Recreational Use

6.2. Rural (RU)

6.2.1. General

- 1) Except as provided in this Bylaw, all development and land used in the Rural (RU) Zone shall comply with the provisions of this section.
- 2) The Rural Zone (RU) is intended to:
 - a) Recognize and permit agricultural uses and agriculture-related uses in the Rural Official Plan designation;
 - b) Recognize and permit a range of land uses appropriate for a rural context; and
 - c) Regulate uses in a manner that respects the rural character of the area and minimizes land use conflicts.

6.2.2. Permitted Uses

- 1) Accessory apartment;
- 2) Agricultural use;
- 3) Animal hospital;
- 4) Auction establishment;
- 5) Boat house;
- 6) Bed and breakfast;

- 7) Cemetery;
- 8) Day care facility;
- 9) Equestrian establishment;
- 10) Excavation pit;
- 11) Farm market;
- 12) Farmer's market;
- 13) Forestry use;
- 14) Greenhouse;
- 15) Group Home;
- 16) Home-based business;
- 17) Hobby farm;
- 18) Kennel;
- 19) Recreational use;
- 20) Park;
- 21) Plant nursery;
- 22) Resource use;
- 23) Secondary suite;
- 24) Single-unit dwelling;
- 25) Solar collection system;
- 26) Wind energy system;
- 27) Duplex dwelling;
- 28) Multi-unit dwelling.

6.2.3. Provisions

Performance Standard	Requirement
Minimum Lot Area	As per Appendix A
Minimum Lot Width	
Maximum Building Height	11 metres (36.1 ft.)

Minimum Front Yard Setback	Livestock building: 45 metres (147.6 ft.) All other buildings: 15 metres (49.2 ft.)
Minimum Flankage Yard Setback	Livestock building: 45 metres (147.6 ft.) All other buildings: 15 metres (49.2 ft.)
Minimum Interior Side Yard Setback	Livestock building: 15 metres (49.2 ft.) All other buildings: 4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	Livestock building: 15 metres (49.2 ft.) All other buildings: 7.5 metres (24.6 ft.)

6.2.4. Special Permit Use

- 1) The following special permit uses have been identified as compatible with the Rural Zone (RU). Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.
 - a) Warehouse
 - b) Club
 - c) Offices

6.3. Rural Residential (RR)

6.3.1. General

- 1) Except as provided in this Bylaw, all development and land used in the Rural Residential (RR) Zone shall comply with the provisions of this section.
- 2) The Rural Residential (RR) Zone is intended to:
 - a) Recognize and permit large-lot residential development in the Rural Official Plan designation; and
 - b) Regulate uses in a manner that respects the rural character of the area and minimizes land use conflicts.

6.3.2. Permitted Uses

- 1) Accessory apartment;
- 2) Bed and breakfast;
- 3) Boat house;
- 4) Day care facility;
- 5) Group home;
- 6) Home-based business;
- 7) Park;

- 8) Secondary suite;
- 9) Single-unit dwelling;
- 10) Solar collection system;
- 11) Duplex dwelling;
- 12) Multi-unit dwelling

6.3.3. Provisions

Performance Standard	Requirement
Minimum Lot Width	As per Appendix A
Minimum Lot Area	
Maximum Building Height	11 metres (36.1 ft.)
Minimum Front Yard Setback	15 metres (49.2 ft.)
Minimum Flankage Yard Setback	15 metres (49.2 ft.)
Minimum Interior Side Yard Setback	4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)

6.3.4. Special Permit Use

- 1) The following special permit uses have been identified as compatible with the Rural Residential (RR) Zone. Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed:
 - a) Club
 - b) Warehouse

6.4. Low-Density Residential Zone (R1)

6.4.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Low-density Residential (R1) Zone shall comply with the provisions of this section.
- 2) The Low-Density Residential Zone (R1) is intended to:
 - a) Restrict the building form to single-unit dwellings; and
 - b) Regulate development in a manner that is compatible with low-density residential land use patterns.

6.4.2. Permitted Uses

- 1) Accessory apartment;
- 2) Bed and breakfast;

- 3) Day care facility, as a home-based business;
- 4) Group home;
- 5) Home-based business;
- 6) Park;
- 7) Secondary suite;
- 8) Single-unit dwelling.

6.4.3. Provisions

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	550 sq.m (5920.2 sq.ft)	As per Appendix A
Minimum Lot Width	18 metres (59.1 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	1.2 metres (3.9 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	1.2 metres (3.9 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	1.2 metres (3.9 ft.)	4.5 metres (3.9 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.4.4. Special Permit Use

- 1) The following special permit use have been identified as compatible with the Lowdensity Residential Zone (R1). Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed:

- a) Boathouse

6.5. Medium-Density Residential (R2)

6.5.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Medium-Density Residential (R2) Zone shall comply with the provisions of this section.
- 2) The Medium-Density Residential Zone (R2) is intended to:
 - a) Restrict the building form to ground-oriented residential dwellings; and

- b) Regulate development in a manner that is compatible with medium-density residential land use patterns.

6.5.2. Permitted Uses

- 1) Accessory apartment;
- 2) Bed and breakfast;
- 3) Day care facility;
- 4) Duplex dwelling;
- 5) Group home;
- 6) Home-based business;
- 7) Park;
- 8) Row dwelling;
- 9) Secondary suite; 10) Semi-detached dwelling;
- 11) Single-unit dwelling.

6.5.3. Provisions

- 1) For single-unit dwellings in the R2 zone, the provisions of the R1 zone shall apply.
- 2) For other permitted residential uses in the R2 zone, the following provisions shall apply:

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area (Per Dwelling Unit)	275 sq.m (2960.1 sq.ft)	As per Appendix A
Minimum Lot Width (Per Dwelling Unit)	9 metres (29.5 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	1.2 metres (3.9 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	1.2 metres (3.9 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	1.2 metres (3.9 ft.)	4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.5.4. Special Permit Use

- 1) The following special permit use have been identified as compatible with the MediumDensity Residential Zone (R2). Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed: a) Boathouse.

6.6.High-Density Residential (R3)

6.6.1. General

- 1) Except as provided in this Bylaw, all development and land use in the High-Density Residential Zone (R3) shall comply with the provisions of this section.
- 2) The High-Density Residential Zone (R3) is intended to: a) Permit a full range of residential dwellings; and
b) Regulate development in a manner that is compatible with higher-density land uses.

6.6.2. Permitted Uses

- 1) Accessory apartment;
- 2) Apartment dwelling;
- 3) Bed and breakfast;
- 4) Day care facility;
- 5) Group home;
- 6) Grouped dwellings;
- 7) Home-based business;
- 8) Multiple-unit dwelling;
- 9) Park;
- 10) Residential care facility;
- 11) Retirement home;
- 12) Row dwelling;
- 13) Secondary suite;

6.6.3. Provisions

- 1) For single-unit dwellings in the R3 zone, the provisions of the R1 zone shall apply.
- 2) For semi-detached, duplex, and row dwellings in the R3 zone, the provisions of the R2 zone shall apply.
- 3) For other permitted residential uses in the R3 zone, the following provisions shall apply:

Performance Standard	Requirement	
	Central Services	Partial or Private Services

Minimum Lot Area (Per Dwelling Unit)	275 sq.m (2960.1 sq.ft)	Not permitted
Minimum Lot Width (Per Dwelling)	9 metres (29.5 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	
Minimum Front Yard Setback	1.2 metres (3.9 ft.)	
Minimum Flankage Side Yard Setback	1.2 metres (3.9 ft.)	
Minimum Interior Side Yard Setback	1.2 metres (3.9 ft.)	
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	

6.6.4. Special Permit Use

- 1) The following special permit uses have been identified as compatible with the HighDensity Residential Zone (R3). Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed:
 - a) Duplex dwelling;
 - b) Semi-detached dwelling;
 - c) Single unit dwelling.

6.7. Residential Mobile Home Zone (RM)

6.7.1. General

- 1) Except as provided in this Bylaw, all development and land use in the RM Zone shall comply with the provisions of this section.
- 2) The Residential Mobile Home (RM) Zone is intended to:
 - a) Limit permitted land uses to mobile homes; and
 - b) Regulate development in a manner that ensures the orderly placement of mobile homes and service buildings within the mobile home park.

6.7.2. Permitted Uses

- 1) Mobile home park;
- 2) Mobile home park offices, maintenance equipment storage and resident accessory structures;
- 3) Neighbourhood parks and playgrounds.

6.7.3. Provisions

- 1) When a mobile home park abuts an R1, R2, R3, MU or I Zone, opaque fencing or a landscaped buffer strip a minimum of 1.8 metres (5.9 ft.) in height shall be provided along the side and rear lot lines, excluding access driveways.
- 2) All required yards shall be landscaped with soft. landscaping, such as lawn, shrubs and trees.
- 3) All mobile home dwellings shall be fully skirted with a durable, opaque material.
- 4) All mobile home dwellings shall be permanently connected to electric, sewer and water facilities.

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area (Per Mobile Home Park)	0.4 hectares (1 acre)	Not permitted
Minimum Lot Area (Per Mobile Home)	464 sq.m (4994.5 sq.ft)	
Minimum Distance Between Mobile Homes	9 metres (29.5 ft.)	
Minimum Setback to a Lot Line	7.5 metres (24.6 ft.)	

6.7.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.8. Mixed Use Zone (MU)

6.8.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Mixed Use (MU) (MU) Zone shall comply with the provisions of this section.
- 2) The Mixed Use (MU) Zone is intended to:
 - a) Permit a range of residential, commercial and institutional uses suitable for the Settlement Area designations in the Official Plan; and
 - b) Regulate development in a manner that is compatible with surrounding land uses.

6.8.2. Permitted Uses

- 1) Animal hospital;
- 2) Apartment dwelling;
- 3) Auction establishment;

- 4) Business or professional office;
- 5) Club;
- 6) Community care facility;
- 7) Community centre;
- 8) Convenience store;
- 9) Day care facility;
- 10) Farmer's Market;
- 11) Home-based business;
- 12) Hotel;
- 13) Marina;
- 14) Medical clinic;
- 15) Motel;
- 16) Personal service shop;
- 17) Place of worship;
- 18) Park;
- 19) Recreational use;
- 20) Residential care facility;
- 21) Restaurant;
- 22) Retail store;
- 23) Retirement home;
- 24) School;
- 25) Single Family dwelling;
- 26) Duplex dwelling;
- 27) Entertainment facility;
- 28) Multi-unit dwelling; 29) Group home.

6.8.3. Provisions

- 1) For a permitted multi-unit residential use in the Mixed Use (MU) Zone, the provisions of the R3 zone shall apply. Single Family dwellings shall be subject to the provision of the

Low Density Residential (R1) Zone. For all other development in the Mixed Use (MU) Zone the following provisions shall apply:

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	450 sq.m (4843.8 sq.ft)	As per Appendix A
Minimum Lot Width	15 metres (49.2 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	1.2 metres (3.9 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	1.2 metres (3.9 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	2.5 metres (8.2 ft.)	4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.8.4. Special Permit Use

1) The following special permit use has been identified as compatible with the Mixed Use Zone (MU). Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

a) Warehouse

6.9. Highway Commercial (HC)

6.9.1. General

1) Except as provided in this Bylaw, all development and land use in the HC Zone shall comply with the provisions of this section. 2) The Highway Commercial (HC) Zone is intended to:

- a) Permit a range of commercial uses suitable for well-travelled roads; and
- b) Regulate development in a manner that is compatible with surrounding land uses.

6.9.2. Permitted Uses

- 1) Animal hospital;
- 2) Auction establishment;
- 3) Automobile body shop;
- 4) Automobile dealership;
- 5) Automobile service station;
- 6) Automotive store;

- 7) Business or professional office;
- 8) Club;
- 9) Community centre;
- 10) Convenience store;
- 11) Contractor's Shop or Yard;
- 12) Day care facility;
- 13) Drive-through facility;
- 14) Farmer's market;
- 15) Garden centre;
- 16) Hotel;
- 17) Kennel;
- 18) Motel;
- 19) Personal service shop;
- 20) Place of worship;
- 21) Restaurant;
- 22) Retail store;
- 23) Shopping centre;
- 24) Salvage yard;
- 25) Warehouse;
- 26) Entertainment Facility.

6.9.3. Provisions

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	1115 sq.m (12001.8 sq.ft)	As per Appendix A
Minimum Lot Width	46 metres (150.9 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	15 metres (49.2 ft.)	15 metres (49.2 ft.)

Minimum Flankage Yard Setback	15 metres (49.2 ft.)	15 metres (49.2 ft.)
Minimum Interior Side Yard Setback	4.5 metres (14.8 ft.)	4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.9.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.10. Community Zone (C)

6.10.1. General

- 1) Except as provided in this , all development and land use in the Community Zone (C) shall comply with the provisions of this section.
- 2) The Community Zone (C) is intended to:
 - a) Permit a range of community uses to create and support complete communities; and
 - b) Regulate development in a manner that is compatible with surrounding land uses.

6.10.2. Permitted Uses

- 1) Business or professional office;
- 2) Club;
- 3) Community centre;
- 4) Community garden;
- 5) Day care facility;
- 6) Farmer's market;
- 7) Park;
- 8) Personal service shop;
- 9) Place of worship;
- 10) Post office;
- 11) Recreational use
- 12) Restaurant;
- 13) Retail store;
- 14) Hospital;
- 15) Library;
- 16) Museum.
- 17) Dwelling Unit

6.10.3. Provisions

Performance Standard	Requirement	
	Central Services	Partial or Private Services

Minimum Lot Area	690 sq.m (7427.1 sq.ft)	As per Appendix A
Minimum Lot Width	22 metres (72.2 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	3 metres (9.8 ft.)	3 metres (9.8 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.10.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.11. Institutional Zone (I)

6.11.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Institutional Zone (I) shall comply with the provisions of this section.
- 2) The Institutional Zone (I) is intended to:
 - a) Permit a range of institutional uses to create and support complete communities; and
 - b) Regulate development in a manner that is compatible with surrounding land uses.

6.11.2. Permitted Uses

- 1) Business or professional office;
- 2) Community centre;
- 3) Day care facility;
- 4) Library;
- 5) Museum;
- 6) Place of assembly;
- 7) Place of worship;
- 8) Park; and 9) School.

6.11.3. Provisions

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	1,000 sq.m (10763.9 sq.ft)	As per Appendix A
Minimum Lot Width	30 metres (98.4 ft.)	
Maximum Building Height	15 metres (49.2 ft.)	14 metres (45.9 ft.)
Minimum Front Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.11.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.12. Light Industrial Zone (LI)

6.12.1. General

- 1) Except as provided in this Bylaw, all development and land use in the LI Zone shall comply with the provisions of this section.
- 2) The Light Industrial Use Zone is intended to:
 - a) Permit light industrial uses to support economic activities in Three Rivers; and
 - b) Regulate development in a manner that is compatible with surrounding land uses.

6.12.2. Permitted Uses

- 1) Auction establishment;
- 2) Automobile body shop;
- 3) Contractor's shop or yard;
- 4) Kennel;
- 5) Recycling facility;
- 6) Warehouse.

6.12.3. Provisions

- 1) Where an Industrial Zone abuts a non-Industrial Zone, one of the following shall be provided along the abutting property line:
 - a) A landscaped buffer strip with a minimum width of 3 metres (9.84 ft.).
- 2) Where outdoor display, outdoor storage, or garbage collection bins are permitted on a lot:
 - a) The outdoor display, outdoor storage, or garbage collection bins shall not be permitted within a required front yard of a lot;
 - b) The area devoted to outdoor display, outdoor storage, or garbage collection bins shall not exceed 50 percent of the lot area; and
 - c) All garbage collection bins associated with the industrial use shall be screened by an opaque fence with a minimum height of 1.8 metres (5.9 ft.).

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	1,115 sq.m (12001.8 sq.ft)	As per Appendix A

Minimum Lot Width	30 metres (98.4 sq.ft)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	Abutting an LI or HI zone: 4.5 metres (14.8 ft.) All other cases: 7.5 metres (24.6 ft.)	4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	7.5 metres (14.8 ft)	7.5 metres (24.6 ft)

6.12.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.13. Heavy Industrial Zone (HI)

6.13.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Heavy Industrial (HI) Zone shall comply with the provisions of this section.
- 2) The Heavy Industrial Zone (HI) is intended to:
 - a) Permit heavy industrial uses to support economic activities in Three Rivers;
 - b) Restrict heavy industrial uses to the HI zone to protect public health and safety; and
 - c) Regulate development in a manner that is compatible with surrounding land uses.

6.13.2. Permitted Uses

- 1) Auction establishment;
- 2) Automobile body shop;
- 3) Contractor's shop or yard;
- 4) Heavy industrial use;
- 5) Kennel;
- 6) Recycling facility;
- 7) Warehouse.

6.13.3. Provisions

- 1) Where a Heavy Industrial (HI) Zone abuts a non-Industrial Zone, one of the following shall be provided along the abutting property line:
 - a) An opaque fence with a minimum height of 1.8 metres (5.9 ft.); or
 - b) A landscaped buffer strip with a minimum height of 1.8 metres (5.9 ft.) and a minimum width of 3 metres (9.84 ft.).
- 2) Where outdoor display, outdoor storage, or garbage collection bins are permitted on a lot:
 - a) The outdoor display, outdoor storage, or garbage collection bins shall not be permitted within a required front yard of a lot;
 - b) The area devoted to outdoor display, outdoor storage, or garbage collection bins shall not exceed 50 percent of the lot area; and
 - c) The area devoted to garbage collection bins associated with the industrial use shall be screened by an opaque fence with a minimum height of 1.8 metres (5.9 ft.).

- 3) Parking spaces shall not be permitted within 6 metres of a side or rear lot line that abuts a non-industrial zone.

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	1,115 sq.m (12001.8 sq.ft)	As per Appendix A
Minimum Lot Width	30 metres (98.4 ft.)	
Maximum Building Height	11 metres (36.1 ft.)	11 metres (36.1 ft.)
Minimum Front Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	Abutting an LI or HI zone: 4.5 metres (14.8 ft.) All other cases: 7.5 metres (24.6 ft.)	4.5 metres (14.8 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.13.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.14. Resource Extraction Zone (RE)

6.14.1. General

- 1) Except as provided in this Bylaw, all development and land use in the RE Zone shall comply with the provisions of this section.
- 2) The Resource Extraction (RE) Zone is intended to:
 - a) Permit resource extraction uses to support economic activities in Three Rivers;
 - b) Restrict resource extraction uses to the Resource Extraction (RE) to protect public health and safety; and
 - c) Regulate development in a manner that is compatible with surrounding land uses.

6.14.2. Permitted Uses 1)

Excavation pit.

6.14.3. Provisions

Performance Standard	Requirement
Minimum Lot Area	As per Appendix A
Minimum Lot Width	
Maximum Building Height	11 metres (36.1 ft.)
Minimum Front Yard Setback	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	7.5 metres (24.6 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)

6.14.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.15. Parks and Open Space Zone (OS)

6.15.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Parks and Open Space Zone (OS) shall comply with the provisions of this section.
- 2) The Parks and Open Space Zone (OS) is intended to:
 - a) Reserve land in Three Rivers for recreation and amenity purposes;

- b) Identify lands for marinas and wharfs associated water-based recreation and economic activities ;
- c) Regulate development in a manner that is compatible with surrounding land uses.

6.15.2. Permitted Uses

- 1) Community garden;
- 2) Farmer's market;
- 3) Marina;
- 4) Marine facility;
- 5) Open space;
- 6) Park; and
- 7) Recreational use.

6.15.3. Provisions

Performance Standard	Requirement	
	Central Services	Partial or Private Services
Minimum Lot Area	No minimum	As per Appendix A
Minimum Lot Width	No minimum	
Maximum Building Height	11 metres (36.1 ft.)	
Minimum Front Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Flankage Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Interior Side Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)
Minimum Rear Yard Setback	7.5 metres (24.6 ft.)	7.5 metres (24.6 ft.)

6.15.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

6.16. Environmental Protection Zone (EP)

6.16.1. General

- 1) Except as provided in this Bylaw, all development and land use in the Environmental Protection Zone (EP) shall comply with the provisions of this section.
- 2) The Environmental Protection Zone (EP) is intended to:
 - a) Reserve land in Three Rivers for the protection of sensitive environmental features;
 - b) Preserve visual amenity in the Town of Three Rivers.

6.16.2. Permitted Uses

- 1) Conservation-related uses; and
- 2) Passive recreational uses.

6.16.3. Provisions

Performance Standard	Requirement
	Partial or Private Services
Minimum Lot Area	As per Appendix A
Minimum Lot Width	

6.16.4. Special Permit Use

- 1) Where a special permit use is proposed it shall be subject to the approval of Council and any conditions imposed.

7. General Provisions for Subdividing Land

7.1. Subdivision Approval

- 1) No person shall engage in the subdivision of land unless the proposed development is compliant with the provisions of this Bylaw.

7.2. Conveying Interest in a Lot

- 1) No person shall sell or convey any interest in a lot in a subdivision before the Development Officer has issued approval for the subdivision in which the lot is situated.

7.3. Permission to Subdivide

- 1) No person shall subdivide land unless the subdivision:

- a) Complies with the requirements of this Bylaw;
- b) Is suitable to the topography, physical conditions, soil characteristics, and natural and surface drainage of the land;
- c) Will not cause undue flooding or erosion;
- d) Has convenient access to a road;
- e) Has adequate utilities and services available or can be conveniently provided with such utilities and services;
- f) Is designed so that lots will have suitable dimensions, shapes, orientation and accessibility;
- g) Is suitable to the use for which it is intended for the future use of adjacent lands; and

7.4. Subdivision Procedure

- 1) Any person seeking approval of a subdivision shall first make application for preliminary approval to the Development Officer and shall be required to submit, along with the application, one copy of a preliminary subdivision plan, drawn to scale, showing:
 - a) The true shape and dimensions of every lot;
 - b) The location of every existing building or structure on the parcel;
 - c) Existing and proposed services and utilities;
 - d) Proposed widths and locations of all streets;
 - e) Location of land proposed for recreation and public open space use; and
 - f) The existing use of the land and all immediately adjacent properties, showing buildings, fields, streams, rivers, swamps, wooded areas and areas subject to flooding or erosion.
- 2) Applicants of approved subdivisions shall be required to register perimeter deeds with the Provincial Registrar of Deeds.

7.5. Servicing

- 1) All proposed lots to be subdivided shall have the capacity to be serviced by central or private water and sanitary services.
- 2) Notwithstanding provision (1), where a subdivision creates a lot on which development is prohibited, including by not limited to environmental preservation areas, setback buffers, and open spaces, the lot need not have the capacity to be serviced by central or private water and sanitary services.

7.6. Highways and Roads

7.6.1. General

- 1) All lots created through a subdivision shall have frontage on a public road.

- 2) Notwithstanding provision (1), a lot that fronts onto a private road shall be deemed to have frontage on a street, provided the private road was legally established and is governed in accordance with an agreement registered in the Provincial Registrar of Deeds.
- 3) New private roads shall be permitted where all lots serviced by the private road accommodate one of the following uses:
 - a) Commercial rental cottages;
 - b) Farm buildings;
 - c) Seasonal commercial and residential uses related to tourism;
 - d) Single family dwellings; and
 - e) Wind energy conversion system development.
- 4) Where a private road is proposed through a subdivision, the private road shall be designed to provincial standards, with the exception of finished pavement.
- 5) Notwithstanding provision (4), subdivisions containing 21 or more lots established after March 21, 2009 shall be serviced by public roads regardless of land use.
- 6) All development shall comply with the requirements of the Roads Act R.S.P.E.I. 1988, R15, including the requirement of Entrance Permits, as applicable.

7.6.2. Subdivisions Along Collector Highways

- 8) Where an existing lot which abuts, and requires access to, a collector highway classified under the Roads Act R.S.P.E.I. 1988, R-15 is proposed to be subdivided:
 - a) A lot with less than 402.3 metres (4330.3 sq.ft) of frontage on the collector highway may only be subdivided to create one new lot in addition to the retained lot;
 - b) A lot with more than 402.3 metres (4330.3 sq.ft) of frontage on the collector highway may be subdivided to create a maximum of one new lot for every 201 metres of frontage along the collector highway.
- 9) Notwithstanding provision (8), where the proposed lot contains an existing farm dwelling served by an existing highway access, one additional lot may be created in addition to the allowances in provision (9).
- 10) Where an additional lot is created under provision (9), no dwelling unit may be developed on the remainder of the subdivided parcel.

7.7. Subdivisions Along Shorelines

- 1) Where a subdivision is proposed along a shoreline, the subdivision may include a right of-way easement to be dedicated to the Town of Three Rivers to provide public pedestrian access to the shoreline.

7.8. Parkland Dedication

- 1) For subdivisions creating six or more lots, up to 10 percent of the lands being subdivided may be conveyed to the Town for the purposes of parkland. The parkland dedication

requirement may alternatively be established and therein maintained through the creation of a homeowner's association, which shall assume ownership at a point to be determined by the Council. The physical condition and location of the land shall, in the opinion of Council, be suitable for use as parkland and shall include at least 1.8 metres (5.9 ft.) of frontage on approved street.

- 2) Where Council deems a dedication of land is not appropriate or the exercising of the conveyance, or establishment through a homeowner's association is not appropriate, Council may impose a parkland dedication fee up to 10 percent of the fair market value of the lands being subdivided. The sum shall be specifically designated for the purchase, development, or maintenance of public parklands in the Town. The parkland dedication fee shall be calculated on the value of the lands being subdivided at the time of application and shall not account for the value of structures on the lands.

7.9. Subdivision Agreement

- 1) The Town may require applicants of a subdivision to enter into a Subdivision Agreement as a condition of subdivision approval. The Subdivision Agreement may cover any matters as required by the Development Officer and/or Council and may include, but not be limited to the following:
 - a) Design and construction costs of sidewalks, water supply, sanitary and storm sewers, roads, and street lighting;
 - b) Dedication of land for recreation and public open space purposes, or payment of a fee in lieu of land;
 - c) Deeding of roads to the Department of Transportation and Public Works;
 - d) Posting of a financial guarantee satisfactory to Council;
 - e) Provision of a controlled landscape plan and stormwater management plan to facilitate the drainage of water and to guard against flooding of lots within the subdivision and adjacent properties;
 - f) Provision of such services, facilities or actions as are necessary to ensure the satisfactory development of the subdivision;
 - g) Provision for the phasing of the subdivision; and
 - h) Preservation and enhancement of surface water drainage systems.

7.10. Final Approval

- 1) Final subdivision approval shall be granted by Development Officer only where the developer has complied with all applicable requirements of this Bylaw and has submitted five copies of a final subdivision plan showing all lots pinned and certified by a surveyor registered to practice in Prince Edward Island.
- 2) The Development Officer may grant final approval to part of a subdivision that is proposed to be developed in phases.

- 3) The Development Officer shall give notice of final approval of a subdivision in writing and shall place the Town's seal on the five copies of the subdivision plan and shall return one copy to the applicant.
- 4) The Development Officer shall file a copy of the final subdivision plan with:
 - a) The Registrar of Deeds;
 - b) The Department of Transportation and Infrastructure; and
 - c) Council files.

8. Parking Requirements

8.1. Parking Requirements

- 1) For every building or structure to be erected or enlarged, off-street parking having unobstructed access to a public street shall be provided and maintained in conformity with the following schedule:

Type of Use	Number of Parking Spaces	Loading Area
Residential	1.5 per dwelling unit (minimum of 2)	n/a
Auditorium, theatre, church or hall	1 per 4 seats	n/a
Hotel, motel, or tourist home	1 per guest room	n/a
Restaurants (including take outs)	1 per 100 sq.ft (9.3 sq.m) minimum of 10	n/a
Business and professional offices	1 per 300 sq.ft (27.9 sq.m) of floor area	n/a
Warehouse and storage facilities and other industrial uses	1 per employee	1 per loading bay
Other Commercial Uses	1 per 300 sq.ft (27.9 sq.m) of floor area	
Other Institutional or Recreation Uses	1 per 400 sq.ft (37.2 sq.m) of floor area	n/a
Other industrial uses	1 per employee	1 per loading bay

8.2. Loading Zones

- 1) One loading space shall be provided for every 929 sq.m (9999.7 sq.ft) of commercial, industrial or institutional floor space.

- 2) A loading space may be required for any building less than 185.8 sq.m (2000 sq.ft).
- 3) A loading space may be located wholly or partly within a building or structure.
- 4) A loading space shall be:
 - a) A minimum of 3.6 metres (11.8 ft.) by 9.2 metres (30.2 ft.), with a vertical clearance of 4.6 metres (15 ft.).
 - b) Constructed with a stable surface that is treated to prevent the raising of dust or loose particles; and
 - c) Have access to a street by means of a driveway with a minimum width of 3.6 metres (11.8 ft.) for one-way traffic and 7.2 metres (23.6 ft.) for two-way traffic.

8.3. Parking Lot Standards

- 1) Where a parking lot for more than four spaces is to be constructed:
 - a) the parking lot shall be constructed with a stable surface that is treated to prevent the raising of dust or loose particles;
 - b) any lighting used to illuminate the parking lot shall be diverted away from streets, adjoining lots and buildings;
 - c) a building not more than 4.6 metres (15.1 ft.) in height and not larger than 4.6 sq.m (49.5 sq.ft) in area may be erected for use of permanent attendants;
 - d) where a permanent hard surface is used, each parking space shall be marked;
 - e) the number of driveways accessing a lot shall not exceed two from any one street;
 - f) a driveway accessing a parking lot shall have a minimum width of 7.6 metres (24.9 ft.); and
 - g) parking lots which abut residential uses shall be screened by landscape buffers, fences or a combination thereof.
- 2) In addition to the parking requirements in this Bylaw, where off-street parking is provided on the same lot as the associated building, accessible parking shall be provided at a rate of one accessible space per 100 parking spaces, or part thereof.
- 3) Where an accessible parking space is provided, the space shall be 3.6 metres (11.8 ft.) wide and shall be located a maximum distance of 45 metres (147.6 ft.) from the accessible building entrance.

9. Signage

9.1. General

- 1) Except where otherwise exempted in this Bylaw, no person shall erect a sign without first obtaining a Development Permit from the Development Officer.

- 2) No Development Permit to erect a sign shall be issued unless all sign provisions of this Bylaw are satisfied.
- 3) An indoor sign shall not be considered a sign for the purpose of this Bylaw unless it is intended to be viewed from outside the building.

9.2. Maintenance

- 1) Every sign shall be kept clean, in good repair and working order.
- 2) If the business, service or other enterprise for which a sign is erected is no longer in operation, the sign shall be removed by the owner within 60 days of the date the operations cease. Removal of a sign includes the support structure or apparatus to which it is attached.
- 3) Provision (2) shall not apply to a seasonal enterprise that normally closes during part of the year.

9.3. Number of Signs

- 1) A sign with two or more faces, including a projecting sign or a ground sign, shall be classified as one sign.
- 2) No more than three signs, other than wall signs, may be erected on a lot unless otherwise approved by the development officer.
- 3) Where there are more than two businesses on a lot, there may be one directory sign per lot and independent signs shall be permitted for each business.
- 4) The maximum size of a directory sign shall not exceed 19 sq.m (204.5 sq.ft).

9.4. Signs Permitted in All Zones

- 1) The following signs shall be permitted in all zones and no Development Permit shall be required:
 - a) Signs identifying the name and address of a resident, provided the sign does not exceed 0.4 sq.m (4.3 sq.ft) in area;
 - b) Signs for regulating the use of a property, including "No Trespassing" signs, provided that the sign does not exceed 0.4 sq.m (4.3 sq.ft) in area;
 - c) Real estate signs that advertise the sale, rental or lease of the premises for the duration of the marketing period;
 - d) On-premises directional or traffic control signs, provided that the sign does not exceed 0.4 sq.m (4.3 sq.ft) in area;
 - e) Signs erected by a government body or under the direction of a government body;
 - f) Memorial signs or tablets;
 - g) Community identification signs;

- h) The flag, pennant or insignia of any government, religious, charitable or fraternal organization;
- i) Temporary election signs;
- j) Temporary signs advertising a construction firm on the lot where the construction is occurring, provided the sign does not exceed 3 sq.m (32.3 sq.ft) in a residential zone or 6 sq.m (64.6 sq.ft) in all other zones.
- k) Identification signs for a place of worship; and
- l) Temporary signs that comprise part of a seasonal or holiday decorative display, provided the sign is not displayed for a period exceeding 60 days.
- m) Pesticide and insecticide spraying warning signage.
- n) A sign erected on a vehicle or trailer, parked on public or private property so as to be visible from a street, for the sole purpose of advertising products or directing people to a business or activity located on the same or nearby property.

9.5. Signs Prohibited in All Zones

- 1) The following signs are not permitted in any zone:
 - a) Signs that incorporate flashing illumination or moving parts;
 - b) Roof signs;
 - c) Any sign or sign structure that is or could be a safety hazard;
 - d) Any sign that obstructs or detracts from the visibility or effectiveness of any traffic sign or control device;
 - e) Any sign that obstructs the free egress from any fire exit door, window, or other required exit way;
 - f) Any sign not erected by a public authority that makes use of words such as "Stop," "Look," "One Way," "Danger," "Yield," or any similar word, phrase, symbol, light or character in such manner as to mislead or confuse the traffic along a street;
 - g) Any sign erected upon a public property or a public right-of-way, unless erected by a public authority or authorized by a public authority;
 - h) Signs painted on, attached to, or supported by a tree, stone cliff, or other natural object; with the exception of civic address;
 - i) Balloon or gas-filled figure or signs;
 - j) Signs not related to any business or use located on the lot or premises unless otherwise approved by the development officer.
 - k) Signs displaying obscene content.

9.6. Wall Signs

- 1) No wall signs shall exceed above the top or beyond the sides of the wall to which it is affixed.

9.7. Projecting Signs

- 1) Projecting signs shall:
 - a) Not have a sign face larger than 1 square metre (10.8 sq.ft).
 - b) Not project further than 1 metre (10.8 sq.ft) from the wall to which it is affixed;
 - c) Not project above the wall to which it is affixed;
 - d) Not extend beyond the property line of the property on which it is erected;
 - e) Not swing freely on its support; and
 - f) Be erected not lower than 2 metres (6.6 ft.) and not higher than 5 metres (16.4 ft.) above the ground.

9.8. Ground Signs

- 1) Ground signs shall:
 - a) Not exceed 12 metres (39.4 ft.) in height;
 - b) Not have a sign face larger than 5 sq.m (53.8 sq.ft); and
 - c) Not extend beyond the property line of the property on which it is erected.

9.9. Mobile Signs

- 1) Mobile signs shall be permitted subject to the following:
 - a) Sandwich board signs shall be limited to Mixed Use (MU), Highway Commercial (HC), or Rural Zones (RU);
 - b) No more than one mobile sign is permitted on a lot;
 - c) The mobile sign shall be removed after 30 consecutive days unless otherwise permitted by the development officer;
 - d) The mobile sign has no moving parts or flashing or unshielded lights; and
 - e) The sign does not exceed 6 sq.m (64.6 sq.ft) in size.

9.10. Canopies or Awnings

- 1) Signs incorporated in a canopy or awning shall be permitted.

9.11. Sandwich Board Signs

- 1) Sandwich board signs shall be permitted subject to the following:

- a) Sandwich board signs shall be affixed securely in place.
- b) Sign faces shall not exceed 1 square metre (10.8 sq.ft) in area;
- c) One sandwich board sign shall be permitted per business on a lot; and
- d) Sandwich board signs shall not obstruct pedestrian or vehicular traffic.

9.12. Menu Signs

- 1) For commercial operations that operate a drive-through facility, menu boards shall be permitted in addition to all other signage, provided:
 - a) The menu board does not exceed 2 sq.m (21.5 sq.ft) in area;
 - b) The menu board is positioned so that lighting does not project on neighbouring properties or street rights-of-way; and
 - c) The menu board complies with setback requirements in the applicable zone.

9.13. Signs in Sports Fields and Outdoor Arenas

- 1) Notwithstanding the provisions of this section, any number of signs may be erected in a sports field or outdoor arena, provided the signs are intended for view from within the sports field or outdoor arena.

10. Repeal

10.1. Repeal

- 1) The Brudenell Zoning Bylaw 2019-06, all previous versions, and all amendment thereto are hereby repealed.
- 2) The Town of Georgetown Zoning & Subdivision Control (Development) Bylaw, 2018, all previous versions, and all amendments thereto are hereby repealed.
- 3) The Community of Lower Montague Zoning and Subdivision Control Bylaw, all previous versions, and all amendments thereto are hereby repealed.
- 4) The Town of Montague Zoning Bylaw, 2017, all previous versions, and all amendments thereto are hereby repealed.
- 5) The Town of Montague Subdivision Bylaw, 2008, all previous versions, and all amendments thereto are hereby repealed.

Zoning Schedules

- Schedule A - Land Use and Road Network (Key Map)
- Schedule A1 – Montague Settlement Area
- Schedule A2 – Georgetown Settlement Area
- Schedule A3 – Cardigan Settlement Area
- Schedule A4 – Poole's Corner Settlement Area

Appendix A: Minimum Lot Area and Lot Width Requirements for Lots on Partial or Private Services

Categories of Lots

Every lot on a plan of subdivision shall be categorized in accordance with the following site suitability standards:

a) Category I, where

- i. The depth of permeable natural soil is 2 ft.. (0.61 m) or greater, ii. The depth to bedrock is 4 ft.. (1.22 m) or greater, and
- iii. The depth to the maximum groundwater elevation is 4 ft.. (1.22 m) or greater;

b) Category II, where

- i. The depth of permeable natural soil is greater than 1 ft.. (0.3 m), but less than 2 ft.. (0.61 m), ii. The depth to bedrock is 4ft.. (1.22 m) or greater, and
- iii. The depth to the maximum groundwater elevation is 4 ft.. (1.22 m), or greater;

c) Category III, where

- i. The depth of permeable natural soil is 1 ft.. (0.3 m) or greater, ii. The depth to bedrock is 2 ft.. (0.61 m) or greater, but less than 4 ft.. (1.22 m), or
- iii. The depth to the maximum groundwater elevation is 2 ft.. (0.61 m) or greater, but less than 4 ft.. (1.22 m);

d) Category IV, where

- i. The lot has a depth of permeable natural soil of less than 1 ft.. (0.3 m),
- ii. The depth to bedrock is greater than 1 ft.. (0.3 m), and
- iii. The depth of the maximum groundwater elevation is greater than 2 ft..

(0.61 m); e) Category V, where

- i. The depth to bedrock is less than 1 ft.. (0.3 m), and
- ii. The depth to the maximum ground water elevation is greater than 2 ft.. (0.61 m).

Table A1 – Minimum Lot Size Standards – Residential Lots

(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Number of Dwelling Units	(e) Minimum Lot Area sq.ft.. / sq.m.	(f) Minimum Circle Diameter to be Contained Within the Boundaries of the Lots – feet / metres
On-site water supply and on-site sewage disposal system	I	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	1 2 3 4 More than 4	25,000 sq.ft.. / 2,322.5 sq.m. 30,000 sq.ft.. / 2,787 sq.m. 35,000 sq.ft.. / 3,251.5 sq.m. 40,000 sq.ft.. / 3,717 sq.m. 40,000 sq.ft.. / 3,717 sq.m., plus 1,500 sq.ft.. / 457 sq.m. for each additional unit	150 ft.. / 45.7 m 160 ft.. / 48.8 m 175 ft.. / 53.3 m 200 ft.. / 61 m 200 ft.. / 61 m
On-site water supply and on-site sewage disposal system	II	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	1 2 3 4 More than 4	35,000 sq.ft.. / 3,251.5 sq.m. 40,000 sq.ft.. / 3,717 sq.m. 45,000 sq.ft.. / 4,180.5 sq.m. 50,000 sq.ft.. / 4,645 sq.m. 50,000 sq.ft.. / 4,645 sq.m., plus 1,500 sq.ft.. / 457 sq.m. for each additional unit	175 ft.. / 53.3 m. 200 ft.. / 61 m. 225 ft.. / 68.6 m. 250 ft.. / 76.2 m. 250 ft.. / 76.2 m.

(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Number of Dwelling Units	(e) Minimum Lot Area sq.ft.. / sq.m.	(f) Minimum Circle Diameter to be Contained Within the Boundaries of the Lots – feet / metres
On-site water supply and on-site sewage disposal system	III	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	1 2 3 4 More than 4	51,000 sq. ft.. / 4,738 sq. m. 56,000 sq. ft.. / 5,202 sq. m. 61,000 sq. ft.. / 5,667 sq. m. 66,000 sq. ft.. / 6,131 sq. m. 66,000 sq. ft.. / 6,131 sq. m., plus 1,500 sq. ft.. / 457 sq. m. for each additional unit	225 ft.. / 68.6 m. 250 ft.. / 76.2 m. 275 ft.. / 83.8 m. 300 ft.. / 91.4 m. 300 ft.. / 91.4 m.
On-site water supply and on-site sewage system	IV	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	1 2 3 4 More than 4	75,000 sq.ft.. / 6,975 sq.m. 80,000 sq.ft.. / 7,440 sq.m. 85,000 sq.ft.. / 7,905 sq.m. 90,000 sq.ft.. / 8,370 sq.m. 90,000 sq.ft.. / 8,370 sq.m., plus 1,500 sq.ft.. / 457 sq.m. for each additional unit	300 ft.. / 91.4 m.

On-site water supply and on-site sewage system	V	N/A	N/A	Not developable	N/A

(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Number of Dwelling Units	(e) Minimum Lot Area sq.ft. / sq.m.	(f) Minimum Circle Diameter to be Contained Within the Boundaries of the Lots – feet / metres
Central water supply and on-site sewage disposal system	I	50 feet / 15.25 m	1 2 3 4 More than 4	20,000 sq. ft. / 1,858 sq. m. 25,000 sq. ft. / 2,322.5 sq. m. 30,000 sq. ft. / 2,787 sq. m. 35,000 sq. ft. / 3,251.5 sq. m. 35,000 sq. ft. / 3,251 sq. m., plus 1,500 sq. ft. / 457 sq. m. for each additional unit	125 ft. / 38.1 m. 150 ft. / 45.7 m. 160 ft. / 48.8 m. 175 ft. / 53.3 m. 175 ft. / 53.3 m.

Central water supply and on-site sewage disposal system	II	50 feet / 15.25 m	1	25,000 sq. ft. / 2,322.5 sq. m.	150 ft. / 45.7 m.
			2	30,000 sq. ft. / 2,787 sq. m.	160 ft. / 48.8 m.
			3	35,000 sq. ft. / 3,251.5 sq. m.	175 ft. / 53.3 m.
			4	40,000 sq. ft. / 3,717 sq. m.	200 ft. / 61 m.
			More than 4	40,000 sq. ft. / 3,717 sq. m., plus 1,500 sq. ft. / 457 sq. m. for each additional unit	200 ft. / 61 m.

(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Number of Dwelling Units	(e) Minimum Lot Area sq.ft. / sq.m.	(f) Minimum Circle Diameter to be Contained Within the Boundaries of the Lots – feet / metres
Central water supply and on-site sewage disposal system	III	50 feet / 15.25 m	1	40,000 sq. ft. / 3,717 sq. m.	200 ft. / 61 m.
			2	45,000 sq. ft. / 4,180.5 sq. m.	225 ft. / 68.6 m.
			3	50,000 sq. ft. / 4,645 sq. m.	250 ft. / 76.2 m.
			4	55,000 sq. ft. / 5,110 sq. m.	275 ft. / 83.8 m.
			More than 4	55,000 sq. ft. / 5,110 sq. m., plus 1,500 sq. ft. / 457 sq. m. for each additional unit	275 ft. / 83.8 m.

Central water supply and on-site sewage disposal system	IV	50 feet / 15.25 m	1 2 3 4 More than 4	60,000 sq. ft. / 5,580 sq. m. 65,000 sq. ft. / 6,450.5 sq. m. 70,000 sq. ft. / 6,510 sq. m. 75,000 sq. ft. / 6,975 sq. m. 75,000 sq. ft. / 6,975 sq. m., plus 1,500 sq. ft. / 457 sq. m. for each additional unit	275 ft. / 83.8 m.
Central water supply and on-site sewage disposal system	V	N/A	N/A	Not developable	N/A
(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Number of Dwelling Units	(e) Minimum Lot Area sq.ft. / sq.m.	(f) Minimum Circle Diameter to be Contained Within the Boundaries of the Lots – feet / metres
On-site water supply and central waste treatment system	I or II	50 feet / 15.25 metres	1 2 3 4 More than 4	15,000 sq. ft. / 1,393.5 sq. m. 20,000 sq. ft. / 1,858 sq. m. 25,000 sq. ft. / 2,322.5 sq. m. 30,000 sq. ft. / 2,787 sq. m. 30,000 sq. ft. / 2,787 sq. m., plus 1,500 sq. ft. / 457 sq. m. for each additional unit	100 ft. / 30.5 m. 125 ft. / 38.1 m. 150 ft. / 45.7 m. 160 ft. / 48.8 m. 160 ft. / 48.8 m.

On-site water supply and central waste treatment system	III	50 feet / 15.25 metres	1	20,000 sq. ft. / 1,858 sq. m.	125 ft. / 38.1 m.
			2	25,000 sq. ft. / 2,322.5 sq. m.	150 ft. / 45.7 m.
			3	30,000 sq. ft. / 2,787 sq. m.	160 ft. / 48.8 m.
			4	35,000 sq. ft. / 3,251.5 sq. m.	175 ft. / 53.3 m.
			More than 4	35,000 sq. ft. / 3,251.5 sq. m., plus 1,500 sq. ft. / 457 sq. m. for each additional unit	175 ft. / 53.3 m.

Table A2 – Minimum Lot Size Standards – Non-Residential Lots

(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Minimum Lot Area	(e) Minimum Circle Diameter to be Contained Within the Boundaries of the Lot – feet / metres
On-site water supply and on-site sewage disposal system	I	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	25,000 sq. ft. / 2,322.5 sq. m.	150 ft. / 45.7 m.

On-site water supply and on-site sewage disposal system	II	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	35,000 sq. ft. / 3,251.5 sq. m.	175 ft. / 53.3 m.
On-site water supply and on-site sewage disposal system	III	100 feet / 30.5 metres (or 50 feet / 15.25 metres, where the frontage is on the interior curve of a street)	51,000 sq. ft. / 4,738 sq. m.	225 ft. / 68.6 m.
Central water supply and on-site sewage disposal system	I	50 feet / 15.25 metres	20,000 sq. ft. / 1,858 sq. m.	125 ft. / 38.1 m.
(a) Servicing	(b) Lot Category	(c) Minimum Lot Frontage	(d) Minimum Lot Area	(e) Minimum Circle Diameter to be Contained Within the Boundaries of the Lot – feet / metres

Central water supply and on-site sewage disposal system	II	50 feet / 15.25 metres	25,000 sq. ft. / 2,322.5 sq. m.	150 ft. / 45.7 m.
Central water supply and on-site sewage disposal system	III	50 feet / 15.25 metres	35,000 sq. ft. / 3,251.5 sq. m.	175 ft. / 53.3 m.
On-site water supply and central waste treatment system	I, II, or III	50 feet / 15.25 metres	15,000 sq. ft. / 1,393.5 sq. m.	100 ft. / 30.5 m.

Three Rivers Development Bylaw 2023-02

FIRST READING:

The Three Rivers Development Bylaw, Bylaw 2023-02, as amended March 23, 2023, was read a first time by a majority of the Councillors present at the Regular Council Meeting held on the 11th day of April, 2023.

The Three Rivers Development Bylaw, Bylaw 2023-02, as amended March 23, 2023, was approved by a majority of the Councillors present at the Regular Council Meeting held on the 11th day of April, 2023.

SECOND READING:

The Three Rivers Development Bylaw, Bylaw 2023-02, as amended March 23, 2023, was read a second time by a majority of the Councillors present at the Special Council Meeting held on the 24th day of April, 2023.

The Three Rivers Development Bylaw, Bylaw 2023-02, as amended March 23, 2023, was approved by a majority of the Councillors present at the Special Council Meeting held on the 24th day of April, 2023.

APPROVAL AND ADOPTION BY COUNCIL:

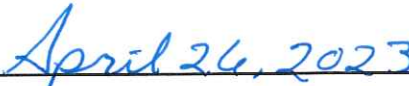
The Three Rivers Development Bylaw, Bylaw 2023-02, as amended March 23, 2023, was adopted by a majority of the Councillors present at the Council Meeting held on the 24th day of April, 2023.


Debbie Johnston, Mayor

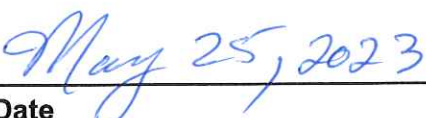

Dorothy Macdonald
Interim Chief Administrative Officer

This Development Bylaw adopted by the Council of the Town of Three Rivers on the 24th day of April, 2023 is certified to be a true copy.


Dorothy Macdonald
Interim Chief Administrative Officer


Date


Honourable Rob Lantz
Minister of Housing, Land and Communities


Date

Tab 3.



Date Issued: June 8, 2026
Docket: LA24010
Type: Planning Act Appeal

INDEXED AS: Judy Shaw v. Rural Municipality of West River
2026 PEIRAC 34 (CanLII)

Order No: LA26-09

BETWEEN:

Judy Shaw

Appellant

AND:

Rural Municipality of West River

Respondent

Sterling Buchanan

Developer

REASONS FOR DECISION

Panel Members:

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

Pamela J. Williams, K.C. Chair
Gordon MacFarlane, Commissioner
Murray MacPherson, Commissioner

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Appearances & Witnesses

1. For the Appellant, Judy Shaw:

Counsel:

Melanie McKenna, Cox & Palmer

Witnesses:

Judy Shaw

Chrystal Fuller, MCIP, LPP

2. For the Respondent, Rural Municipality of West River:

Counsel:

Curtis Doyle, Stewart McKelvey

Witness:

Susan Morse, CAO, Rural Municipality of West River

3. For the Developer, Sterling Buchanan:

Counsel:

Iain McCarvill, Key Murray Law

Witnesses:

Sterling Buchanan

Thayne Jenkins

1. INTRODUCTION

1. This is an appeal of the decision of the Rural Municipality of West River to adopt an amendment to the Municipality's 2022 Land Use Bylaw, Schedule A Zoning Map to rezone a 34-acre parcel of land on Shaw's Wharf Road (PID 818500) from the Rural Area (RA) zone to the Rural Residential (RR) zone. The Developer sought the rezoning in order to eventually subdivide the parcel into 13 residential lots.
2. The Appellant, Judy Shaw, has asked the Commission to overturn the approval of the rezoning on the basis of both procedural errors committed by the Municipality and the failure of the Municipality to consider sound planning principles. The Appellant's appeal raises issues of land use conflicts between her neighbouring farm land and the proposed residential development and the loss of agricultural land.

2. BACKGROUND

3. On September 21, 2023, the Developer applied to the Rural Municipality of West River (the "Municipality") to rezone his property located on Shaw's Wharf Road (PID 818500) (the "Subject Property"). The Subject Property is a 34-acre parcel presently zoned Rural Area (RA) and is used for farm land. The Developer sought to rezone the parcel to Rural Residential (RR) for the purpose of eventual subdivision of 13 lots for single-family dwellings, and maybe one duplex for his daughter (the "Rezoning Application").
4. The Subject Property borders the Appellant's property.
5. The requested zoning amendment also required a consequential amendment to the Municipality's Official Plan to amend the Future Land Use Map, which also designated the Subject Property as Rural Area.
6. On January 9, 2024, the Rezoning Application came before the Municipality's Planning Board for consideration. Planning Board unanimously recommended to Council that the application be authorized to proceed to a public meeting.
7. A public meeting was scheduled for February 29, 2024,¹ to seek public feedback on the Rezoning Application. Notice of the meeting was provided to nearby landowners and advertised The Guardian newspaper. A sign was also placed on the Subject Property directing interested people to contact the Municipality for specific details.
8. At the public meeting, the Municipality's development officer presented the Rezoning Application. Twenty people attended the public meeting to ask questions and give feedback on the proposal.
9. At the Municipality's Planning Board meeting on March 12, 2024, Planning Board recommended Council approve the Rezoning Application.
10. On March 19, 2024, the Rezoning Application was considered at Council's regular meeting. Council unanimously voted to amend the Official Plan. Council also unanimously

¹ The meeting had originally been scheduled for February 15, 2024, but was cancelled and rescheduled due to inclement weather.

voted in favour of the Zoning Map amendment, and read and approved the amendment for a first time. The rezoning amendment to the Land Use Bylaw Zoning Map was unanimously adopted at a regular Council meeting on April 25, 2024.

11. The Appellant appealed Council's decision to the Commission on May 15, 2024. The Appellant's Notice of Appeal raised concerns about the loss of prime agricultural land, environmental concerns and incompatibility of land uses, as examples.
12. The parties participated in mediation, facilitated by Commission staff, in November 2024. By May 2025, the parties had exhausted possible resolution discussions and agreed the matter would proceed to a public hearing. Due in part to difficulties scheduling the matter at a mutually agreeable date for all parties, the Commission eventually set the matter down for hearing on Tuesday, December 9, 2025.
13. On November 25, 2025, the Commission agreed to a request by Appellant's counsel to postpone the scheduled hearing, upon consent of the Municipality and Developer.
14. By agreement of the parties, the hearing was rescheduled to February 3, 2026, and the Commission heard the appeal at a public hearing on that date.

3. ISSUES

15. In keeping with the Commission's well-established two-part guideline, an appeal pursuant to the *Planning Act* raises two main questions for the Commission:
 - The first question is procedural and asks the Commission to determine whether the Municipality followed the proper procedure as required by its 2022 Land Use Bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness, in adopting the Zoning Map amendment; and
 - Second, the Commission must consider whether the decision made by the Municipality to adopt the Zoning Map amendment was made in accordance with the Municipality's Official Plan and 2022 Land Use Bylaw, and was based on sound planning principles.
16. The specific grounds of appeal raised under each part will be addressed in detail in the Analysis section of these reasons.

4. DISPOSITION

17. The appeal is dismissed. For the reasons that follow, the Commission is satisfied that the Municipality's decision to permit the Developer's Rezoning Application was procedurally fair and was consistent with the Land Use Bylaw, sound planning principles, and the Official Plan.

5. EVIDENCE

18. The Appellant submitted expert opinion evidence from Chrystal Fuller ("Fuller"), LPP, MCIP. Fuller is the Principal of Brighter Community Planning and Consulting in Windsor,

Nova Scotia, and prepared a report in respect of her opinion. Fuller also testified to the findings in her report at the hearing.

19. The Appellant also testified at the hearing, giving evidence with respect to her perspective as a neighbour of the Subject Property and the issues surrounding the process and procedures which led to the Municipality's decision to approve the Rezoning Application.
20. The Municipality's documentary evidence consisted of an Appeal Record, totalling over 300 pages and a Supplementary Appeal Record, totaling approximately 200 pages. The two appeal records included (but were not limited to): the Developer's permit application, agendas and minutes from Planning Board and Council meetings, and copies of the bylaws and resolutions approving the Rezoning Application (and associated Official Plan amendment).
21. At the hearing, the Municipality called one witness: the Municipality's CAO, Susan Morse.
22. The Developer testified personally at the hearing with respect his application to rezone the Subject Property, as well as his plans for the ultimate subdivision of the Subject Property. The Developer also called as a witness Thayne Jenkins ("Jenkins"), a professional land use planner. Jenkins has more than 30 years of experience as a professional planner, and was the Planning Officer at the City of Summerside until his retirement in January 2025. Jenkins prepared a report in respect of his opinion and testified to the findings in his report at the hearing.

6. ANALYSIS

23. As a preliminary matter, in November 2023, the *Planning Act* was amended to introduce a requirement that prospective appellants be "aggrieved persons" as defined by section 27.1 of the *Planning Act*. Neither the Municipality nor the Developer challenged the Appellant's standing as an aggrieved person. On the Commission's review of the Appellant's Notice of Appeal and accompanying submissions, the Commission was satisfied that the Appellant meets the standard of an "aggrieved person" and demonstrated that she, in good faith, believes this decision to allow the Rezoning Application will adversely affect the reasonable enjoyment of her property.

A. Authority and Guideline

24. It is well-established that appeals before the Commission pursuant to the *Planning Act* are heard *de novo*. Generally speaking, this means that the Commission is not limited to reviewing the record of the planning authority. Rather, the Commission may, as the context requires, review the record, receive new evidence, and entertain new legal arguments on appeal. When exercising its appellate authority under the *Planning Act*, the Commission considers a two-part guideline:²

- i. Whether the planning authority followed the proper procedure as required by its bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness; and

² See, for example: Order LA23-03, *New Homes Plus v. City of Charlottetown*, at para 34; Order LA22-07, *Landfest Company Ltd. v. Town of Stratford*, at para 32 [*Landfest*]; and Order LA17-02, *APM Construction Services Inc. v. Community of Brackley*, at para 21.

- ii. Whether the decision made by the planning authority has merit based on sound planning principles in the field of land use planning and as enumerated in its official plan and bylaw.

25. In any *Planning Act* appeal, after conducting this two-step analysis, the Commission determines whether to exercise its discretion to substitute its own decision for the decision made by the initial planning authority. The Commission has long held that it does not lightly interfere with decisions made by a planning authority.³ The Commission usually shows deference to planning decisions that are properly made, and will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the applicable official plan and bylaw, and sound planning principles.⁴

B. Procedural Issues

26. In this appeal, with respect to the first part of the Commission's two-part guideline, the Appellant submits that the Municipality acted arbitrarily and violated the duty of procedural fairness when assessing the Rezoning Application.

27. First, the Appellant submits that Council did not have the Rezoning Application reviewed by a planning professional prior to making its decision. Appellant's counsel submitted at the hearing that such a failure is not a standalone ground of appeal; however, nevertheless points out that this was a discretionary decision of Council, which the Commission has previously said should be subject to review by a professional planner.⁵ In the present case, the Appellant submits that the Municipality's development officer who was consulted before Council's decision was not a professional land use planner.

28. The Appellant also argues that Council did not consider specific, relevant sections of the Land Use Bylaw in their decision-making. The Appellant points to several sections of the Land Use Bylaw that require a zoning amendment to be consistent with the Official Plan (e.g. sections 12.1.2 and 12.3.4.a) and submits that there is no evidence before the Commission that either Planning Board or Council considered the Official Plan policies in coming to this decision.

29. Finally, the Appellant submits that the Council failed to provide sufficient reasons for its decision to rezone the Subject Property. The Appellant submits this is especially problematic given the feedback received at the public meeting and the written comments received from residents. As support for this ground of appeal, Appellant's counsel points to previous decisions of the Commission that have held that a council must provide thorough, cogent and thoughtful reasons – based on sound planning principles – to justify its decision when evaluating planning applications.⁶

³ *Landfest* at para 32.

⁴ Order LA18-02, *Queens County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41. [QCC No. 40]

⁵ See: Order LA17-06, *Stringer v. Minister of Communities, Land and Environment*, at para 64; and Order LA23-04, *Arsenault v. Minister of Agriculture and Land*, at paras 44-45.

⁶ Order LA23-05, *Deborah Dennis v. City of Charlottetown*, at para 50.

30. On the whole, the Appellant's position is that the evidence before the Commission is insufficient to demonstrate if and how Council carefully evaluated their decision to ensure it was based on sound planning principles. For these reasons, the Appellant submits that the decision was procedurally deficient and should be set aside.
31. In response, the Municipality has conceded that its documentary record in this matter was not perfect. However, they submit that according deference to the Municipality's decision is not an all or nothing proposition. Rather, the Municipality submits that the process followed by the Municipality was generally compliant with the Land Use Bylaw: public notice was given, a public meeting was held, Planning Board considered the Rezoning Application and made a recommendation to Council, and Council voted to adopt the rezoning. At the hearing, the Municipality's CAO, Susan Morse, took the Commission through the Appeal Record and Supplementary Appeal Record and a review of the documentary evidence and meeting agendas and minutes for each procedural step.
32. With respect to the reasons of Council, the Municipality agrees that its reasons on the record are insufficient to earn substantial deference from the Commission. However, the Municipality submits that this defect goes only to the question of deference, and not the substantive merits of the Rezoning Application. The Municipality submits that this kind of defect can be cured by a fair *de novo* hearing before the Commission.
33. The Municipality also submits that the Appellant's argument that the Municipality failed to consult a professional planner is without merit. The Municipality submits that, despite the Commission's precedent, there is no "mandatory" prescribed procedural step under the *Planning Act* for planning authorities to consult a professional planner. Further, the Municipality submits that a recognized professional accreditation does not equate to expertise. Rather, they submit that expertise may be developed by any combination of training, study and practical experience.⁷
34. For his part, with respect to the alleged procedural defects, the Developer submits that he applied for – and received – a rezoning amendment for his Subject Property after a fair and public process. He submits that the Appeal Record demonstrates that the Municipality's development officer, Planning Board and Council were all in favour of the Rezoning Application.
35. With respect to the procedural issues raised by the Appellant, the Commission dismisses these grounds of appeal. First, the Commission makes note that Fuller's report generally seems to comment positively on the process followed by the Municipality in assessing the Rezoning Application.
36. Next, the Commission acknowledges its past precedent and findings in orders LA17-06 and LA23-04 with respect to the expectation that planning authorities consult a planning professional, particularly when considering a discretionary land use application (such as a rezoning). However, the Commission has also recently commented in Order LA25-02 that a "professional planner" can be considered someone with education in the area of land use planning. Building off of this, the Commission agrees with the submission of Counsel for the Municipality that land use planning expertise may sometimes be developed by any combination of training, study and practical experience. The Commission takes note that this may be especially true in some smaller municipalities

⁷ In support of their position, the Municipality cites: *R v. Marquard*, [1993] 4 SCR 223, at p 243.

without dedicated resources for “professional” consultations. Further, the Commission notes that more complex applications or decisions may warrant more expertise, depending on the circumstances.

37. The Commission did not hear any specific evidence about the “expertise” of the development officer in this case; however, the Commission has reviewed the report prepared and provided to Planning Board. On a review of that report, it appears to the Commission that the development officer prepared a well thought out report that is grounded in the provisions of the Official Plan and Land Use Bylaw. The development officer appears to have reviewed the Rezoning Application through a planning lens and the report includes a table that identifies relevant criteria from both the Official Plan and Bylaw. The table includes direction to Planning Board about what criteria were consistent, inconsistent or required weighing. The report also includes a summary of the public feedback expressed at the public meeting. On the whole, the Commission is of the opinion that this report establishes that the Planning Board had a planning consultation before them when making their recommendation to Council.
38. Finally, with respect to the reasons of Council to approve the Rezoning Application, the Commission is satisfied that the record as a whole demonstrates why Council approved the application. Appellant’s Counsel is correct that the Commission has articulated many times what it expects from municipal councils in respect of sufficient reasons. In this case, the Municipality does not have verbatim minutes to review and consider. However, the Commission has said in the past that the record as a whole can be considered when determining whether reasons are sufficient.⁸ In this case, Council adopted the recommendation of Planning Board, and Planning Board’s decision was consistent with the development officer’s recommendation in his report. The record includes the meeting packages and minutes of the public meeting, Planning Board meeting, and Council meeting where the Rezoning Application was considered. The Municipality’s CAO, Morse, testified that all members of Council are also members of the Planning Board. The Commission notes that four members of Council were present at the public meeting to hear the feedback of residents.
39. In conclusion, on a review of the record as a whole, the Commission is not satisfied that the Municipality’s reasons are insufficient to a degree that the decision should be overturned. This Commission does not give effect to this ground of appeal.

C. Sound Planning Principles

40. The second consideration in the Commission’s two-step guideline asks whether the decision made by Council has merit based on sound planning principles in the area of land use planning and as enumerated in the Official Plan and Land Use Bylaw. In order to uphold the decision on appeal, it well-settled that the Commission must be satisfied that the final decision made by Council was animated by sound planning principles.

i. Appellant’s position

41. The Appellant submits that the Municipality’s decision must fail the second step of the Commission’s two-part test because it was not made in accordance with sound planning principles, or the Municipality’s Land Use Bylaw or Official Plan.

⁸ See, for example, LA17-08 *Pine Cone Developments Inc. v. City of Charlottetown*, at para 60.

42. The Appellant's property borders the Subject Property. At the hearing, she testified that her land is currently farmed by two different farmers, one being the Developer himself, Sterling Buchanan. The upper portion of the Appellant's property is rotated between grain and forage hay, while the Developer farms the lower portion (that borders the Subject Property) on a 3-year potato rotation. The Appellant testified that she feels very strongly about agriculture in Prince Edward Island and is concerned about the loss of valuable agriculture land to residential developments. The Appellant is also concerned that a residential subdivision next door to her farm property will impact her right to farm "without harassment". She said she is aware of the issues that can arise when people live beside farm fields, and she is concerned about the incompatibility of those two land uses.
43. With respect to the Rezoning Application, the Appellant submits that sections 12.1.2 and 12.3.4 of the Land Use Bylaw both require that amendments to the Zoning Map must be consistent with the Official Plan. The Appellant submits that the decision to approve the Rezoning Application is inconsistent with many policies in the Official Plan and, therefore, inconsistent with the Land Use Bylaw. In particular, the Appellant submits that the Official Plan policies and objectives, which include the desire for the Municipality to protect the long-term viability of farming, retain the rural character of the community, and minimize land use conflicts, were not considered by the Municipality when the decision was made. The Appellant has also submitted that the Municipality did not give adequate consideration to the public feedback heard at the public meeting.
44. To support her position, the Appellant sought the planning opinion of Chrystal Fuller, LPP, MCIP ("Fuller"). Fuller is a professional land use planner and was accepted by the Commission as an expert. Fuller prepared a written report and testified before the Commission at the hearing. The Commission notes that Fuller's opinion was qualified on the premise that the Official Plan amendment was also appealable to the Commission. This will be discussed in more detail later in these reasons.
45. Fuller's main findings can be summarized as follows:
- Official Plan policy RU-1 states that Council will protect agricultural and other resource land uses from the intrusion of conflicting land uses and that large-scale conversion of primary resource lands into non-resource lands will be discouraged. On the record, there is no agricultural impact assessment, land evaluation and site assessment, or comparable evidence justifying removal of this parcel from the Rural Area designation for a multi-lot residential subdivision.
 - The Official Plan's growth management approach relies on "community nodes". The Subject Property is outside a community node and is not intended to be a community node, yet the approval enables a 13-lot subdivision outside the node framework. In Fuller's opinion, this is a contradiction.
 - Staff identified insufficient information on development constraints and flood risk policy directions (Official Plan policies PHY-5 and PHY-6). In Fuller's opinion, a Rural Residential re-designation is a policy-level decision that presumes basic suitability for residential density. Approving the re-designation without resolving staff-identified information gaps was premature.

- The Official Plan's Rural Area policies emphasise maintenance of rural character and support for agriculture and primary resources, while Rural Residential is intended for low-density residential development in suitable areas.
 - In Fuller's opinion, the presence of these inconsistencies and unresolved information gaps is material to the Commission's step-two analysis of whether the Official Plan amendment and rezoning are supported by sound planning principles.
46. Fuller's report comments that Council's decision does not consider the cumulative impacts of the conversion of agriculture land and the land use compatibility issues created by residential development next to agricultural activities. At the hearing, Fuller described the cumulative effects of rezoning resource land to residential as "death by a thousand cuts". She said that having an agricultural impact assessment to consider the potential impact of conversion to residential development would have been a helpful tool for Council.
47. Fuller testified that best practice in the planning world is to look at the constraints of land and to put development where there are no significant development constraints. For example, she says the Official Plan contemplates that Rural Area (RA) zoned land will be primarily for agriculture and resource uses and there are better places to put more intense housing developments – e.g. the Rural Residential (RR) zone and community nodes. Fuller acknowledged that the RA zone does permit some residential subdivision, as of right (4 lots), but commented that would still preserve the *primary* use of the land as agricultural, whereas rezoning to RR would change the primary use of the land to residential.
48. In conclusion, Fuller's report concluded that the Municipality's decision to amend the Official Plan and Land Use Bylaw and rezone the Subject Property from Rural Area to Rural Residential "was unsound and contrary to good planning principles."

ii. Municipality's position

49. The Municipality is of the opinion that the appeal should be dismissed and the decision of Council to permit the Rezoning Application should be confirmed by the Commission.
50. With respect to the planning report prepared by the Municipality's development officer, the Municipality's counsel submits that it is possible to overstate the inadequacies of that report. At the hearing, Morse testified to the version of the report that was included in the Planning Board's package before the March 12, 2024, meeting. The Municipality's counsel points out that the report includes a summary of the application and rezoning process, as well as an assessment of the Rezoning Application and a table that notes applicable criteria from the Official Plan and Land Use Bylaw. The table assesses the Rezoning Application against that criteria and notes whether it is consistent, inconsistent, or requires weighing. The development officer's report also includes a record of the public feedback received at the public meeting and a recommendation to Planning Board on the outcome of the Application.
51. Further, at the hearing, Susan Morse testified that all members of Council are also members of Planning Board. The Appeal Record shows that four members (including the Mayor) were present at the public meeting where public feedback was received.

52. In any event, the Municipality notes that the Commission has two expert reports to consider on this appeal. The Municipality urges the Commission to prefer the opinion of the Developer's expert, Thayne Jenkins, on that basis that his report engages more with the requirements of the Land Use Bylaw that involve Council's discretion.

iii. Developer's position

53. The Developer submits that there is sufficient evidence before the Commission to reasonably decide that the Developer is entitled to his requested rezoning of the Subject Property, as decided by the Municipality.

54. Developer's counsel submitted that the Municipality has chosen to adopt a somewhat mixed use in the Rural Area (RA) zone, permitting four subdivided residential lots as of right (section 13.5.1 of the Land Use Bylaw). Therefore, he submits, this rezoning would be a change from four lots for residential use, to a proposed 13 lots. The Developer submits this is not a material change that would warrant the Commission overturning the decision of the Council, in this case.

55. To support his position, the Developer sought the opinion of Thayne Jenkins ("Jenkins"), a professional land use planner. Jenkins was accepted by the Commission as having expertise in the area of land use planning. Jenkins prepared a report and testified at the hearing.

56. Jenkins' report specifically considered several of the criteria at section 12.3.4 of the Land Use Bylaw. That section of the Bylaw states, in full: ⁹

Planning Board and Council shall consider the following general criteria when reviewing applications for amendments to the Bylaw, as applicable:

- a. conformity with the Official Plan;
- b. conformity with all requirements of this Bylaw;
- c. suitability of the site for the proposed development;
- d. compatibility of the proposed development with surrounding land uses, including both existing and future uses as per the Zoning Map;
- e. any comments from residents or other interested persons;
- f. adequacy of existing water supply, wastewater treatment and disposal systems, streets, stormwater management, and parks and parkland for accommodating the development, and any projected infrastructure requirements;
- g. impacts from the development on pedestrian and vehicular access and safety, and on public safety generally;
- h. compatibility of the development with environmental systems;
- i. impact on the Municipality's finances and budgets; and

⁹ At the hearing, Jenkins testified that he did not consider clauses (e) through (j), as he does not have expertise in those areas and because those factors are considered in greater detail at the subdivision or development stage.

- j. other planning matters as considered relevant by the Planning Board or Council.

57. Jenkins' specifically considered clauses (a) through (d) in his report, and made the following findings:

- Criteria (a): Jenkins' report cites five (5) specific policies from the Official Plan (RU-1, RU-2, RU-3, PHY-3, R-1). At the hearing, he testified that the Official Plan does not include a "moratorium" on residential developments, rather it speaks to "protecting" (rather than preserving) resource lands. Jenkins testified that, in his opinion, protecting can include mitigation measures such as limiting the number of residential lots or requiring land use buffers.

Jenkins also spoke to policy R-1, which states that it was the policy of Council to zone existing lots of less than 2 acres as Rural Residential (RR) and that new multi-lot subdivisions may only proceed via a rezoning application, which is what happened in the present case.

- Criteria (b): Jenkins concludes the Rezoning Application conforms with the requirements of the Land Use Bylaw.
- Criteria (c): Jenkins concludes that the overall layout of the lots cannot be considered ribbon development (which the Official Plan seeks to limit), as most of the lots will access off of a new cul-de-sac, not the main road.
- Criteria (d): Jenkins' report comments that the area is already partially developed with residential uses to the east of Shaw's Wharf Road. He concludes the rezoning of the Subject Property is compatible with the existing pattern of development for low-density. At the hearing, Jenkins testified that this proposed subdivision "mirrors" the subdivision to the east of Shaw's Wharf Road and is consistent with that existing land use pattern.

Further, Jenkins' report comments that two of the proposed subdivision lots will be approximately 8 acres in area, and will be in keeping with the character of the Rural Area (RA) zone for larger rural residential lots.

58. Jenkins' report also comments on the development officer's report, finding it to be "a balanced planning report", taking into consideration the Official Plan and Land Use Bylaw.

59. With respect to the issues raised by the public during the public meeting, Jenkins' report comments that those issues are considered at the subdivision stage. Consistent with this opinion, the Developer's counsel submits that there are opportunities later in the development process to mitigate any incompatible land use conflicts.

60. Generally, Jenkins' report concluded that the Subject Property should be rezoned from Rural Area (RA) to Rural Residential (RR) based on the conclusions summarized above.

iv. Commission's analysis and decision

61. As a starting point, the Commission notes that Fuller testified that her report was premised on the assumption that Official Plan amendments can be appealed to the Commission. This is not consistent with the appeal rights prescribed by section 28(1.1) the *Planning*

Act. Nevertheless, the Commission generally accepts the premise that rezoning amendments must be consistent with the policies and objectives of the applicable official plan. Therefore, the Commission gives effect to Fuller's opinion with this in mind.

62. Generally, the Appellant's position on appeal is that the Rezoning Application is not consistent with various policies in the Municipality's Official Plan and, therefore, not consistent with the Land Use Bylaw. Upon review and consideration of all the evidence before the Commission on this appeal, the Commission cannot agree with the Appellant's position.
63. First, for the reasons put forward by the Developer, the Commission prefers the opinion evidence of Jenkins on the basis that, as stated by Counsel for the Developer, Jenkins' report engages more with the requirements of the Land Use Bylaw that involve Council's discretion rather than strictly considering certain Official Plan policies. In particular, the Commission accepts the opinion of Jenkins that the area is already partially developed with residential uses and that rezoning of the Subject Property is compatible with the existing pattern of development for low-density in the area.
64. The Commission does not disagree, necessarily, with the Appellant's submissions and Fuller's report on the ways that this Rezoning Application appears to be inconsistent with certain policies and objectives of the Official Plan that prioritize agriculture and resource land uses. However, on the Commission's review of the Official Plan, there are other policies and objectives that also contemplate and allow for residential uses within the Municipality. One example that seems to straddle both is policy RU-2(b) which says that all subdivision approvals will have a caveat stating that the Municipality is a rural community and property owners are notified they will be subject to exposure to things such as agricultural odours and noise. In the Commission's view, this is an express acknowledgment by the Municipality that land use conflicts will inherently exist in a rural Municipality.
65. The Commission also finds it compelling that the Official Plan, at section 5.1, started from a place of only designating parcels smaller than 2 acres as residential in the Future Land Use Map. It states:

Residential parcels of 2 acres or less shall be designated as Residential, except where fully encapsulated by surrounding rural area uses. Infill areas between residential areas shall not be pre-zoned for residential use, leaving those larger parcels with the flexibility in uses associated with the Rural Area zone until such time as there is a proposal for development. The change in designation and zone shall require a public official plan and bylaw amendment process.
66. The Official Plan, in other words, specifically acknowledges that larger parcels zoned as Rural Area may be subject to applications for development.
67. In considering the Appellant's grounds of appeal and rationale for bringing this appeal, the Commission is struck that many of these arguments appear to be policy-type arguments about the hierarchy of land uses. The Appellant values agriculture and resource uses, which the Commission understands. However, the Commission is satisfied that Council

appropriately exercised its discretion in this case to permit changing the use of the Subject Parcel to primarily residential.

7. CONCLUSION

68. The appeal is dismissed. The Commission is satisfied that the Municipality's decision to permit the Developer's Rezoning Application was procedurally fair and was consistent with the Land Use Bylaw, sound planning principles, and the Official Plan.

69. The Commission thanks the parties for their submissions in this matter.

8. ORDER

70. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, **June 8, 2026.**

BY THE COMMISSION:

[sgd. Pamela J. Williams, K.C.]

Pamela J. Williams, K.C., Chair

[sgd. Gordon MacFarlane]

Gordon MacFarlane, Commissioner

[sgd. Murray MacPherson]

Murray MacPherson, 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.

NOTE: In accordance with IRAC'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.

Tab 4.

KeyCite treatment

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Saulteaux v. Carry the Kettle First Nation](#) | 2022 FC 1435, 2022 CF 1435, 2022 CarswellNat 4460, 2022 CarswellNat 8619 | (F.C., Oct 21, 2022)

2004 SCC 48, 2004 CSC 48

Supreme Court of Canada

Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine c. Lafontaine (Municipalité)

2004 CarswellQue 1545, 2004 CarswellQue 1546, 2004 CSC 48, 2004 SCC 48, [2004] 2 S.C.R.

650, [2004] S.C.J. No. 45, 121 C.R.R. (2d) 261, 132 A.C.W.S. (3d) 3, 17 Admin. L.R. (4th)

165, 241 D.L.R. (4th) 83, 323 N.R. 1, 49 M.P.L.R. (3d) 157, J.E. 2004-1367, REJB 2004-66514

Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine, Roberto Biagioni and Denis Léveillé, Appellants v. Municipality of the village of Lafontaine, Harold Larente and Attorney General of Quebec, Respondents and Seventh-Day Adventist Church in Canada, Evangelical Fellowship of Canada and Canadian Civil Liberties Association, Interveners

McLachlin C.J.C., Iacobucci, Major, Bastarache, Binnie, Arbour, LeBel, Deschamps, Fish JJ.

Heard: January 19, 2004

Judgment: June 30, 2004

Docket: 29507

Proceedings: reversing (2002), 2002 CarswellQue 2160, [2002] R.J.Q. 3015 (C.A. Que.); affirming (1998), 1998 CarswellQue 4183 (C.S. Que.)

Counsel: André Carbonneau, David M. Gnam for Appellants

Michel Lalande, Jean-Pierre St-Amour for Respondents, Municipalité du village de Lafontaine, Harold Larente

Mario Normandin for Respondent, Attorney General of Quebec

Gerald D. Chipeur, Ivan Bernardo for Interveners, Seventh-Day Adventist Church in Canada, Evangelical Fellowship of Canada

Andrew K. Lokan, Megan Shortreed for Intervener, Canadian Civil Liberties Association

Subject: Public; Churches and Religious Institutions; Constitutional; Civil Practice and Procedure; Municipal

Related Abridgment Classifications

Administrative law

II Natural justice

II.1 Duty of fairness

II.1.a Procedural fairness

II.1.a.vi Reasons for decision

Municipal law

V Municipal council

V.7 Judicial review

V.7.b Grounds

Headnote

Municipal law --- Municipal council --- Judicial review --- Grounds --- Procedural fairness

Municipality refused three times rezoning application by Jehovah's Witnesses in order to be able to build place of worship on parcel of land located outside designated zone for places of worship — Municipality gave reasons for first refusal but not for other two refusals — Duty of procedural fairness owed by municipality to congregation required municipality to carefully evaluate applications for zoning variance and to give reasons for refusing applications — By giving reasons for first refusal,

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... municipality gave congregation legitimate expectations of fair process — By refusing to justify refusal, municipality breached heightened duty of procedural fairness owed to congregation, which duty was heightened by municipality's own conduct and by importance of decision for congregation, impacting as it did on congregation's right to practise religion of choice — Municipality acted in arbitrary fashion, close to bad faith — Refusals were illegal and were set aside.

Administrative law --- Requirements of natural justice — Right to hearing — Procedural rights at hearing — Reasons for decision

Municipality refused three times rezoning application by Jehovah's Witnesses in order to be able to build place of worship on parcel of land located outside designated zone for places of worship — Municipality gave reasons for first refusal but not for other two refusals — Duty of procedural fairness owed by municipality to congregation required municipality to carefully evaluate applications for zoning variance and to give reasons for refusing applications — By giving reasons for first refusal, municipality gave congregation legitimate expectations of fair process — By refusing to justify refusal, municipality breached heightened duty of procedural fairness owed to congregation, which duty was heightened by municipality's own conduct and by importance of decision for congregation, impacting as it did on congregation's right to practise religion of choice — Municipality acted in arbitrary fashion, close to bad faith — Refusals were illegal and were set aside.

Droit municipal --- Conseil municipal — Contrôle judiciaire — Motifs — Équité procédurale

Municipalité a refusé à trois reprises la demande de modification de zonage présentée par la Congrégation des témoins de Jéhovah afin de pouvoir construire son lieu de culte sur un terrain situé à l'extérieur de la zone désignée pour les lieux de culte — Municipalité a motivé son premier refus mais non les deux autres — Devoir d'équité procédurale de la municipalité envers la congrégation l'obligeait à examiner soigneusement les demandes de dérogation et à motiver ses refus d'acquiescer aux demandes de la congrégation — En motivant son premier refus, la municipalité a créé des attentes légitimes chez la congrégation quant au respect d'une procédure équitable — En refusant de justifier ses refus, la municipalité a manqué à l'obligation d'équité procédurale accrue qu'elle avait envers la congrégation, obligation accrue en raison des attentes créées par sa propre conduite et de l'importance de la décision pour la congrégation, compte tenu de son effet sur le droit de celle-ci de pratiquer la religion de son choix — Municipalité a agi de manière arbitraire, à la limite de la mauvaise foi — Refus étaient illégaux et étaient annulés.

Droit administratif --- Exigences de la justice naturelle — Droit à une audition — Droits procéduraux lors de l'audition — Motifs

Municipalité a refusé à trois reprises la demande de modification de zonage présentée par la Congrégation des témoins de Jéhovah afin de pouvoir construire son lieu de culte sur un terrain situé à l'extérieur de la zone désignée pour les lieux de culte — Municipalité a motivé son premier refus mais non les deux autres — Devoir d'équité procédurale de la municipalité envers la congrégation l'obligeait à examiner soigneusement les demandes de dérogation et à motiver ses refus d'acquiescer aux demandes de la congrégation — En motivant son premier refus, la municipalité a créé des attentes légitimes chez la congrégation quant au respect d'une procédure équitable — En refusant de justifier ses refus, la municipalité a manqué à l'obligation d'équité procédurale accrue qu'elle avait envers la congrégation, obligation accrue en raison des attentes créées par sa propre conduite et de l'importance de la décision pour la congrégation, compte tenu de son effet sur le droit de celle-ci de pratiquer la religion de son choix — Municipalité a agi de manière arbitraire, à la limite de la mauvaise foi — Refus étaient illégaux et étaient annulés.

After unsuccessfully trying to find land in zone P3, the designated zone under the municipality's zoning by-law for places of worship, the Jehovah's Witnesses' congregation, who wanted to build a Kingdom Hall, made an offer on a parcel of land located in a residential zone, conditional to the municipality's agreement to amend its zoning by-law. After assessing the matter, the municipality refused the application on the ground that it would increase the ratepayers' tax burden. The congregation continued its search and made an offer on a parcel of land located in a commercial zone, conditional to the municipality's amendment of the zoning by-law. The municipality refused the amendment once more, on the ground that land parcels were available in zone P3, but did not name which ones. The municipality did not reassess the demand. Having found nothing in zone P3, the congregation applied for the third time for an amendment of the zoning by-law, which the municipality refused without grounds and without making an assessment.

The congregation brought a motion for mandamus to force the municipality to amend its zoning by-law. The congregation alleged the municipality's refusal infringed its freedom of religion protected by s. 2(a) of the Canadian Charter of Rights and Freedoms and the Quebec Charter of Human Rights and Freedoms. It also sought a declaration that the provisions of the Act respecting land use planning and development (ALUPD) with respect to approval procedure by referendum were unconstitutional because a vote by the population would be contrary to freedom of religion.

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45...
The trial judge dismissed the motion after finding that land was in fact available in zone P3 and that the zoning by-law did not infringe the freedom of religion. By a majority, the Court of Appeal dismissed the congregation's appeal. The three judges concluded the trial judge made an unreasonable error in finding there was still land available in zone P3. The majority concluded that the lack of land could not be attributed to the municipality and the municipality did not have any obligation to ensure religious communities had a place of worship on its territory. The congregation appealed.

Held: The appeal was allowed.

Per McLachlin C.J.C. (Iacobucci, Binnie, Arbour, Fish JJ. concurring): While the municipality's first refusal was in accordance with the law, such could not be said of its second and third refusals. In weighing the merits of the congregation's rezoning requests, the municipality was discharging a duty delegated to it by the legislature. It was bound to exercise the powers conferred upon it fairly, in good faith and with a view to the public interest. The municipality had a duty of fairness towards the congregation because its decision refusing the amendment affected the congregation's rights. The content of the duty of fairness owed by a public body depends on five factors stated in *Baker v. Canada (Minister of Citizenship & Immigration)*. The application of the first four factors to the facts of this case showed; the elected municipal officials could not arbitrarily deny a rezoning application; the municipality had to have greater solicitude for fairness since the ALUPD did not provide for any right of appeal; the municipality's decision was important for the congregation as it affected its practice of its religion; and the municipality, in following an involved process to answer the first rezoning application, created for the congregation a legitimate expectation that its applications would be thoroughly vetted and carefully considered. As for the fifth factor, the acknowledgment that the public body might better positioned to decide the matter, it did not carry much weight here since nothing indicated the municipality had actually used its expertise. The five factors indicated that the municipality's duty of procedural fairness to the congregation required the municipality to carefully evaluate the applications for a zoning variance and to give reasons for refusing them. This duty applied to the first application, and was complied with. The duty was therefore stronger on the second and third applications, where legitimate expectations of fair process had been established by the municipality itself.

The municipality's duty existed independent of the congregation's own conduct. The municipality's duty of procedural fairness to the congregation was not contingent upon the interactions of the congregation with third parties, such as the owner of the land available in zone P3. By refusing to justify its refusals, the municipality breached the heightened duty of procedural fairness it owed to the congregation, a duty heightened by its own conduct and by the importance of the decision to the congregation, impacting as it did on the right of the congregation to practise the religion of its choice. The municipality acted in an arbitrary fashion and close to bad faith. The last two refusals were illegal and were set aside. The appeal was allowed and the matter sent back to the municipality for a new evaluation of the congregation's application for rezoning. It was unnecessary to consider the constitutionality of the impugned provisions of the ALUPD and to answer the constitutional questions.

Per LeBel J. (dissenting) (Bastarache, Deschamps JJ. concurring): The Court of Appeal's finding concerning the availability of the land was wrong, in spite of the fact that their opinion that there was no land available for construction of the congregation's place of worship was agreed with. That finding resulted from an impermissible interference with the trial judge's assessment of the facts and even with his assessment of certain witnesses' credibility. While the judge committed a reviewable error as to the availability of the land, it was not a palpable and overriding error within the meaning of the Supreme Court's case law. Consequently, the Court of Appeal could not reassess the evidence in order to determine whether that finding was reasonable. Since the finding was valid and the Court of Appeal should have shown it deference, the finding justified the dismissal of the congregation's motion because it precluded any conclusion of infringement of the freedom of religion.

The zoning by-law was not prohibitive since it did not prohibit places of worship everywhere within the boundaries of the municipality. Freedom of religion includes a positive aspect, which in turn includes the right to proselytize, that is, to teach and disseminate one's beliefs. This fundamental freedom imposes on the state and public authorities a duty of religious neutrality that assures individual or collective tolerance, thereby safeguarding the dignity of every individual and ensuring equality for all. The State therefore does not have to give active support to any one particular religion; it must respect a variety of faiths whose values are not always easily reconciled. Rights protected by s. 2(a) of the Charter are, however, not absolute. Freedom of religion is limited by the rights and freedoms of others. In order to prove a violation of freedom of religion, it must first be shown that the interference with the religious belief or practice in question is not trivial or insubstantial. Churches and their members are not exempted from making any effort, or even sacrifice in the exercise of their freedom of worship. In view of the conclusion that there was available land, the congregation could not complain that the zoning by-law violated its freedom of religion because it made it impossible for them to establish a place of worship in the municipality. While the municipality is

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... required to be neutral in matters of religion and to structure its by-laws in such a way as to avoid placing unnecessary obstacles in the way of the exercise of religious freedoms, this does not mean that it has to actively help them resolve any difficulties they might encounter in their negotiations with third parties. The municipality did not have to provide the appellants with access to a lot that corresponded better to their criteria. Moreover, the limited zone determined by the zoning by-law is necessary to protect security and order, and ensure proper land use, and does not constitute a violation of freedom of religion. Neither the by-law nor its application violated the congregation's freedom of religion. The congregation was not exempted from respecting municipal by-laws because of its religious beliefs or practices. The appeal should be dismissed.

In the event that no land had been in fact available, the zoning by-law, as it was drafted, combined with the municipality's refusal to amend it, would have constituted an infringement of the congregation's freedom of religion. The congregation would therefore be unable to build its place of worship anywhere within the boundaries of the municipality because of the lack of land. But freedom of religion includes the right to have a place of worship, and thus the right to build one. The congregation, having shown that their Kingdom Hall was necessary to the manifestation of their religious faith, should therefore be free to establish such a facility within the boundaries of the municipality. The infringement of the freedom of religion would result not from the existence of the zoning by-law, but from the refusal to adapt it to evolving community needs. The Charter does not require the State to take positive steps in support of the exercise of the fundamental freedoms provided for in s. 2(a). The State must even refrain from implementing measures that could favour one religion over another. However, the State's restraint will not always be sufficient; a positive governmental action may sometimes be required to give meaning to a fundamental freedom. This case would be one of these exceptional situations. The municipality would therefore need to amend its by-law in order to allow the congregation to enjoy its fundamental freedom.

In case of a finding of violation, the Supreme Court could have ordered the municipality to amend its by-law, but it could not have imposed a particular location. Zoning by-laws must be drafted in light of a large number of factors, and it is ordinarily only those with political power who are in a position to measure the impact of those factors. It would have been up to the municipality to determine in which zone the place of worship could have been built. The only appropriate remedy would have been an order to the municipality to review its zoning by-law so as to make land available to the congregation on which it could build its place of worship. It would not have been appropriate to suspend the operation of the ALUPD and its process for approval by way of referendum. It could not be assumed that this democratic process, which was consistent with the nature of municipal government in Canada, in any way infringed the freedom of religion guaranteed by the Charter or that it was considered suspect in relation to the values enshrined in the Charter.

The present appeal had administrative law implications. The application of the five factors determined in *Baker v. Canada (Minister of Citizenship & Immigration)* placed the municipality under an obligation to give reasons for its repeated refusals, which it did not do for the last two. If the municipality had given reasons for its refusals, the congregation would have had a better understanding of the decision and would also have given the municipality's decision-making process the required transparency and the appearance of procedural fairness.

Per Major J. (dissenting): LeBel J.'s result was agreed with, but only as regards his conclusions on the findings of fact of the trial judge and the absence of any infringement of freedom of religion.

Après avoir tenté sans succès de trouver un terrain dans la zone P3, la zone communautaire régionale désignée par le règlement de zonage pour l'établissement d'édifices de culte, afin d'y construire sa Salle du Royaume, la Congrégation des témoins de Jéhovah a fait une offre sur un terrain situé dans une zone résidentielle, conditionnelle à l'acceptation par la municipalité de modifier son règlement de zonage. Après évaluation, la municipalité a refusé la demande de modification du zonage de la congrégation au motif que cela donnerait lieu à une augmentation du fardeau fiscal des contribuables. La congrégation a poursuivi ses recherches et a fait une offre sur un terrain situé dans une zone commerciale, conditionnelle à la modification du zonage par la municipalité. La municipalité a refusé à nouveau la modification, invoquant cette fois-ci la disponibilité de terrains dans la zone P3, sans toutefois préciser lesquels. Elle n'a procédé à aucune nouvelle évaluation du cas. N'ayant trouvé aucun terrain dans la zone P3, la congrégation a présenté une troisième demande à la municipalité, qui l'a refusée sans motif et sans faire d'évaluation.

La congrégation a présenté une requête en mandamus, afin de forcer la municipalité à modifier son règlement de zonage. Elle a allégué que le refus de la municipalité était contraire à la liberté de religion protégée par l'art. 2a) de la Charte canadienne des droits et libertés et par la Charte des droits et libertés de la personne du Québec. La congrégation a aussi demandé à ce que les dispositions de la Loi sur l'aménagement et l'urbanisme (LAU) relatives à la procédure d'approbation référendaire d'une

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... modification à un règlement de zonage soient déclarées inconstitutionnelles, parce qu'un vote populaire serait contraire à la liberté de religion.

Le juge de première instance a rejeté la requête après avoir conclu que des terrains étaient effectivement disponibles dans la zone P3 et que le règlement de zonage ne portait pas atteinte à la liberté de religion. La Cour d'appel a rejeté le pourvoi de la congrégation à la majorité. Les trois juges ont conclu que le premier juge avait commis une erreur déraisonnable en décidant qu'il y avait toujours des terrains disponibles dans la zone P3. Les juges majoritaires ont conclu que l'absence de terrains n'était pas imputable à la municipalité et que celle-ci n'avait pas l'obligation d'assurer aux communautés religieuses un lieu de culte sur son territoire. La congrégation a interjeté appel.

Arrêt: Le pourvoi a été accueilli.

McLachlin, J.C.C. (Iacobucci, Binnie, Arbour, Fish, JJ., souscrivant à l'opinion de McLachlin, J.C.C.): Bien que le premier refus de la municipalité ait été conforme à la loi, tel n'était pas le cas pour ce qui était de ses deuxième et troisième refus.

En appréciant le bien-fondé des demandes de modification de la congrégation, la municipalité s'acquittait d'une fonction qui lui avait été déléguée par le législateur. Elle était donc tenue d'exercer ses pouvoirs équitablement, de bonne foi et en tenant compte de l'intérêt public. La municipalité avait une obligation d'équité envers la congrégation puisque sa décision refusant la demande de modification touchait les droits de cette dernière. Le contenu de cette obligation d'équité qui incombe à un organisme public varie en fonction de cinq facteurs énoncés dans l'arrêt *Baker v. Canada (Minister of Citizenship & Immigration)*. L'application des quatre premiers facteurs aux faits de l'espèce indiquait que les élus municipaux ne pouvaient refuser de manière arbitraire d'acquiescer à une demande de modification de zonage; que la municipalité devait faire preuve d'un plus grand souci d'équité parce que la LAU ne prévoyait aucun droit d'appel; que la décision de la municipalité était importante pour la congrégation puisqu'elle touchait l'exercice par celle-ci de sa religion; et que la municipalité, en suivant un processus complexe pour répondre à la première demande de modification, avait créé chez la congrégation une attente légitime que ses demandes seraient examinées rigoureusement et soigneusement. Quant au cinquième facteur, soit la reconnaissance que l'organisme public est peut-être mieux placé pour décider, il ne jouait guère en l'espèce, puisque rien n'indiquait que la municipalité avait utilisé son expertise. Les cinq facteurs indiquaient que le devoir d'équité procédurale de la municipalité envers la congrégation l'obligeait à examiner soigneusement les demandes de dérogation et à motiver ses refus d'acquiescer à la deuxième et à la troisième demandes de la congrégation. La municipalité était assujettie à cette obligation lors de la première demande et s'en était acquittée. Son obligation était donc plus rigoureuse lors des deuxième et troisième demandes, car la municipalité avait elle-même créé des attentes légitimes quant au respect d'une procédure équitable.

Le devoir de la municipalité existait indépendamment de la conduite de la congrégation. L'obligation d'équité procédurale de la municipalité envers la congrégation n'était pas tributaire des rapports entre celle-ci et les tiers, comme la propriétaire du terrain disponible dans la zone P3. En refusant de justifier ses refus, la municipalité a manqué à l'obligation d'équité procédurale accrue qu'elle avait envers la congrégation, accrue en raison des attentes créées par sa propre conduite et l'importance de la décision pour la congrégation, compte tenu de son effet sur le droit de celle-ci de pratiquer la religion de son choix. La municipalité a agi de manière arbitraire, à la limite de la mauvaise foi. Les deux derniers refus étaient illégaux et étaient annulés. Le pourvoi était accueilli et l'affaire était renvoyée à la municipalité pour qu'elle examine de nouveau la demande de modification de zonage de la congrégation. Il n'était pas nécessaire d'examiner la constitutionnalité des dispositions de la LAU et de répondre aux questions constitutionnelles.

LeBel, J. (dissident) (Bastarache, Deschamps, JJ.): La conclusion de la Cour d'appel relativement au terrain disponible était mal fondée, et ce, même si leur opinion quant à la non-disponibilité du terrain pour la construction du lieu du culte de la congrégation était partagée. Cette conclusion résultait d'une intervention inadmissible dans l'appréciation des faits par le juge de première instance et, même, de l'évaluation de la crédibilité de certains témoins. Le premier juge avait certes commis une erreur révisable quant au terrain disponible, mais il ne s'agissait pas d'une erreur manifeste et dominante au sens de la jurisprudence de la Cour suprême. Ce faisant, la Cour d'appel ne pouvait analyser une seconde fois la preuve pour déterminer si cette conclusion était raisonnable. Puisque la conclusion était bien fondée et que la Cour d'appel aurait dû faire preuve de retenue à son égard, la conclusion justifiait le rejet de la requête de la congrégation puisque qu'elle interdisait toute conclusion d'atteinte à la liberté de religion.

Le règlement de zonage n'était pas prohibitif puisqu'il n'interdisait pas l'usage d'édifices de culte sur l'ensemble du territoire de la municipalité. La liberté de religion comprend un aspect négatif et un aspect positif, lequel inclut le droit au prosélytisme, soit celui d'enseigner et de propager ses croyances. Cette liberté fondamentale impose à l'État et aux pouvoirs publics une obligation

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... de neutralité religieuse garante de la tolérance individuelle ou collective, préservatrice de la dignité de chacun et de l'égalité de tous. L'État n'a donc pas à donner un appui actif à une religion particulière; il est tenu au respect de confessions diverses dont les valeurs ne se concilient pas toujours aisément. Par ailleurs, les droits protégés par l'art. 2a) de la Charte canadienne ne sont pas absolus. La liberté de religion est limitée par les droits et libertés d'autrui. La diversité des opinions et des convictions exige la tolérance mutuelle et le respect d'autrui. Avant de conclure à une violation de la liberté de religion, il faut démontrer que l'atteinte à la pratique ou à la croyance religieuse n'est pas insignifiante ou négligeable. Les Églises et leurs membres ne sont pas dispensés de tout effort, voire de tout sacrifice, dans l'exercice de la liberté du culte. Vu la conclusion qu'il y avait un terrain disponible, la congrégation ne pouvait se plaindre que le règlement de zonage contrevenait à sa liberté de religion parce qu'il rendait impossible leur implantation d'un lieu de culte dans la municipalité. Si la municipalité, tenue de faire preuve de neutralité religieuse, devait veiller à aménager sa réglementation afin d'éviter d'imposer des obstacles inutiles à l'exercice des libertés religieuses, elle n'avait cependant pas à aider activement les groupes religieux à régler toutes les difficultés qu'ils pouvaient éprouver dans leurs négociations avec des tiers. La municipalité n'avait pas à assurer à la congrégation l'accès à un terrain répondant davantage à ses critères. De plus, la zone limitée prévue par le règlement de zonage était nécessaire à la préservation de la sécurité et de l'ordre au sein de la municipalité et au bon usage de son territoire et ne violait pas la liberté de religion. Ni le règlement ni son application ne portaient atteinte à la liberté de religion de la congrégation. Les croyances et pratiques religieuses de celle-ci ne l'exemptaient pas de se conformer à la réglementation municipale. Le pourvoi devrait être rejeté.

Par ailleurs, dans l'hypothèse où il n'y aurait eu aucun terrain de disponible, la rédaction du règlement de zonage combinée au refus de la municipalité de le modifier aurait constitué une atteinte à la liberté de religion de la congrégation. L'absence de terrain mettrait la congrégation dans l'impossibilité de construire son lieu de culte sur l'ensemble du territoire de la municipalité. Or, la liberté de religion inclut le droit de bénéficier d'un lieu de culte, et donc celui d'en construire un. La congrégation ayant démontré que la Salle du Royaume était nécessaire à la manifestation de sa foi religieuse, elle devait alors être libre d'implanter un tel lieu sur le territoire de la municipalité. L'atteinte à la liberté de religion résulterait non pas de l'existence du règlement, mais du refus de l'adapter à l'évolution des besoins collectifs. La Charte n'oblige pas l'État à prendre des mesures positives pour assurer l'exercice des libertés fondamentales prévues à l'art. 2a), et celui-ci doit même s'abstenir de favoriser une religion ou une autre. Cependant, il ne sera pas toujours suffisant que l'État agisse avec réserve; une mesure gouvernementale positive pourrait parfois être nécessaire pour donner un sens à la liberté fondamentale. L'espèce serait l'une de ces situations exceptionnelles. La municipalité devrait donc alors modifier le règlement pour permettre à la congrégation de jouir de sa liberté de religion.

En cas de conclusion de violation, la Cour suprême aurait certes pu ordonner à la municipalité de modifier son règlement, mais elle n'aurait pu lui imposer un lieu d'implantation en particulier. L'élaboration des règlements de zonage nécessite la prise en considération de nombreux facteurs dont seul le pouvoir politique est habituellement capable de mesurer l'impact. C'est la municipalité qui aurait eu à décider dans quelle zone le lieu de culte pouvait être construit. La seule réparation appropriée aurait été d'ordonner à la municipalité de procéder au réexamen de son règlement de zonage afin de rendre accessibles à la congrégation des terrains où elle pouvait construire son lieu de culte. Il n'y aurait par ailleurs pas eu lieu d'écarter l'application de la LAU et de sa procédure d'approbation référendaire. On ne pouvait présumer que cette procédure démocratique, conforme à la nature des régimes municipaux du Canada, portait une quelconque atteinte à la liberté de religion protégée par la Charte ou qu'elle devait être considérée comme suspecte par rapport aux valeurs consacrées par celle-ci.

Le présent pourvoi avait une incidence sur le droit administratif. L'application des cinq facteurs de l'arrêt *Baker v. Canada (Minister of Citizenship & Immigration)* engendrait au moins une obligation pour la municipalité de motiver ses refus répétés, ce qu'elle n'a pas fait à l'égard des deux derniers. Si la municipalité avait motivé ses refus, la congrégation aurait mieux compris sa décision et aurait également permis la nécessaire transparence et l'apparence d'équité du processus décisionnel de la municipalité. Major, J. (dissident): La conclusion du juge LeBel était partagée, mais seulement quant à ses conclusions sur les constatations de fait du premier juge et sur l'absence d'atteinte à la liberté de religion.

Annotation

"[H]igh-handed or outrageous conduct as that of the Municipality" are strong words reminding municipalities that all citizens, including discreet minorities, are entitled to fair treatment and respect. *Congrégation des Témoins de Jéhovah de St-Jerome-Lafontaine v. Lafontaine (Village)*, demonstrates how difficult the road to justice can be for citizens who are victims of arbitrary decisions from elected officials (The Village of Lafontaine has since merged with three other municipalities to form the City of St-Jerome). It also shows the value of persisting all the way to the Supreme Court of Canada. In this case, persistence paid off

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... with important legal principles that illuminate the authority and responsibility of a municipal council and the place of religion in public (municipal) space.

This judgment of the Supreme Court of Canada enunciates four basic principles. First, a municipality is "bound to exercise the powers conferred upon it fairly, in good faith and with a view to the public interest." Second, freedom of religion includes the right to have a place of worship. Third, state and public authorities have a duty of religious neutrality that assures individual or collective tolerance. Fourth, when the state creates a situation that interferes with the exercise of a freedom, it could be required to take positive steps to put an end to that interference. The first two principles are *ratio decidendi*, the second two principles are *obiter dictum* of three members of the court.

The 'dissent' by Justice LeBel adds to the analysis. The Quebec Court of Appeal unanimously overturned a finding of fact made by the trial judge that no land was available within the municipality for a place of worship. The municipality in effect admitted in its Supreme Court factum no land was available. The Supreme Court, in deference to the trial judge, held land was available (but not as much as the trial judge originally stated). Notwithstanding, the majority allowed the appeal and remitted the congregation's re-zoning application to the municipality to be reconsidered in light of the reasons given. The four dissenting judges felt with the availability of land there was no infringement of the congregation's freedom of religion and therefore dismissed the appeal. Major J. dismissed the appeal without comments on the merits. LeBel J., writing on behalf of himself, Bastarache and Deschamps JJ. continued the legal analysis "because of the nature of the debate that has taken place in the Quebec courts and in this Court and the importance of the constitutional questions raised."

The analysis by three of the dissenting judges makes an otherwise narrow 5-4 decision much more authoritative and instructive. For example, the *unanimous* court agreed, "[f]reedom of religion includes the right to have a place of worship," as worded by LeBel J. in the portion of dissent agreed to by Major J. The majority said: "The right to freely adhere to a faith and to congregate with others in doing so is of primary importance, as attested to by its protection in the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms*."

The decision was 8-1 on the principle a municipality must "exercise the powers conferred upon it fairly, in good faith and with a view to the public interest," written by McLachlin C.J.C. for five judges. LeBel J. wrote municipalities must ensure "decisions are made using a fair, impartial and open process appropriate to their statutory, institutional and social context (*Baker*, at paras. 22 and 28)." While agreeing on this principle, and agreeing the municipality failed in its duty of procedural fairness, the three judges in LeBel J.'s dissent chose not to join the majority in their administrative law remedy to this legal wrong by remitting the rezoning application back to the municipality for reconsideration. Although recognizing the congregation had claimed the municipality exercised its discretion unreasonably, arbitrarily and in bad faith, they did not feel the Appellants sufficiently focused their argument on administrative law to allow the Court to give an administrative law remedy.

This was not entirely unforeseen. The congregation had a long and tortuous history with the municipality stretching back twelve years to their first rezoning application in 1992. They realized a strict administrative argument was their strongest suit. However, it would yield the less than satisfactory administrative remedy. After twelve years, the congregation wanted a building permit, not to begin the process all over again. They focused their argument on freedom of religion and the municipality's arbitrariness and bad faith. Justice Iacobucci held the door open during oral argument when he asked: "is it part of your argument that you're saying the failure to give reasons was an independent wrong that was committed in this case apart from freedom of religion . . . ?" Counsel for the congregation replied: "What we are saying is the conduct of the Municipal Council towards the Appellants was in bad faith and was not open, fair and impartial administration." That seems to parallel what Justice LeBel ultimately wrote.

The congregation's concentration on freedom of religion and arbitrariness paid off. Although granting an administrative remedy, the reasoning of the Court, both majority and dissent, beneficially illustrates the interaction between administrative fairness and respect for freedom of religion. The Court's reasons reassure the congregation they (and other religious communities) should not be caught again in an arduous, fruitless process. This interaction will be explored momentarily.

The majority's principle that a municipality must "exercise the powers conferred upon it fairly, in good faith and with a view to the public interest" is an elegant distillation of decades of case law. Joining these three duties into one principle corrects the

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... fixation of courts and municipalities on the simplistic maxim that municipal councils can regulate but not prohibit. McLachlin C.J.C. held the Court must examine the conduct of the municipality in denying the congregation's rezoning application. In her view, availability of land for a place of worship provided justification to refuse the rezoning; it did not justify playing cat and mouse with the congregation.

The municipality continuously referred the congregation back to the same four P-3 zones without any further information or direction, notwithstanding the congregation's good faith efforts, including confirming in writing with the owners in the four P3 zones their properties were not available. Both McLachlin C.J.C. and LeBel J. detail the congregation's efforts. The congregation specifically asked the municipality in writing, "If [the municipality] is aware of any property available in the community zone, please communicate this information to us as soon as possible." No information was forthcoming. When the municipality alleged the congregation had refused an available property, the congregation wrote, denying such a refusal, and asked what available property had allegedly been refused. No information was given. Five years later, on the last day of trial, the municipality brought out a 'surprise' witness — Mrs. Jolicoeur testified she would have been willing to sell part of her land.

During oral argument, counsel for the municipality confirmed his client planned Mrs. Jolicoeur's testimony before the trial began. Arbour J. quickly asked, "why didn't the municipality not say back then, no it is not necessary to rezone because you know very well Mrs. Jolicoeur has a property to sell?" Counsel responded: "I admit it would have been a lot easier to say it is the property of so and so that is available. Unfortunately, that is not what happened."

The majority in the Supreme Court, and LeBel J. (at para. 92), realized the importance of the municipality's conduct in denying the rezoning application. A little more fairness, a little more good faith, a little more respect for the public interest on the part of the municipality would have avoided 12 years of friction, expense and delay. As the majority concluded: "The Municipality acted in a manner that was arbitrary and straddled the boundary separating good from bad faith."

The elegance of the Chief Justice's principle is further understood when considered from the standpoint of a municipal council. It does not impose a heavy burden on their administrative and political function. In fact, it explicitly recognized as the Chief Justice wrote: "What is in the public interest is a matter of discretion to be determined solely by the municipality." That discretion enjoys a healthy deference in any reviewing court — so long as the municipal council does not act arbitrarily. Arbitrariness by public authorities is anathema to democratic societies (and minorities like Jehovah's Witnesses) as Rand J. articulated in *Roncarelli v. Duplessis*, 1959 CarswellQue 37, [1959] S.C.R. 121, 16 D.L.R. (2d) 689 (S.C.C.), and quoted by McLachlin C.J.C.

Justice LeBel's *obiter dicta* on the interaction between freedom of religion and municipalities is enlightening. The majority does not disassociate itself from his comments. This opinion comes close to the American concept of separation of church and state, but with a distinct Canadian accent on tolerance and dignity. That accent is neither an afterthought nor a quaint Canadianization. The balancing of interests in LeBel J.'s advice for municipalities is a practical, workable approach to situations that arise in the municipal context. It gets us beyond the intransigence imposed by a trite recitation of, "freedom of religion is not absolute."

LeBel J. imposes on public authorities "a duty of religious neutrality that assures individual or collective tolerance, thereby safeguarding the dignity of every individual and ensuring equality for all." How does a municipality exercise that duty of religious neutrality? LeBel J. says that means "refraining from implementing measures that could favour one religion over another or that might simply have the effect of imposing one particular religion." (Perhaps this signals an end to such practices as a municipally sponsored nativity scene at Christmas?) He also speaks in terms of setting up a "social and legal framework" wherein tolerance reigns and religion is respected subject to the time-honoured limits necessary "to protect public safety, order, health or morals."

However, this conception of tolerance and dignity is more than a hands off, live and let live philosophy. LeBel J. states municipalities must structure their by-laws "in such a way as to avoid placing unnecessary obstacles in the way of the exercise of religious freedoms." In the context of this case, as LeBel J. found, a municipality could not refuse to zone any land for a place of worship or only zone land that lay in a swamp. Such a by-law would be an unnecessary obstacle to the exercise of religious freedom. However, what about the situation where appropriately-zoned land exists, but the problem is private owners are unable or unwilling to sell to the religious community? That leads us to the fourth principle in this judgment.

The majority in the Quebec Court of Appeal, quoting from *Dunmore v. Ontario (Attorney General)*, 2001 CarswellOnt 4434, 2001 CarswellOnt 4435, [2001] 3 S.C.R. 1016 (S.C.C.), at para. 19, said the *Charter* imposes no positive duty on the municipality to do anything in such a circumstance. Justice LeBel disagreed. Also referring to *Dunmore*, he said the state couldn't hide behind private actors, and in the circumstance, "when the state creates a situation that interferes with the exercise of a freedom, it may be required to take positive steps to put an end to the interference." Such positive steps could be as simple as adapting the zoning by-law to the evolving needs of the community by zoning additional land appropriately (over 83% of the municipality of Lafontaine is not urbanized) or by interpreting the zoning regulation liberally to allow places of worship in zones with a similar land use (such as social clubs, performance halls or sports centres).

Just as a municipality must act fairly, in good faith and with a view to the public interest, so must the religious community seeking to build a place of worship. It cannot build wherever it chooses, or whatever size and shape it chooses. It must conform to the neutral social and legal framework established by the municipality to protect public safety, order and health. Such is the nature of Canadian tolerance and respect for the dignity of all citizens. We work cooperatively, in the public interest. It will be interesting to see the collaborative solution arrived at by the new municipality of St-Jerome and the Lafontaine congregation of Jehovah's Witnesses.

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André Carboneau

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Trinity Western University v. College of Teachers (British Columbia) (2001), 2001 SCC 31, 2001 CarswellBC 1016, 2001 CarswellBC 1017, 199 D.L.R. (4th) 1, 269 N.R. 1, (sub nom. *British Columbia College of Teachers v. Trinity Western University*) 2001 C.L.L.C. 230-026, 151 B.C.A.C. 161, 249 W.A.C. 161, 31 Admin. L.R. (3d) 163, [2001] 1 S.C.R. 772, 82 C.R.R. (2d) 189, 39 C.H.R.R. D/357 (S.C.C.) — considered

Words and phrases considered

freedom of religion

Per LeBel J. (dissenting) (Bastarache, Deschamps JJ. concurring): Freedom of religion is a fundamental right and represents a major triumph of our democratic society. The philosophical and political values underpinning Canadian democracy recognize the need to respect the diverse opinions and beliefs that guide the consciences and give direction to the lives of all members of our society. It is because of the crucial importance of this fundamental right that this Court decided it was essential to give it a liberal interpretation in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 (S.C.C.) (at p. 336):

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.

The concept of freedom of religion, which is not strictly limited to the above definition, includes a positive aspect, that is, the right to believe or not believe what one chooses, to declare one's beliefs openly, and to practice one's religion in accordance with its tenets. This positive aspect also includes the right to proselytize, that is, to teach and disseminate one's beliefs. Freedom of religion also has a negative aspect, that is, the right not to be compelled to belong to a particular religion or to act in a manner contrary to one's religious beliefs (J. Woehrling, "L'obligation d'accommodement raisonnable et l'adaptation de la société à la diversité religieuse" (1998), 43 *McGill L.J.* 325, at p. 371). This fundamental freedom imposes on the state and public authorities, in relation to all religions and citizens, a duty of religious neutrality that assures individual or collective tolerance, thereby safeguarding the dignity of every individual and ensuring equality for all.

Termes et locutions cités

liberté de religion

[LeBel, J. (dissident) (Bastarache, Deschamps, JJ., souscrivant à l'opinion de LeBel, J.)]: La liberté de religion représente un droit fondamental et une conquête essentielle de notre société démocratique. Les valeurs philosophiques et politiques qui inspirent le régime démocratique du Canada reconnaissent la nécessité de respecter, dans toute leur diversité, les opinions et croyances qui guident la conscience de chacun des membres de la société et orientent la vie de ceux-ci. C'est en raison de l'importance critique de ce droit fondamental que notre Cour a jugé indispensable de lui donner une interprétation large dans l'arrêt *R. c. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295 (p. 336) :

Le concept de la liberté de religion se définit essentiellement comme le droit de croire ce que l'on veut en matière religieuse, le droit de professer ouvertement des croyances religieuses sans crainte d'empêchement ou de représailles et le droit de manifester ses croyances religieuses par leur mise en pratique et par le culte ou par leur enseignement et leur propagation.

Ce concept de liberté de religion, qui ne se limite pas strictement au cadre de cette définition, comprend, d'une part, un aspect positif, soit le droit de croire ou de ne pas croire librement, de professer ouvertement ses croyances, de pratiquer le culte religieux qui s'y rattache. Ce volet positif inclut aussi le droit au prosélytisme, c'est-à-dire celui d'enseigner et de propager ses croyances. D'autre part, la liberté de religion incorpore un aspect négatif, soit le droit de ne pas se voir contraint d'adhérer à une religion particulière ainsi que celui de ne pas être tenu d'agir d'une manière contraire à ses croyances (J. Woehrling, « L'obligation d'accommodement raisonnable et l'adaptation de la société à la diversité religieuse » (1998), 43 *R.D. McGill* 325, p. 371). Cette liberté fondamentale impose à l'État et aux pouvoirs publics, une obligation envers l'ensemble des religions et des citoyens, soit une obligation de neutralité religieuse garante de la tolérance individuelle ou collective, préservatrice de la dignité de chacun et de l'égalité de tous.

APPEAL from judgment reported at 2002 CarswellQue 2160, [2002] R.J.Q. 3015 (Que. C.A.), dismissing appeal by congregation from judgment reported at 1998 CarswellQue 4183 (Que. S.C.), dismissing congregation's motion in mandamus seeking order that municipality amend zoning by-law in order to be able to build place of worship outside zone reserved for such construction.

POURVOI à l'encontre de l'arrêt publié à 2002 CarswellQue 2160, [2002] R.J.Q. 3015 (C.A. Qué.), qui a rejeté son pourvoi à l'encontre du jugement publié à 1998 CarswellQue 4183 (C.S. Qué.), qui avait rejeté sa requête en mandamus visant à ce qu'il soit ordonné à la municipalité de modifier son règlement de zonage afin de pouvoir construire un lieu de culte à l'extérieur de la zone réservée à ce type de construction.

McLachlin C.J.C.:

I. Summary

1 The issue in this case is whether the municipality of the village of Lafontaine (the "Municipality") lawfully denied an application for rezoning to permit the Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine (the "Congregation") to build a place of worship. Unlike my colleague Justice LeBel, I conclude the Municipality did not. Although the Municipality's first denial of permission to rezone complied with the law, the second and third did not, in my view, because the Municipality gave no reasons for its denial, instead taking the position that it enjoyed absolute discretion to refuse the zoning variance with no explanation to the Congregation.

2 In weighing the merits of the Congregation's rezoning requests, the Municipality was discharging a duty delegated to it by the Legislature. It was bound to exercise the powers conferred upon it fairly, in good faith and with a view to the public interest. Here, on the facts as found by the trial judge, the Municipality failed to do so. Accordingly, I would remit the matter to the Municipality for reconsideration.

II. The Duty on the Municipality

3 A public body like a municipality is bound by a duty of procedural fairness when it makes an administrative decision affecting individual rights, privileges or interests: *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 (S.C.C.); *Inuit Tapirisat of Canada v. Canada (Attorney General)*, [1980] 2 S.C.R. 735 (S.C.C.); *Martineau v. Matsqui Institution (No. 2)* (1979), [1980] 1 S.C.R. 602 (S.C.C.); *Nicholson v. Haldimand-Norfolk (Regional Municipality) Commissioners of Police* (1978), [1979] 1 S.C.R. 311 (S.C.C.). The decision to deny the application for rezoning affected the Congregation's rights and interests. There can thus be no question that the Municipality owed the Congregation a duty of fairness.

4 At issue in this case is the content of this duty. More particularly and on the facts as found, does the duty require the Municipality to give the Congregation reasons for refusing the rezoning application? Or does it clothe the Municipality with absolute discretion to refuse the Congregation's application?

5 The content of the duty of fairness on a public body varies according to five factors: (1) the nature of the decision and the decision-making process employed by the public organ; (2) the nature of the statutory scheme and the precise statutory provisions pursuant to which the public body operates; (3) the importance of the decision to the individuals affected; (4) the legitimate expectations of the party challenging the decision; and (5) the nature of the deference accorded to the body: *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.). In my view and having regard to the facts and legislation in this appeal, these considerations require the Municipality to articulate reasons for refusing the Congregation's second and third rezoning applications.

6 The first factor -- the nature of the decision and the process by which it is reached -- merges administrative and political concerns. The decision to propose a draft by-law rezoning municipal territory is made by an elected council accountable to its constituents in a manner analogous to that in which Parliament and the provincial legislatures are accountable to their own: *Godbout c. Longueuil (Ville)*, [1997] 3 S.C.R. 844 (S.C.C.), at para. 51. This decision is moreover tempered by the municipality's

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... charge to act in the public interest: *Toronto (City) Roman Catholic Separate School Board v. Toronto (City)* (1925), [1926] A.C. 81 (Ontario P.C.), at p. 86. What is in the public interest is a matter of discretion to be determined solely by the municipality. Provided the municipality acts honestly and within the limits of its statutory powers, the reviewing court is not to interfere with the municipal decision unless "good and sufficient reason be established": *Kuchma v. Tache (Rural Municipality)*, [1945] S.C.R. 234 (S.C.C.), at p. 243 (*per* Estey J.); see also *Norfolk v. Roberts* (1914), 50 S.C.R. 283 (S.C.C.), at p. 293; *Glover v. Kee* (1914), 20 B.C.R. 219 (B.C. C.A.), at pp. 221-22; *Howard v. Toronto (City)*, [1928] 1 D.L.R. 952 (Ont. C.A.), at p. 965.

7 However, the elected councillors cannot deny a rezoning application in an arbitrary manner. Where the municipal council acts in an arbitrary fashion in the discharge of its public function, "good and sufficient reason" exists to warrant intervention from the reviewing court in order to remedy the proven misconduct. The need for judicial oversight of arbitrary municipal decision making is only heightened by the aggravated potential for abuse of discretionary statutory authority. As Rand J. has made clear in *Roncarelli v. Duplessis*, [1959] S.C.R. 121 (S.C.C.), at p. 140, no discretion casts a net wide enough to shield an arbitrary or capricious municipal decision from judicial review:

In public regulation of this sort there is no such thing as absolute and untrammelled "discretion", that is that action can be taken on any ground or for any reason that can be suggested to the mind of the administrator; no legislative Act can, without express language, be taken to contemplate an unlimited arbitrary power exercisable for any purpose, however capricious or irrelevant, regardless of the nature or purpose of the statute.

8 The second factor is the statutory scheme and its provisions, in this case the *Act respecting Land Use Planning and Development*, R.S.Q., c. A-19.1, which grants the Municipality authority to consider a rezoning application. Even so, the absence of an appeal provision demands greater municipal solicitude for fairness. Enhanced procedural protections "will be required when no appeal procedure is provided within the statute, or when the decision is determinative of the issue and further requests cannot be submitted": *Baker*, *supra*, at para. 24, *per* L'Heureux-Dubé J.

9 The third factor requires us to consider the importance of the decision to the Congregation. The stringency of procedural protection is directly proportional to the importance of the decision to the lives of those affected and the nature of its impact on them: *Baker*, *supra*, at para. 25; see also *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105 (S.C.C.), at p. 1113. Here, it becomes important that the municipal decision affects the Congregation's practice of its religion. The right to freely adhere to a faith and to congregate with others in doing so is of primary importance, as attested to by its protection in the *Canadian Charter of Rights and Freedoms* and the *Quebec Charter of Human Rights and Freedoms*.

10 The fourth factor -- the legitimate expectations of the Congregation -- also militates in favour of heightened procedural protection. Where prior conduct creates for the claimant a legitimate expectation that certain procedures will be followed as a matter of course, fairness may require consistency: *Baker*, *supra*, at para. 26; see also *Bendahmane v. Canada (Minister of Employment & Immigration)*, [1989] 3 F.C. 16 (Fed. C.A.); *Qi v. Canada (Minister of Citizenship & Immigration)* (1995), 33 Imm. L.R. (2d) 57 (Fed. T.D.); *Mercier-Néron v. Canada (Minister of National Health & Welfare)* (1995), 98 F.T.R. 36 (Fed. T.D.). Here, the Municipality followed an involved process in responding to the Congregation's first rezoning application, in so doing giving rise to the Congregation's legitimate expectation that future applications would be thoroughly vetted and carefully considered.

11 The fifth factor -- the nature of the deference due to the decision maker -- calls upon the reviewing court to acknowledge that the public body may be better positioned than the judiciary in certain matters to render a decision, and to examine whether the decision in question falls within this realm. Municipal decisions on rezoning fall within the sphere in which municipalities have expertise beyond the capacity of the judiciary, thus warranting deference from reviewing courts. However, this factor may not carry much weight where, as here on the second and third applications for rezoning, there is no record to indicate that the Municipality has actually engaged its expertise in evaluating the applications.

12 The five *Baker* factors suggest that the Municipality's duty of procedural fairness to the Congregation required the Municipality to carefully evaluate the applications for a zoning variance and to give reasons for refusing them. This conclusion is consistent with the Court's recent decision in *Prud'homme c. Prud'homme*, [2002] 4 S.C.R. 663, 2002 SCC 85 (S.C.C.), at

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... para. 23, holding that municipal councillors must always explain and be prepared to defend their decisions. It is also consistent with *Baker, supra*, where it was held, at para. 43 dealing with a ministerial decision, that if an organ of the state has a duty to give reasons and refuses to articulate reasons for exercising its discretionary authority in a particular fashion, the public body may be deemed to have acted arbitrarily and violated its duty of procedural fairness.

13 Giving reasons for refusing to rezone in a case such as this serves the values of fair and transparent decision making, reduces the chance of arbitrary or capricious decisions, and cultivates the confidence of citizens in public officials. Sustained by both law and policy, I conclude that the Municipality was bound to give reasons for refusing the Congregation's second and third applications for rezoning. This duty applied to the first application, and was complied with. If anything, the duty was stronger on the Congregation's second and third applications, where legitimate expectations of fair process had been established by the Municipality itself.

III. Applying the Duty of Fairness to the Facts

14 Before considering the rezoning applications, it is necessary to deal with a preliminary question: does the trial judge's finding that Mrs. Jolicoeur was willing to sell a P-3 property to the Congregation resolve the matter and make it unnecessary to consider the Municipality's treatment of the Congregation's application for rezoning, as LeBel J. concludes?

15 Like LeBel J., I accept the finding of fact that land was available in zone P-3. However, this does not resolve the issue, in my view, because the Municipality's duty of procedural fairness to the Congregation is not contingent upon the interactions of the Congregation with third parties, namely Mrs. Jolicoeur. The Municipality's duty exists independent of the Congregation's own conduct.

16 I therefore find it necessary to consider whether the Municipality fulfilled its duty of procedural fairness in responding to the rezoning applications brought by the Congregation. In my view, the answer is no.

17 The Congregation requested a zoning variance from the Municipality on three separate occasions. On each occasion, the Municipality refused the request. The process by which the Municipality refused the first request withstands judicial scrutiny. But the process followed to respond to the second and third requests does not.

18 On March 4, 1992, after having concluded no land was available in P-3, the Congregation entered into a purchase agreement for a parcel of land located at the intersection of 112th Avenue and Maurice Boulevard, conditional upon obtaining rezoning approval. The parcel was located in a residential zone, not a P-3 community zone where the construction of churches was permitted. However, another P-3-zoned structure was already located in the area.

19 On May 12, 1992, the Municipality referred the request to its Comité consultatif d'urbanisme for a recommendation. Realizing that places of worship normally enjoy exemption from property taxes, the Comité commissioned a study from Marcel Bélanger, then assistant secretary-treasurer, on the financial impact upon city taxpayers of granting the Congregation's request. Bélanger reported back to the Comité on June 10, concluding that granting the Congregation's zoning variance would result in increased property taxes for neighbouring residents. On June 23, the Comité recommended that the Municipality deny the Congregation's request for a zoning variance. On July 6 at a public meeting, the Municipality announced its final decision to deny the request, supported by detailed reasons.

20 At the urging of the Mayor, the Congregation met with the Municipality's building inspector the next day, July 7. The building inspector indicated on a map the location of P-3 zones in which the Congregation could purchase land to build its place of worship. The building inspector added that if no land were available for purchase in zone P-3, the Congregation would have to reapply for a zoning variance. To this point, the Municipality's conduct cannot be faulted.

21 Following this advice, the Congregation renewed its search for available land in zone P-3. Again its search turned up no available land in P-3 zones and the Congregation took its search to other zones. It found a suitable lot in a commercial zone at 2373 Labelle Boulevard -- only 400 metres from another place of worship -- and entered into a conditional purchase agreement. Still following the building inspector's earlier advice, the Congregation filed a second request for a zoning variance.

22 The Congregation's accompanying letter, dated February 1, 1993, detailed its four-year-long effort to build a place of worship in the Municipality and expressed its inability to find any available land in zone P-3. It requested a zoning variance for the commercial-zoned property it now proposed to acquire. The Congregation asked for an audience with the Municipality in order to personally present its construction plans.

23 Three days later, on February 4, the Municipality sent the Congregation a letter summarily denying its request. It gave no reasons for this decision. The Municipality did not engage in an evaluative process like the one it undertook in response to the Congregation's first request for a zoning variance, nor indeed any evaluative process at all. The Municipality did not refer the matter to its Comité. It did not study the financial impact of granting the zoning variance. And it did not grant the Congregation the courtesy of meeting with its representatives to discuss the Congregation's construction plans, which by then had been derailed for four years. The Municipality contented itself with advising that lots in P-3 were available.

24 This advice was no substitute for a proper evaluation of the rezoning application and accompanying reasons justifying the refusal. The Municipality knew that the Congregation believed on the basis of two searches that no P-3 lots were available. Yet, it offered only the general observation that lots were available without offering any direction. In fact, as the trial judge found, land *was* available in P-3. But this is not the issue. The issue is whether, in these circumstances, the Municipality's curt dismissal of the Congregation with the advice that land was available in P-3 constitutes a sufficient justification of its refusal to grant the second rezoning application to comply with the duty of fairness it owes the Congregation -- a duty heightened by the Congregation's legitimate expectations. I conclude that it does not.

25 Had this second application been a mere request for reconsideration, one might have understood the absence of evaluation and reasons. But this was not so. The Congregation's second request concerned a different parcel of land, located in a commercial zone rather than a residential zone, and situated near another place of worship. The findings of the Bélanger study on tax impact of granting a zoning variance and the accompanying analyses of the first application were inapplicable to these new and different circumstances. A new evaluation was required, together with an explanation. Neither was offered.

26 Having been told land was available in P-3 but not informed as to where, the Congregation yet again renewed its search for land in P-3. It canvassed landowners in this zone, but again concluded that no suitable properties were for sale. Armed with written confirmation from P-3 property owners attesting to the unavailability of land in zone P-3, the Congregation presented its third request to the Municipality for a zoning variance on May 31, 1993. The request related to the same property that had been the subject of the second request. In a series of letters to the Municipality, the Congregation presented evidence of its fruitless search to identify any available land in zone P-3.

27 The Municipality responded by letter, dated August 24, 1993. Again, it refused the application for rezoning. Again, it offered no reasons. This time it did not even tell the Congregation that land was available in zone P-3. The Municipality contented itself with asserting -- erroneously -- that since the Legislature had conferred discretion upon it, the Municipality was not required to offer any justification for refusing the Congregation's rezoning application:

You have made a number of applications to amend the zoning by-law. The Legislature has given the municipal council the responsibility for exercising this power, which is discretionary. Upon careful consideration, the municipality of Lafontaine has decided not to take action in respect of your applications. The municipal council of Lafontaine is not required to provide you with a justification and we therefore have no intention of giving reasons for the council's decision. [Emphasis added.]

28 Where, one asks, is the recognition that the Municipality must exercise its legislatively conferred discretion in the public interest? Where is the recognition that the Municipality owed a duty of fairness to the Congregation? The Congregation in making its second and third applications was acting in good faith on the advice it had received from the municipal inspector following the rejection of its first application. The Congregation offered evidence of good faith searches for land in P-3 to no avail -- evidence the Municipality did not bother to comment on, much less rebut.

29 The Municipality's attitude was clear. The Congregation was welcome to find land in P-3 on its own. If it was unable to do so, the Municipality was neither prepared to accept an application for rezoning nor justify its refusal. The letter effectively

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... foreclosed any possibility that the Municipality would assist the Congregation in its quest for land upon which to build its place of worship. Not surprisingly, the Congregation concluded further applications would be fruitless and commenced this litigation.

30 In refusing to justify its decision to deny the second and third applications for zoning variances, the Municipality breached the duty of procedural fairness it owed to the Congregation -- a duty heightened by the expectations established by the Municipality's own conduct and the importance of the decision to the Congregation, impacting as it did on the right of the Congregation to practise the religion of its choice. The Municipality acted in a manner that was arbitrary and straddled the boundary separating good from bad faith. It follows that the second and third refusals do not comply with the law and must be set aside.

IV. Remedy

31 I would allow the appeal, set aside the second and third rezoning refusals, and remit the matter to the Municipality for reconsideration of the Congregation's rezoning application.

32 The Congregation argues that this remedy is inadequate because it fears that the Municipality will once again refuse its application, this time with proper reasons. Accordingly, it asks this Court to order the Municipality to grant its rezoning application. But such an order presupposes that the Congregation is entitled to a favourable decision by the Municipality in the proper exercise of its discretion. Having already discussed the broad scope of the municipal power to pursue its urban planning program with fairness, in good faith and with a view to the public interest, I take no position on this matter.

33 It may be that in appropriate cases, high-handed or outrageous conduct as that of the Municipality in this appeal might support an order for solicitor-and-client costs or punitive damages: *Whiten v. Pilot Insurance Co.*, [2002] 1 S.C.R. 595, 2002 SCC 18 (S.C.C.); *Young v. Young*, [1993] 4 S.C.R. 3 (S.C.C.). Although the Congregation has made no such request to this Court, we nevertheless retain the right to issue an order for solicitor-and-client costs where circumstances so warrant: *Supreme Court Act*, R.S.C. 1985, c. S-26, s. 47. However, in light of our inability to conclude on the facts whether the Municipality acted in bad faith in denying the Congregation's second and third rezoning applications, I would decline to award solicitor-and-client costs in this appeal.

34 It is also unnecessary to consider the constitutionality of the impugned provisions of the *Act respecting land use planning and development* and to answer the constitutional questions.

V. Conclusion

35 I would allow the appeal with costs to the Congregation and remit the Congregation's rezoning application for the property located at 2373 Labelle Boulevard to the Municipality, to be considered in accordance with these reasons and in observance of the lawful exercise of discretionary authority.

Major J. (Dissenting):

36 I agree with the result in the judgment of LeBel J. but restrict my reasons to his conclusions on the findings of fact of the trial judge and the absence of any infringement to freedom of religion.

LeBel J.:

I. Introduction

37 This appeal concerns a municipal zoning problem relating to the construction of a place of worship for a religious group. The dispute arose out of the refusal of the municipality of the village of Lafontaine (the "municipality") to amend its zoning by-law to allow the appellants to build a place of worship, a Kingdom Hall, on land they bought in a zone where the construction of such facilities is not permitted. More specifically, it is necessary to determine whether the municipality's refusal to amend its zoning by-law infringes of the freedom of religion guaranteed by s. 2(a) of the *Canadian Charter of Rights and Freedoms* (the "*Charter*"). If so, it will be necessary to find an appropriate remedy, which will entail a review of the constitutionality of

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... provisions of the *Act respecting land use planning and development*, R.S.Q., c. A-19.1 ("*ALUPD*"), relating to the referendum process for approving amendments to zoning by-laws. The case also raises a preliminary issue, that is, whether the Court of Appeal was correct in varying the trial judge's finding of fact that lots were available in the zone where the establishment of places of worship is permitted by the municipal by-law. Finally, there remains a question of administrative law relating to the provision of reasons for the municipality's decision not to amend its zoning by-law that should be addressed.

38 The courts below dismissed the appellants' case. I conclude, for reasons that are different from those of the Quebec Court of Appeal and that I will now set out, that an infringement of freedom of religion has not been established and that the appeal should be dismissed.

II. Origins of the Case

39 The respondent municipality, the village of Lafontaine, is located near St-Jérôme, Quebec. In 2002, the municipality was amalgamated with the city of St-Jérôme. The appellants have been looking for a suitable parcel of land in this municipality on which to establish a place of worship, a "Kingdom Hall", since 1989 and have been seeking permission from the municipality to build such a facility since 1992.

40 The municipality's zoning by-law No. 362, as it read in 1992, allowed places of worship to be built in a regional community use zone designated as Zone P-3 (ss. 2.2.1 and 2.2.5.3). As they felt that no land was available in this zone for the construction of their Kingdom Hall, the appellants made an initial offer, conditional on the amendment of the municipality's zoning by-law, to purchase a lot located in a residential zone. On receiving the appellants' application, the municipality refused to amend its zoning by-law on the ground that this would have resulted in an increase in the tax burden for ratepayers, since places of worship are exempt from paying tax. Following this refusal, the appellants made a second conditional offer on November 22, 1992, this time to purchase a lot in Zone C-3, a commercial use zone. They then applied to the municipality a number of times for a zoning change that would permit them to build their place of worship on this lot. The municipality categorically refused to grant their application. There were then some heated exchanges with the municipality's lawyers, who justified the refusal to amend the zoning by-law on the basis that lots were available in Zone P-3. On August 5, 1993, after the municipality refused to amend its zoning by-law, the appellants bought the lot in Zone C-3.

41 To obtain the necessary permits to build their place of worship on this lot, the appellants instituted a proceeding for mandamus. They based their proceeding on grounds based primarily on constitutional law, alleging that the municipality's refusal to amend its zoning by-law violated their freedom of religion under *s. 2(a) of the Charter* and under the *Charter of human rights and freedoms*, R.S.Q., c. C-12 (the "*Quebec Charter*"). They also asked that the provisions of the *Act respecting land use planning and development* relating to the process for approving amendments to zoning by-laws by way of referendum be declared unconstitutional, because such a public consultation, in their view, would violate their freedom of religion. This proceeding gave rise to the case now before our Court.

III. Judicial History

A. Quebec Superior Court (December 14, 1998)

42 Dubois J. of the Quebec Superior Court began by finding that, pursuant to the municipality's zoning by-law, places of worship could be built only in Zone P-3. To build such a facility in another zone, in this case Zone C-3, the by-law would have to be amended.

43 After conducting a detailed analysis of the evidence before him, the trial judge held that lots on which the appellants could build their place of worship were still available in Zone P-3 and that some of them were still up for sale. According to Dubois J., 709,873 square feet of land in Zone P-3 had yet to be developed. At least two lots were still on the market in that zone. In his view, one lot, which he called the "island lot", was available and would be a suitable site for the appellants' place of worship, since it was even larger than the lot they had purchased. According to Dubois J., another lot, one belonging to Francine Jolicoeur that was located behind the Pavillon Ste-Marie (P-3-418), was also available. He found Ms. Jolicoeur's testimony to

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... the effect that she was prepared to sell this lot to be credible. In his opinion, the appellants should have made Ms. Jolicoeur a formal offer to purchase to determine whether the lot was indeed available.

44 Dubois J. also refused to characterize the zoning by-law as prohibitive, since it allowed the construction of places of worship in Zone P-3. He concluded by stating that, since the purpose of the by-law was to organize the municipality's territory while ensuring that citizens' interests were taken into account and that order was maintained in the municipality, the by-law did not infringe freedom of religion. The Superior Court accordingly dismissed the appellants' application for mandamus.

B. Court of Appeal, [2002] R.J.Q. 3015 (C.A. Que.)

45 The Quebec Court of Appeal was divided as to how to dispose of the appeal. Gendreau and Pelletier JJ.A., who formed the majority of the Court, dismissed the appeal, while Robert C.J.Q., who dissented, would have allowed it.

46 The majority agreed with the conclusion of Robert C.J.Q. that the trial judge had made an unreasonable error in finding that lots on which the appellants could build their place of worship were still available in Zone P-3. Thus, all the judges of the Court of Appeal agreed that no land was available in that zone on which to build a Kingdom Hall.

47 However, in the opinion of the majority, the municipality was not responsible for this unavailability. Since the zoning by-law was not prohibitive, as it did not make it impossible to locate places of worship within the boundaries of the municipality, it could not be regarded as the reason why no land was available in Zone P-3. Rather, the source of the problem was the refusal of landowners in that area to sell lots to the appellants. The majority added that the municipality was under no positive obligation to preserve freedom of religion under *s. 2(a) of the Charter*. This led them to conclude that the municipality was not under an obligation to ensure that every religious community could have a place of worship located within its boundaries. The majority therefore dismissed the appeal.

48 Robert C.J.Q., dissenting, would have allowed the appeal. In his view, the trial judge had correctly concluded that, pursuant to the zoning by-law, places of worship could be built only in Zone P-3 and that the by-law would have to be amended to allow the construction of such facilities in other zones, such as Zone C-3.

49 However, the Chief Justice felt that the trial judge had made a palpable and overriding error in assessing the facts with respect to the availability of lots in Zone P-3. In his view, the Superior Court made an initial error of this nature in assessing the evidence relating to the availability of the "island lot". The island was in fact too small for the appellants' construction plans, because a strip of land varying between 10 and 15 metres in width had been set aside to protect the river banks. Moreover, the island's access road would be insufficient for a traffic volume of 40 to 50 vehicles. At any rate, the appellants had been told that the land was not for sale. Robert C.J.Q. was also of the opinion that the burden placed on the appellants as regards their dealings with Ms. Jolicoeur to purchase her land was excessive. In his view, the evidence did not support a finding that she was in fact prepared to sell the portion of her land located behind the Pavillon Ste-Marie. He therefore was of the view that no land was available in Zone P-3 for the construction of the appellants' place of worship. As I have already mentioned, the majority accepted this finding of fact.

50 Unlike the majority, Robert C.J.Q. held that the application of the zoning by-law infringed the freedom of religion guaranteed by *s. 2(a) of the Charter*, as it made it impossible for the appellants to build a place of worship. The municipality was therefore under a duty to make a reasonable effort to accommodate the appellants. It should have amended its zoning by-law at that time to allow the place of worship to be built in another zone within its boundaries.

51 In the dissenting judge's opinion, this infringement of the appellants' right to freedom of religion should be remedied by granting the appellants a constitutional exemption from the zoning by-law. This form of remedy would make it unnecessary to amend the zoning by-law. An amendment would require the application of the *Act respecting land use planning and development*, which would entail the risks inherent in its process for approval by way of referendum. Robert C.J.Q. therefore would have ordered the municipality to issue a building permit to the appellants for the construction of their place of worship on the lot they had acquired in Zone C-3.

IV. Leave to Appeal to the Supreme Court and Constitutional Questions Stated by the Court

52 Leave to appeal to this Court was granted, [2003] 1 S.C.R. viii (S.C.C.), on April 10, 2003. The appellants then asked the Court to state the constitutional questions raised in this case in relation to the process for approving amendments to by-laws by way of referendum as provided for in ss. 123 to 130 and 132 of the *Act respecting land use planning and development*. On June 5, 2003, the following questions were stated:

1 Do ss. 123 to 130 and 132 of the *Act respecting land use planning and development*, R.S.Q. c. A-19.1, infringe the right to freedom of religion guaranteed by s. 2(a) of the *Canadian Charter of Rights and Freedoms*?

2 If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

3 Do ss. 123 to 130 and 132 of the *Act respecting land use planning and development*, R.S.Q. c. A-19.1, infringe the right to equality without discrimination guaranteed by s. 15(1) of the *Canadian Charter of Rights and Freedoms*?

4 If so, is the infringement a reasonable limit prescribed by law that can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

V. Constitutional and Legislative Framework

53 The constitutional and legislative provisions applicable to this case can be found in the appendix to these reasons.

VI. Issues

54 The dispute now before this Court raises four main issues. First, it must be determined whether the Court of Appeal erred in varying the trial judge's findings of fact regarding the availability of lots in Zone P-3. The next question is whether the wording of the municipality's zoning by-law and the municipality's refusal to amend it infringe the freedom of religion guaranteed by s. 2(a) of the *Charter*. It would also have been possible to consider whether the right to freedom of religion guaranteed by s. 3 of the *Quebec Charter* had been violated. Although the appellants alleged such a violation in their legal proceedings, the debate between the parties centred on the interpretation and application of the *Canadian Charter*, so the analysis will be limited to the freedom of religion guaranteed by s. 2(a) of the *Canadian Charter*. If it is found that this fundamental freedom has been infringed, appropriate remedies will have to be selected. In this analysis, the constitutional questions stated by this Court will have to be answered. Finally, although the issue was not directly argued by the appellants, I believe it is important to comment, in an administrative law context, on whether the municipality is under an obligation to provide the appellants with reasons for its decisions not to amend its zoning by-law and, if so, to what extent.

VII. Analysis

A. Interpretation of the Zoning By-law

55 Before I begin my analysis of the four issues, I should mention that I cannot accept the appellants' submission that a liberal construction of the zoning by-law would lead to the conclusion that it authorizes the establishment of places of worship in Zone C-3. This submission is based on the wording of s. 2.2.3.3 of the zoning by-law, which sets out the uses authorized for Zone C-3, namely [TRANSLATION] "uses in the nature of sales and service", including, "but ... not limited to, the establishments listed below and establishments of a similar nature"; included in the list are "Commercial 2 (local)" uses, which, according to s. 2.2.3.2, include "social clubs". The appellants argue that, since the list of authorized uses is not exhaustive, and since places of worship are similar in nature to social clubs, it follows that the establishment of places of worship is permitted in Zone C-3.

56 Under s. 113(3) *ALUPD*, municipalities have the authority to prohibit particular uses in specific zones within their boundaries. In principle, a municipality may implicitly prohibit certain uses by listing the authorized uses for a zone (*St-Michel Archange (Municipalité) c. 2419-6388 Québec Inc.*, [1992] R.J.Q. 875 (C.A. Que.), at p. 883). Thus, a municipality that lists

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... the permitted uses for a zone automatically excludes any use not on the list (*Orford (Canton) c. Fonds de placement Hamel Inc.*, [1995] A.Q. No. 2260 (C.S. Que.)). The appellants contend that this principle does not apply to s. 2.2.3.3 of the zoning by-law, because the municipality has clearly stated that the list of authorized uses is not exhaustive. As pointed out by the dissenting member of the Court of Appeal, this contention cannot be accepted in relation to this by-law because of the *ejusdem generis* rule of interpretation, according to which a generic term that completes an enumeration must be interpreted in light of the genus of the other terms. In the case at bar, the provisions relating to Zone C-3 concern commercial uses. In this context, a "social club" cannot therefore be interpreted as being similar in nature to a place of worship.

57 In my opinion, therefore, the municipal by-law permits the establishment of places of worship only in Zone P-3. Having said this, I will now turn to the analysis of the issues.

B. Did the Court of Appeal Err in Varying the Trial Judge's Findings of Fact?

58 The Court of Appeal unanimously concluded that the trial judge had made an overriding error in assessing the evidence relating to the availability of certain lots in Zone P-3. Contrary to the trial judge's finding, the Court of Appeal acknowledged that no lots were available in this zone for the appellants to build their place of worship. Although I agree with the Court of Appeal that the "island lot" was not available for the construction of the appellants' place of worship, I respectfully consider its conclusion regarding Ms. Jolicoeur's lot to be wrong. It reached that conclusion by means of an impermissible interference with the trial judge's assessment of the facts and even with his assessment of certain witnesses' credibility. Consequently, the trial judge's findings of fact with respect to the availability of this lot should be restored.

59 According to the principles restated by this Court in *Housen v. Nikolaisen*, [2002] 2 S.C.R. 235, 2002 SCC 33 (S.C.C.), an appellate court may not review the findings of fact of a trial court unless the trial court has made a palpable, serious and overriding error. This duty of deference is particularly strong in respect of the assessment of witnesses' credibility. In the case at bar, as Robert C.J.Q. concluded, the trial judge made a reviewable error with respect to the availability of the "island lot". The trial judge clearly failed to take into account the consequences of the strip along the river bank and of the narrowness of the bridge providing access to the island.

60 Robert C.J.Q. also faulted the trial judge for making a palpable and overriding error regarding the availability of the lot belonging to Ms. Jolicoeur. His opinion on this point can be found in particular in the following comments from his reasons, at paras. 76-77:

[Translation]

In my view, there was no need for the appellants to make a formal offer to purchase. Ms. Jolicoeur's disinterest, coupled with the uncontradicted statement that the Secretary-Treasurer had asked her not to sell to the Jehovah's Witnesses, led the appellants to believe in good faith that the lot was not available.

Furthermore, Ms. Jolicoeur's testimony five years after the fact to the effect that the lot was available in 1992 and 1993 and was still available in 1998 is surprising, to say the least. Her version of the facts is contradicted by her conduct throughout the years in question. The judge, in preferring her version, made a palpable and overriding error, particularly in attributing a hidden motive to the appellants, one not supported by the evidence, namely that they wanted a lot that was located near a major thoroughfare.

61 With respect, I do not believe that, on this point, the trial judge made a palpable and overriding error within the meaning of the case law of this Court. Dubois J. stated in his reasons for judgment that one of the appellants' representatives, Mr. Biagioni, testified that Ms. Jolicoeur had shown a marked disinterest in selling her property, that the Secretary-Treasurer of the municipality, a certain Mr. Campbell, had told her not to sell the lot to the Jehovah's Witnesses, and that she had not replied to the appellants' letters. The trial judge acknowledged that Ms. Jolicoeur's testimony was consistent with that of Mr. Biagioni in that she admitted that she had neither returned the appellants' calls nor responded to their letters. However, Dubois J. noted that the two witnesses contradicted each other on one specific and important point. Contrary to what Mr. Biagioni had said, Ms. Jolicoeur stated that Mr. Campbell had not called her to recommend that she not sell to the Jehovah's Witnesses, but to ask her

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... why she had refused to sell them her land. She added that the appellants wanted to buy a portion of her land that was not for sale, that is, the one on the main road where the Pavillon Ste-Marie is located. She testified that she had offered to sell the back portion of her land to the appellants, but that they were not interested. Faced with this contradiction between the two witnesses, the trial judge found Ms. Jolicoeur to be more credible and preferred her version of the facts to Mr. Biagioni's version. Dubois J. therefore held that [TRANSLATION] "Ms. Jolicoeur's testimony cannot be discounted, and her land in Zone P-3 was available in 1992 and 1993 and remains so to this day in 1998" (at p. 29). Thus, the trial judge addressed the issue of the witnesses' credibility. There was no need for the Court of Appeal to reassess the evidence heard by the trial judge to determine if this conclusion was reasonable. Absent a palpable error, the Court of Appeal should have deferred to the trial judge's finding of fact. Since this finding was valid, it should not have been varied by the Court of Appeal.

62 In these circumstances, since there was no valid reason for reviewing the trial judge's findings of fact, it is necessary to analyse the parties' submissions starting from the premise that at least one parcel of land in Zone P-3, the one that Ms. Jolicoeur owned behind the Pavillon Ste-Marie, remained available as a site for the appellants' place of worship. In my view, this finding of fact would justify dismissing the appellants' application from the outset, since it precludes a conclusion that the respondent infringed the appellants' constitutional guarantee of freedom of religion under *s. 2(a) of the Charter*, as we will now see.

C. Was There an Infringement of the Freedom of Religion Guaranteed by s. 2(a) of the Canadian Charter of Rights and Freedoms?

63 Before I address the question of freedom of religion, it should be noted that the municipality's zoning by-law did not prohibit the "place of worship" use everywhere within its boundaries; rather, it permitted this use in a specified zone. Therefore, the by-law cannot be considered prohibitive as defined by the courts (*Saint-Michel Archange (Municipalité de)*, *supra*, at p. 882; J. L'Heureux, *Droit municipal québécois*, t. II (1984), p. 317, at para. 606). The wording of the by-law leaves room for the exercise of freedom of worship. We must now determine whether the room it leaves is consistent with the constitutional requirements of the *Canadian Charter*.

64 Freedom of religion is a fundamental right and represents a major triumph of our democratic society. The philosophical and political values underpinning Canadian democracy recognize the need to respect the diverse opinions and beliefs that guide the consciences and give direction to the lives of all members of our society. It is because of the crucial importance of this fundamental right that this Court decided it was essential to give it a liberal interpretation in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295 (S.C.C.) (at p. 336):

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious beliefs openly and without fear of hindrance or reprisal, and the right to manifest religious belief by worship and practice or by teaching and dissemination.

65 The concept of freedom of religion, which is not strictly limited to the above definition, includes a positive aspect, that is, the right to believe or not believe what one chooses, to declare one's beliefs openly, and to practice one's religion in accordance with its tenets. This positive aspect also includes the right to proselytize, that is, to teach and disseminate one's beliefs. Freedom of religion also has a negative aspect, that is, the right not to be compelled to belong to a particular religion or to act in a manner contrary to one's religious beliefs (J. Woehrling, "*L'obligation d'accommodement raisonnable et l'adaptation de la société à la diversité religieuse*" (1998), 43 *McGill L.J.* 325, at p. 371). This fundamental freedom imposes on the state and public authorities, in relation to all religions and citizens, a duty of religious neutrality that assures individual or collective tolerance, thereby safeguarding the dignity of every individual and ensuring equality for all.

66 The duty of neutrality appeared at the end of a long evolutionary process that is part of the history of many countries that now share Western democratic traditions. Canada's history provides one example of this experience, which made it possible for the ties between church and state to be loosened, if not dissolved. There were, of course, periods when there was a close union of ecclesiastical and secular authorities in Canada. European settlers introduced to Canada a political theory according to which the social order was based on an intimate alliance of the state and a single church, which the state was expected to promote within its borders. Throughout the history of New France, the Catholic church enjoyed the status of sole state religion. After

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... the Conquest and the Treaty of Paris, the Anglican church became the official state religion, although social realities prompted governments to give official recognition to the status and role of the Catholic church and various Protestant denominations. This sometimes official, sometimes tacit recognition, which reflected the make-up of and trends in the society of the period, often inspired legislative solutions and certain policy choices. Thus, at the time of Confederation in 1867, the concept of religious neutrality implied primarily respect for Christian denominations. One illustration of this can be seen in the constitutional rules relating to educational rights originally found, *inter alia*, in s. 93 of the *British North America Act, 1867*.

67 Since then, the appearance and growing influence of new philosophical, political and legal theories on the organization and bases of civil society have gradually led to a dissociation of the functions of church and state; Canada's demographic evolution has also had an impact on this process, as have the urbanization and industrialization of the country. Although it has not excluded religions and churches from the realm of public debate, this evolution has led us to consider the practice of religion and the choices it implies to relate more to individuals' private lives or to voluntary associations. (M.H. Ogilvie, *Religious Institutions and the Law in Canada* (2nd ed. 2003), at pp. 27 and 56). These societal changes have tended to create a clear distinction between churches and public authorities, placing the state under a duty of neutrality. Our Court has recognized this aspect of freedom of religion in its decisions, although it has in so doing not disregarded the various sources of our country's historical heritage. The concept of neutrality allows churches and their members to play an important role in the public space where societal debates take place, while the state acts as an essentially neutral intermediary in relations between the various denominations and between those denominations and civil society.

68 In this context, it is no longer the state's place to give active support to any one particular religion, if only to avoid interfering in the religious practices of the religion's members. The state must respect a variety of faiths whose values are not always easily reconciled. As this Court observed in *Big M, supra*, "[w]hat may appear good and true to a majoritarian religious group, or to the state acting at their behest, may not, for religious reasons, be imposed upon citizens who take a contrary view" (at p. 337; see also pp. 347, 350 and 351). In *R. v. Videoflicks Ltd.*, [1986] 2 S.C.R. 713 (S.C.C.), this Court had occasion to restate this concern with preventing public authorities from intruding on private beliefs (at p. 759):

The purpose of s. 2(a) is to ensure that society does not interfere with profoundly personal beliefs that govern one's perception of oneself, humankind, nature, and, in some cases, a higher or different order of being.

The guarantee of freedom of religion set out in s. 2(a) of the *Charter* prohibits the state from compelling an individual to adopt or renounce a particular belief or to practice a particular religion. This obligation remains essentially a negative one. As a general rule, the state refrains from acting in matters relating to religion. It is limited to setting up a social and legal framework in which beliefs are respected and members of the various denominations are able to associate freely in order to exercise their freedom of worship, which is a fundamental, collective aspect of freedom of religion, and to organize their churches or communities. In this context, the principle of neutrality must be taken into account in assessing the duty of public entities, such as municipalities, to actively help religious groups.

69 A review of the various components of the concept of freedom of religion might suggest that the rights protected by s. 2(a) of the *Charter* are absolute, but such is not the case. This freedom is limited by the rights and freedoms of others. The diversity of opinions and convictions requires mutual tolerance and respect for others. Freedom of religion is also subject to limits necessary "to protect public safety, order, health, or morals..." (*Big M, supra*, at p. 337; *Attis v. New Brunswick District No. 15 Board of Education*, [1996] 1 S.C.R. 825 (S.C.C.), at para. 72; *Trinity Western University v. College of Teachers (British Columbia)*, [2001] 1 S.C.R. 772, 2001 SCC 31 (S.C.C.), at para. 29). This Court has stressed that, in order to prove a violation of freedom of religion, it must be shown that the interference with the religious belief or practice in question is not trivial or insubstantial. Thus, churches and their members are not exempted from making any effort, or even sacrifice, *inter alia* in the exercise of their freedom of worship:

The Constitution shelters individuals and groups only to the extent that religious beliefs or conduct might reasonably or actually be threatened. For a state-imposed cost or burden to be proscribed by s. 2(a) it must be capable of interfering with religious belief or practice. In short, legislative or administrative action which increases the cost of practising or otherwise

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... manifesting religious beliefs is not prohibited if the burden is trivial or insubstantial: see, on this point, *R. v. Jones*, [1986] 2 S.C.R. 284, per Wilson J. at p. 314. (*Edwards Books*, *supra*, at p. 759)

70 I concluded above that the trial judge's findings of fact regarding the availability of certain lots in Zone P-3 and, more specifically, of the one belonging to Ms. Jolicoeur, should be restored in this case. As this lot should have been considered available, the appellants cannot complain that the zoning by-law, by making it impossible for them to establish a place of worship in the municipality, violates their freedom of religion. The appellants could in fact have built a Kingdom Hall, on Ms. Jolicoeur's lot at least, had they come to an agreement with her.

71 As the municipality is required to be neutral in matters of religion, its by-laws must be structured in such a way as to avoid placing unnecessary obstacles in the way of the exercise of religious freedoms. However, it does not have to provide assistance of any kind to religious groups or actively help them resolve any difficulties they might encounter in their negotiations with third parties in relation to plans to establish a place of worship. In the case at bar, the municipality did not have to provide the appellants with access to a lot that corresponded better to their selection criteria. Such assistance would be incompatible with the municipality's duty of neutrality in that the municipality would be manipulating its regulatory standards in favour of a particular religion. Such support for a religious group could jeopardize the neutrality the municipality must adopt toward all such groups. Moreover, as this Court stated in *Edwards Books*, "[s]ection 2(a) does not require the legislatures to eliminate every minuscule state-imposed cost associated with the practice of religion" (at p. 759). Although the very nature of the zoning by-law means that the appellants do not have absolute freedom to choose the location of their place of worship, this limit is necessary to protect safety and order, and ensure proper land use, in the municipality and does not constitute a violation of freedom of religion. Neither the purpose nor the effect of this by-law has been to infringe the appellants' freedom of religion.

72 Since at least one lot remains available in Zone P-3 for the construction of their place of worship, the appellants must comply with the municipality's zoning by-law and build their place of worship in that zone, where such a use is authorized. Their religious beliefs and practices do not exempt them from complying with municipal by-laws. For this reason, I would dismiss the appeal. Having reached this conclusion, I could end my analysis here. However, for the sake of discussion only, and because of the nature of the debate that has taken place in the Quebec courts and in this Court and the importance of the constitutional issues raised, I propose to go on to review the parties' positions based on a different, fictitious premise. I will now consider what the legal consequences would have been had the evidence shown that no land was available in Zone P-3 for the appellants to establish a place of worship.

D. Hypothetical Situation in Which No Land Was Available in Zone P-3

73 The appellants submit that, because no land is available in Zone P-3, the zoning by-law, as it is drafted, combined with the municipality's refusal to amend it, constitutes an infringement of their freedom of religion under [s. 2\(a\) of the Charter](#). If no land were in fact available, I would agree with them. Thus, under the zoning by-law, places of worship may be established only in Zone P-3, but no land would be available there. The appellants would therefore be unable to build their place of worship anywhere within the boundaries of the municipality. Freedom of religion includes the right to have a place of worship. Generally speaking, the establishment of a place of worship is necessary to the practice of a religion. Such facilities allow individuals to declare their religious beliefs, to manifest them and, quite simply, to practise their religion by worship, as well as to teach or disseminate it. In short, the construction of a place of worship is an integral part of the freedom of religion protected by [s. 2\(a\) of the Charter](#).

74 In the case at bar, the appellants have shown that their Kingdom Hall, a place of prayer and contemplation that serves as a venue for weddings and funerals, is necessary to the manifestation of their religious faith. They should therefore be free to establish such a facility within the boundaries of the municipality. If no land were available in Zone P-3, they would be prevented from doing so, in which case they would be unable to practise their religion, and their freedom guaranteed by [s. 2\(a\) of the Charter](#) would be infringed accordingly.

75 Contrary to the conclusion of the majority of the Court of Appeal, I believe this infringement would not be solely attributable to the property owners who had refused to sell their land in Zone P-3 to the appellants. Our Court has stated that

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... "the contribution of private actors to a violation of fundamental freedoms does not immunize the state from *Charter* review; rather, such contributions should be considered part of the factual context in which legislation is reviewed" (*Dunmore v. Ontario (Attorney General)*, [2001] 3 S.C.R. 1016, 2001 SCC 94 (S.C.C.), at para. 26). Thus, the infringement of the appellants' freedom of religion would result not from the existence of the zoning by-law, but from the refusal to adapt it to evolving community needs in a situation in which no land was available in the zone set aside for the establishment of places of worship.

76 The problem consists in identifying cases in which it will be possible to require the municipality to amend its zoning by-law while respecting its duty of neutrality. As a general rule, the *Charter* does not require the state to take positive steps in support of the exercise of the fundamental freedoms provided for in s. 2(a) of the *Charter*. The principle of neutrality discussed above means that the state must even refrain from implementing measures that could favour one religion over another or that might simply have the effect of imposing one particular religion. However, there may be situations in which an absolute application of this principle unduly restricts the free exercise of religion. In some cases, an inflexible application of the principle of neutrality that fails to take the circumstances into account may prove to be inconsistent with the right to the free exercise of religion. In this regard, Professor Woehrling observed that [TRANSLATION] "the two constituent principles of freedom of religion -- free exercise and state neutrality -- must be regarded as mutually limiting, since giving the broadest scope to one will inevitably negate the other" (Woehrling, *supra*, at p. 379).

77 Our Court has noted on numerous occasions that it is not always enough for the state to adopt a posture of restraint. The Court has recognized that, in certain exceptional circumstances, positive government action may be required to make a fundamental freedom meaningful (*Delisle c. Canada (Sous-procureur général)*, [1999] 2 S.C.R. 989 (S.C.C.), at paras. 7 and 33; *Haig v. R.*, [1993] 2 S.C.R. 995 (S.C.C.), at p. 1039; *Dunmore*, *supra*).

78 *Dunmore*, *supra*, is an example of a case in which exceptional circumstances imposed a positive obligation on the state. In *Dunmore*, Ontario's *Labour Relations Act*, 1995, S.O. 1995, c. 1, excluded agricultural workers from the labour relations scheme it established. The appellants contended that this exclusion infringed their right to freedom of association under s. 2(d) of the *Charter*. Bastarache J., writing for the majority, concluded that the total exclusion of these workers did in fact infringe their freedom of association and that a minimum level of protection had to be provided for persons employed in agriculture in Ontario. He noted that, in principle, the fundamental freedoms guaranteed by the *Charter* place only a negative obligation on the state, which is only required to refrain from interfering (at para. 19). However, when the state creates a situation that interferes with the exercise of a freedom, it may be required to take positive steps to put an end to the interference. In such a case, it is essential to prove that the limit complained of is related to the freedom at issue and not to access to a particular statutory scheme. In other words, it must be proven that the impugned measure makes it impossible to exercise, or at least substantially interferes with, one's freedom (at para. 25). As Bastarache J. mentions, it will only be in exceptional cases that underinclusive legislation will have a substantial impact on the exercise of a fundamental freedom (at para. 22).

79 The case at bar involves one such exceptional situation in which a posture of restraint on the municipality's part would interfere with the appellants' freedom of religion. It would be utterly impossible for the appellants to establish their place of worship within the boundaries of the municipality if no land were available in the only zone where this type of use is authorized. As it would then be impossible to practise their religion, this would constitute direct interference with their freedom of religion. This is a clear example of a case in which freedom of religion can have no real meaning unless the public authorities take positive action. Since such positive action would be required, it would constitute a reasonable limit on the principle of state neutrality. Thus, for the appellants to enjoy their freedom of religion, the municipality would have to amend the by-law. This brings me to the question of the remedies that could have been available had I concluded that no land was available in Zone P-3.

E. What Are the Appropriate Remedies?

80 Since no infringement of a *Charter* right has been established in this case, there is nothing to remedy. However, had a violation been established, the appellants asked this Court to compel the municipality to amend its zoning by-law to allow the construction of their place of worship on the lot they acquired in Zone C-3. The appellants also asked that this amendment not be subject to the process for approving amendments by way of referendum under ss. 123 to 130 and 132 *ALUPD*, because they

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... contend that those provisions are contrary to the freedom of religion guaranteed by s. 2(a) of the *Charter*. Such a remedy could not have been granted in the circumstances of the case at bar.

81 This Court could in fact have ordered the municipality to amend its zoning by-law, but we could not have imposed on the municipality our choice of location for the establishment of the appellants' place of worship. The purpose of zoning by-laws is to organize a municipality's territory so as to protect citizens' interests and maintain order. They must be drafted in light of a large number of factors, and it is ordinarily only those with political power who are in a position to measure the impact of those factors. It would therefore have been up to the municipality to determine the zone where the appellants could establish their place of worship. In so doing, the respondent would have had to take into account the restrictions resulting from the regional development plans established by the regional county municipality pursuant to the *Act respecting land use planning and development*. Thus, the only possible remedy that would have been appropriate was an order to the municipality to review its zoning by-law so as to make land available to the appellants on which they could build their place of worship.

82 It would not have been appropriate to suspend the operation of the *Act respecting land use planning and development* and its process for approval by way of referendum. It cannot be assumed that this democratic process, which is consistent with the nature of municipal government in Canada, in any way infringes the freedom of religion guaranteed by s. 2(a) of the *Charter* or that it is considered suspect in relation to the values enshrined in the *Charter*. In the case at bar, the municipality did not draft a by-law to amend its zoning by-law, and a public meeting was not held to study such a draft by-law (ss. 125-27 *ALUPD*). The by-law was not submitted for the approval of the qualified voters to determine whether it would be submitted for approval by way of referendum (ss. 130-33 *ALUPD*), nor was a referendum held to approve the by-law to amend the zoning by-law. It cannot be assumed that residents of the municipality would look unfavourably on the Jehovah's Witnesses and that the outcome of a referendum would be negative. Thus, it would be inappropriate to declare ss. 123 to 130 and 132 *et seq.* *ALUPD* unconstitutional or to suspend, *a priori*, the operation of those provisions.

83 In short, if no land had been available in Zone P-3, this Court would have found an infringement of the freedom of religion protected by s. 2(a) of the *Charter* and would have ordered the municipality to review the zoning by-law, taking into account all the interests, both public and private, at issue, in order to amend it, if necessary, to permit the appellants, as far as possible, to build their place of worship within the municipality's boundaries. However, this Court would have had no valid reason to override the democratic control mechanisms provided for in Quebec's municipal legislation with respect to zoning.

84 I would also note in closing that the amalgamation of municipalities has probably resulted in changes relating to zoning in the municipality, which is now part of the city of St-Jérôme. As the parties did not discuss this consequence of the passage of time in a case that has been going on for too long, it would have been difficult for the Court to devise an effective remedy.

F. The Impact of Administrative Law

85 In addition to the constitutional questions discussed so far, this appeal has administrative law implications. However, the appellants declined to base their case on the principles of administrative law, preferring to focus on their arguments based on freedom of religion. As a result, the questions of administrative law cannot form the basis of this Court's decision, although some comments are in order due to the importance of these questions.

86 In their pleadings, the appellants limited themselves to maintaining that the municipality, in refusing to amend its zoning by-law, had exercised its discretion in an unreasonable and arbitrary manner and had acted in bad faith. Although these contentions are not supported by the evidence, they do show that an argument relating to procedural fairness, based on the reasons given for the municipality's negative decisions, could have been raised by the appellants, but they declined to do so at the hearing before this Court.

87 The municipality's decision to refuse to amend its zoning by-law is within the scope of its discretionary power, as it had to decide whether it would be appropriate to amend the by-law. The municipality had a range of options at its disposal, and its constituting act did not dictate which one it should select (*Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.), at para. 52). This type of decision made by an administrative authority can at times be subject to a duty of

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... procedural fairness. For example, the *Act respecting administrative justice*, R.S.Q., c. J-3 ("*AAJ*"), which was enacted by the Quebec legislature on December 16, 1996, and came into force on April 1, 1998, after the facts giving rise to this case took place, requires government departments and bodies to comply with procedural fairness in their discretionary decision-making processes. Thus, the organizations to which this act applies have a duty to act fairly (s. 2 *AAJ*), including a requirement to give reasons for any unfavourable decisions they make (ss. 5 and 8 *AAJ*). As municipalities are not subject to this act (s. 3 *AAJ*), it must be determined whether they are subject to the same duty by virtue of the legal rules gradually developed by the common law to define the obligations of procedural fairness applicable to government organizations.

88 In *Baker*, *supra*, this Court stated that "[t]he fact that a decision is administrative and affects 'the rights, privileges or interests of an individual' is sufficient to trigger the application of the duty of fairness: *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 (S.C.C.), at p. 653" (at para. 20). To define the variable content of this duty, it is necessary to consider five open-ended factors that serve to ensure that individuals affected by a decision have the opportunity to present their case fully and fairly and that decisions are made using a fair, impartial and open process appropriate to their statutory, institutional and social context (*Baker*, at paras. 22 and 28). Thus, the scope of this duty will depend on the nature of the decision, on the decision-making process, on the nature of the statutory scheme, for example whether it includes a right of appeal, on the importance of the decision to the person affected, on the legitimate expectations of that person and on the choices of procedure made by the decision-making body (*Baker*, at paras. 23-28).

89 When applied to the case at bar, these factors would, at the least, place the municipality under an obligation to give reasons for its repeated refusals to amend its zoning by-law. The municipality's decision regarding the application to amend the zoning by-law, which was not subject to a specific decision-making process, could not be appealed by the appellants even though it had a direct effect on their right to freedom of religion guaranteed by s. 2(a) of the *Charter*. Normally, the appellants could expect to receive reasons from the municipality for its decision. The importance of a negative decision to the appellants, who as a result found it impossible to build the place of worship they needed to practice their religion, in itself placed the municipality under an obligation to give reasons for its decision.

90 The municipality did not give sufficient reasons for its decisions. After receiving the appellants' application to amend the zoning by-law in relation to their first offer to purchase the lot located in a residential zone, the municipality's explanation for its refusal was that such an amendment would result in an increase in the taxation rate and that the owners of adjacent lots who would be affected by this increase would not take part in the process of approval by way of referendum provided for in the *Act respecting land use planning and development*. Then, when the municipality refused to amend its zoning by-law in relation to the second lot the appellants wished to purchase, the one located in Zone C-3, it justified its decision on the basis that lots were available in Zone P-3 but did not identify the lots in question. The appellants, convinced that no lots were available in that zone, then applied to the municipality on four other occasions to amend the zoning by-law. The municipality simply repeated that lots were available in Zone P-3 and that it was therefore under no obligation to amend its zoning by-law.

91 In its replies, the municipality never did specify which lots were available or give any other reasons for its decision. This refusal to provide the appellants with valid reasons is obvious from a letter the municipality's attorney sent to the appellants on August 24, 1993, in which he wrote, [TRANSLATION] "Upon careful consideration, the municipality of Lafontaine has decided not to take action in respect of your applications. The municipal council of Lafontaine is not required to provide you with a justification and we therefore have no intention of giving reasons for the council's decision". The respondent should have given more detailed reasons for its decisions.

92 More detailed reasons would have given the appellants a better understanding of the municipality's decision and, above all, demonstrated to them that there were in fact lots available in Zone P-3. As a result, they would not have been left with the impression that the municipality's decision was arbitrary or that the municipality had acted in bad faith. A more precise and rigorous justification would therefore have given the municipality's decision-making process the required transparency and the appearance of procedural fairness.

VIII. Conclusion

93 For the reasons set out here, I would answer the constitutional questions in the negative and dismiss the appeal with costs.
Appeal allowed.

Pourvoi accueilli.

APPENDIX — Constitutional and Legislative Provisions

Canadian Charter of Rights and Freedoms

2. Everyone has the following fundamental freedoms:

- a) freedom of conscience and religion;

Charte canadienne des droits et libertés

2. Chacun a les libertés fondamentales suivantes :

- a) liberté de conscience et de religion;

Cities and Towns Act, R.S.Q., c. C-19

410. The council may make by-laws:

- (1) To secure peace, order, good government, health and general welfare in the territory of the municipality, provided such by-laws are not contrary to the laws of Canada, or of Québec, nor inconsistent with any special provision of this Act or of the charter;

Loi sur les cités et villes, L.R.Q., ch. C-19

410. Le conseil peut faire des règlements :

- 1 Pour assurer la paix, l'ordre, le bon gouvernement, la salubrité et le bien-être général sur le territoire de la municipalité, pourvu que ces règlements ne soient pas contraires aux lois du Canada ou du Québec, ni incompatibles avec quelque disposition spéciale de la présente loi ou de la charte;

[TRANSLATION]

Village de Lafontaine, By-law No. 361, Zoning By-law (April 2, 1991)

2.2.1 Classes

For the purposes of this by-law, certain uses are grouped based on compatibility. These uses are:

.				
C	use	Commercial	1	(C-1)
	use	Commercial	2	(C-2)
	use	Commercial	3	(C-3)
.				
P	use	Community	1	(P-1)

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45...	use	Community	2	(P-2)
	use	Community	3	(P-3)
	use	Community	4	(P-4)

Village of Lafontaine, Règlement no. 362, Règlement de zonage (2 avril 1991)

2.2.1 Nomenclature

Pour les fins du présent règlement, certains usages sont groupés selon leur compatibilité. Ces usages sont :

[				
.....				
]				
C	usage	Commerce	1	(C-1)
	usage	Commerce	2	(C-2)
	usage	Commerce	3	(C-3)
[				
.....				
]				
P	usage	Communautaire	1	(P-1)
	usage	Communautaire	2	(P-2)
	usage	Communautaire	3	(P-3)
	usage	Communautaire	4	(P-4)

2.2.3.2 Commercial 2 (Local)

This zone is reserved for uses in the nature of sales and service...

This classification includes, but is not limited to, the establishments listed below and establishments of a similar nature... :

-
- hotels, motels, night clubs, social clubs, exhibition halls;
-

2.2.3.2 Commerce 2 (quartier)

Ne sont de cet usage que les usages des types vente et service [...]

Sont de cet usage, de manière non limitative, les établissements mentionnés dans la liste ci-dessous ou s'apparentant à ceux-ci [...] :

- [...]
- hôtels, motels, clubs sociaux, salles d'exposition;

[...]

2.2.3.3 Commercial 3 (Regional)

This zone is reserved for uses in the nature of sales and service and for small-scale industries/businesses

.....

This classification includes, but is not limited to, the establishments listed below and establishments of a similar nature:

- Commercial 1 (neighbourhood) and Commercial 2 (local) uses;

.....

2.2.3.3 Commerce 3 (régional)

Sont de cet usage, les usages des types vente et service et les industries/commerces artisanaux

[...]

Sont de cet usage, et de manière non limitative, les établissements mentionnés dans la liste ci-dessous ou s'apparentant à ceux-ci :

- les usages de la classe Commerce 1 (voisinage) et Commerce 2 (quartier);

[...]

2.2.5.3 Community 3 (Regional)

This zone is reserved for the following activities relating to public administration, education, recreation, health care and community-oriented cultural activities:

.....

- places of worship;

.....

2.2.5.3 Communautaire 3 (Régional)

Sont de cet usage les activités suivantes reliées à l'administration publique, à l'éducation, aux loisirs, à la santé et aux activités culturelles de nature communautaire :

[...]

- édifices de culte;

[...]

Act respecting land use planning and development, R.S.Q., c. A-19.1

113. The council of a municipality may adopt a zoning by-law for its whole territory or any part thereof.

A zoning by-law may include provisions regarding one or more of the following objects:

.....

[...]

(3) to specify, for each zone, the structures and uses that are authorized and those that are prohibited, including public uses and buildings, and the land occupation densities;

Loi sur l'aménagement et l'urbanisme, L.R.Q., ch. A-19.1113.

113. Le conseil d'une municipalité peut adopter un règlement de zonage pour l'ensemble ou partie de son territoire.

Ce règlement peut contenir des dispositions portant sur un ou plusieurs des objets suivants :

[...]

3 spécifier, pour chaque zone, les constructions ou les usages qui sont autorisés et ceux qui sont prohibés, y compris les usages et édifices publics, ainsi que les densités d'occupation du sol;

.....

123. Sections 124 to 127 apply with respect to

(1) zoning, subdivision and building by-laws;

.....

(4) by-laws to amend or replace a by-law mentioned in subparagraphs 1 to 3.

.....

For the purposes of this division, a by-law that is subject to approval by way of referendum is a by-law that

(1) is designed to amend a zoning or subdivision by-law by adding, amending, replacing or striking out a provision bearing on a matter mentioned in any of subparagraphs 1 to 5, 6, 10, 11 and 16.1 to 22 of the second paragraph of section 113 or in the third paragraph of the said section, or a matter mentioned in any of subparagraphs 1, 3 and 4.1 of the second paragraph of section 115; and tout règlement de zonage, de lotissement ou de construction;

(2) is not a concordance by-law enacting, pursuant to section 58, 59, 102 or 110.4, an amendment referred to in subparagraph 1 for the sole purpose of taking into account an amendment to or revision of the land use planning and development plan or the coming into force of the original planning program or of the amendment to or revision of the planning program.

.....

123. Les articles 124 à 127 s'appliquent à l'égard de :

[...]

4 tout règlement qui modifie ou remplace l'un de ceux mentionnés aux paragraphes 1 à 3.

[...]

Pour l'application de la présente section, est susceptible d'approbation référendaire tout règlement qui remplit les conditions suivantes :

1 avoir pour objet de modifier le règlement de zonage ou de lotissement en ajoutant, modifiant, remplaçant ou supprimant une disposition qui porte sur une matière prévue à l'un des paragraphes 1 à 5, 6, 10, 11 et 16.1 à 22 du deuxième alinéa de l'article 113 ou au troisième alinéa de cet article ou sur une matière prévue à l'un des paragraphes 1, 3 et 4.1 du deuxième alinéa de l'article 115;

2 ne pas être un règlement de concordance qui apporte une modification visée au paragraphe 1, en vertu de l'un des articles 58, 59, 102 et 110.4, uniquement pour tenir compte de la modification ou de la révision du schéma d'aménagement et de développement ou de l'entrée en vigueur du plan d'urbanisme original ou de la modification ou de la révision du plan.

[...]

124. Every by-law to which this section applies shall be adopted in draft form by the council of the municipality.

.

124. Le conseil de la municipalité adopte un projet de tout règlement à l'égard duquel s'applique le présent article.

[...]

125. The municipality shall hold a public meeting in connection with the draft by-law, presided by the mayor or by a member of the council designated by the mayor.

The date, time and place of the meeting shall be fixed by the council, which may delegate all or part of this power to the clerk or secretary-treasurer of the municipality.

125. La municipalité tient une assemblée publique sur le projet de règlement par l'intermédiaire du maire ou d'un autre membre du conseil désigné par le maire.

Le conseil fixe la date, l'heure et le lieu de l'assemblée; il peut déléguer tout ou partie de ce pouvoir au greffier ou au secrétaire-trésorier de la municipalité.

126. At least seven days before the public meeting is held, the clerk or secretary-treasurer of the municipality shall post, in the office of the municipality, a notice setting out the date, time, place and object of the meeting, and publish it in a newspaper circulated in its territory.

.

126. Au plus tard le septième jour qui précède la tenue de l'assemblée publique, le greffier ou secrétaire-trésorier de la municipalité affiche au bureau de celle-ci et publie dans un journal diffusé sur son territoire un avis de la date, de l'heure, du lieu et de l'objet de l'assemblée.

[...]

127. During the public meeting, the person presiding must explain the draft by-law and hear every person or body wishing to express an opinion.

127. Au cours de l'assemblée publique, celui par l'intermédiaire duquel elle est tenue explique le projet de règlement et entend les personnes et organismes qui désirent s'exprimer. Where the draft by-law contains a provision making it a by-law subject to approval by way of referendum, the person responsible for explaining the draft by-law shall identify that provision and explain the nature of and means of exercising the right of certain persons to make an application, pursuant to the provisions of subdivision 2, for any by-law containing that provision to be submitted for the approval of certain qualified voters. Lorsque le projet contient une disposition propre à un règlement susceptible d'approbation référendaire, la personne chargée de l'explication du projet identifie cette disposition et explique la nature et les modalités d'exercice du droit de certaines personnes de demander, conformément aux dispositions de la sous-section 2, que tout règlement contenant cette disposition soit soumis à l'approbation de certaines personnes habiles à voter.

128. Once the public meeting on a draft by-law containing a provision making it a by-law subject to approval by way of referendum has been held, the council of the municipality shall adopt, with or without change, a second draft by-law. No such

2004 SCC 48, 2004 CSC 48, 2004 CarswellQue 1545, 2004 CarswellQue 1546, [2004] 2 S.C.R. 650, [2004] S.C.J. No. 45... provision may be included in the second draft by-law unless it relates to a matter in respect of which such a provision was included in the first draft by-law.

.....

128. Après la tenue de l'assemblée publique portant sur un projet de règlement qui contient une disposition propre à un règlement susceptible d'approbation référendaire, le conseil de la municipalité adopte, avec ou sans changement, un second projet de règlement. Celui-ci ne peut contenir une telle disposition portant sur un sujet que si ce dernier a fait l'objet d'une telle disposition contenue dans le premier projet. However, the council is not bound to adopt a second draft by-law if the by-law it adopts under section 134 no longer contains any provision making it a by-law subject to approval by way of referendum.

Toutefois, le conseil n'est pas tenu d'adopter un second projet lorsque le règlement qu'il adopte en vertu de l'article 134 ne contient aucune disposition propre à un règlement susceptible d'approbation référendaire contenue dans le premier projet.

[...]

129. A summary of the second draft by-law may be produced under the responsibility of the municipality.

.....

129. Un résumé du second projet de règlement peut être produit sous la responsabilité de la municipalité.

[...]

130. If the second draft by-law contains a provision making the by-law a by-law subject to approval by way of referendum, an application may be made under this section and under sections 131 and 133 to require that any by-law containing the provision that is adopted under section 136 be submitted for the approval of certain qualified voters.

.....

130. Toute disposition propre à un règlement susceptible d'approbation référendaire qui est contenue dans le second projet de règlement peut faire l'objet, conformément au présent article et aux articles 131 et 133, d'une demande visant à ce que tout règlement contenant cette disposition et adopté en vertu de l'article 136 soit soumis à l'approbation de certaines personnes habiles à voter.

[...]

131. Every interested person in a zone or a sector of a zone may sign an application originating from that zone or sector.

131. Toute personne intéressée d'une zone ou d'un secteur de zone peut signer toute demande qui en provient. For the purposes of this subdivision, an interested person in a given zone or sector of a zone is a person who would be a qualified voter and whose name would be entered on the referendum list of the zone or sector if the reference date, within the meaning of the Act respecting elections and referendums in municipalities (chapter E-2.2), was the date of adoption of the second draft by-law and if the sector concerned, within the meaning of that Act, was that zone or sector.

Pour l'application de la présente sous-section, est une personne intéressée d'une zone ou d'un secteur de zone quiconque serait une personne habile à voter ayant le droit d'être inscrite sur la liste référendaire de la zone ou du secteur de zone si la date de référence, au sens de la Loi sur les élections et les référendums dans les municipalités (chapitre E-2.2), était celle de l'adoption du second projet de règlement et si le secteur concerné, au sens de cette loi, était la zone ou le secteur de zone.

132. Following the adoption of the second draft by-law, the clerk or secretary-treasurer shall, in accordance with the Act governing the municipality for such purposes, issue a public notice

(1) setting out the number, title and date of adoption of the second draft by-law;

(2) giving a brief description of the object of the provisions in respect of which an application may be made, or mentioning the fact that a copy of the summary of the second draft by-law may be obtained, free of charge, by any person who so requests;

(3)

(a) stating which interested persons are entitled to sign an application in respect of each provision and the tenor of an application or, if the object of the provisions is not stated in the notice, explaining, in a general manner, entitlement to sign an application and the tenor of an application and stating how information may be obtained to determine which interested persons are entitled to sign an application in respect of each provision and the tenor of an application;

(b) setting out the conditions of validity of an application;

(4) determining the interested persons in a zone and the manner in which a legal person may exercise the right to sign an application, or stating how such information may be obtained;

(5) describing, using street names whenever possible, the perimeter of each zone from which an application may originate, otherwise than by reason of the fact that it is contiguous to another zone, illustrating it by means of a sketch, or indicating the approximate location of the zone and stating the fact that a description or illustration is available for consultation at the office of the municipality;

(6) mentioning the fact that the provisions in respect of which no valid application is received may be included in a by-law that is not required to be submitted for the approval of the qualified voters;

(7) stating the place, dates and times at which the second draft by-law is available for consultation.

.....

132. À la suite de l'adoption du second projet de règlement, le greffier ou secrétaire-trésorier donne, conformément à la loi qui régit la municipalité en cette matière, un avis public qui :

1 mentionne le numéro, le titre et la date d'adoption du second projet;

2 décrit brièvement l'objet des dispositions qui peuvent faire l'objet d'une demande ou mentionne le fait qu'une copie d'un résumé du second projet peut être obtenue, sans frais, par toute personne qui en fait la demande;

3

(a) indique quelles personnes intéressées ont le droit de signer une demande à l'égard de quelles dispositions et décrit l'objectif de la demande ou, si la description de l'objet des dispositions n'est pas contenue dans l'avis, explique de façon générale le droit de signer une demande et l'objectif de celle-ci et indique la façon d'obtenir des renseignements permettant de déterminer quelles personnes intéressées ont le droit de signer une demande à l'égard de quelles dispositions et quel est l'objectif de cette demande;

b) énonce les conditions de validité de toute demande;

4 explique quelles sont les personnes intéressées d'une zone et les modalités d'exercice par une personne morale du droit de signer une demande ou indique la façon d'obtenir ces renseignements;

5 en utilisant autant que possible le nom des voies de circulation, soit décrit le périmètre de chaque zone d'où peut provenir une demande, autrement qu'en raison du seul fait qu'elle est contiguë à une autre, ou l'illustre par croquis, soit indique l'endroit approximatif où la zone est située et mentionne le fait que la description ou l'illustration peut être consultée au bureau de la municipalité;

6 mentionne le fait que les dispositions qui n'auront fait l'objet d'aucune demande valide pourront être incluses dans un règlement qui n'aura pas à être approuvé par les personnes habiles à voter;

7 mentionne l'endroit, les jours et les heures où le second projet peut être consulté.

[...]

133. An application, in order to be valid, must

- (1) state clearly the provision to which it refers and the zone or sector of a zone from which it originates;
- (2) be signed by at least 12 interested persons in a zone or sector in which there are more than 21 interested persons, or, in other cases, by a majority of the interested persons;
- (3) be received by the municipality not later than the eighth day following the day on which the notice provided for in section 132 is published.

The provisions of the Act respecting elections and referendums in municipalities (chapter E-2.2) dealing with the manner in which a legal person may exercise its rights, the manner in which qualified voters entitled to have their names entered on the referendum list are to be counted, and applications for the holding of a referendum poll apply, adapted as required, to the signing of an application.

133. Pour être valide, une demande doit remplir les conditions suivantes :

- 1 indiquer clairement la disposition qui en fait l'objet et la zone ou le secteur de zone d'où elle provient;
- 2 être signée, dans le cas où il y a plus de 21 personnes intéressées de la zone ou du secteur de zone d'où elle provient, par au moins 12 d'entre elles ou, dans le cas contraire, par au moins la majorité d'entre elles;
- 3 être reçue par la municipalité au plus tard le huitième jour qui suit celui où est publié l'avis prévu à l'article 132.

Les dispositions de la Loi sur les élections et les référendums dans les municipalités (chapitre E-2.2) qui concernent la façon pour une personne morale d'exercer ses droits et la façon de compter les personnes habiles à voter ayant le droit d'être inscrites sur la liste référendaire et les demandes de tenue d'un scrutin référendaire s'appliquent, compte tenu des adaptations nécessaires, à la signature de la demande.

Tab 5.



Docket **Erreur ! Source du renvoi introuvable.**

Order **Erreur ! Source du renvoi introuvable.**

IN THE MATTER of **Erreur ! Source du renvoi introuvable.**

BEFORE THE COMMISSION on **Erreur ! Source du renvoi introuvable.**, the **Erreur ! Source du renvoi introuvable.****Erreur ! Source du renvoi introuvable.** day of **Erreur ! Source du renvoi introuvable.**, **Erreur ! Source du renvoi introuvable.**

J. Scott MacKenzie, Q.C., Chair
Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

IN THE MATTER of **Erreur ! Source du renvoi introuvable.**

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Order

IN THE MATTER of **Erreur ! Source du renvoi introuvable.**

Appearances & Witnesses

1. For the Appellant Hanmac Inc.

Counsel:

**William F. Dow, Q.C.
Jason Morais**

Witnesses:

**Cecil MacLaughlin
Jeff Ready**

2. For the Respondent City of Charlottetown

Counsel:

David W. Hooley, Q.C.

Witnesses:

**Laurel Palmer-Thompson, Planning and Development Officer
Alex Forbes, Manager of Planning and Heritage**

IN THE MATTER of **Erreur ! Source du renvoi introuvable.**

Reasons for Order

1. Introduction

[1] The Appellant Hanmac Inc. (“Hanmac”) has 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***”). This appeal concerns a July 14, 2014 decision of the Respondent City of Charlottetown (the “City”) to reject a joint rezoning application filed on March 12, 2014 by Hanmac as developer and the Belvedere Golf Club (“Belvedere”) as property owner to rezone the property located at 1 Greensview Drive, property number 279091, in the City of Charlottetown, being a parcel of land approximately 500’ x 170’ located in the northwest corner of lands comprising the Belvedere Golf Course (the “Subject Property”) from Open Space Zone (OS) to Medium Density Residential Zone (R-3).

[2] The application was processed by the City’s Planning and Heritage Department in a good and business like manner and on April 7, 2014, the City’s Planning and Heritage Committee – Planning Board (“Planning Board”) recommended to the City’s Council (“Council”) that the application to rezone the Subject Property proceed to the public consultation phase. Planning Board noted that the rezoning amendment would also require an amendment to the City’s Official Plan Future Land Use Map from Recreational to Medium Density Residential. Planning Board also noted that the proposed development involves an 18-unit residential development consisting of three (3) buildings containing six (6) units each.

[3] On April 14, 2014, Council approved the request to proceed to the public consultation phase to consider the proposed amendments to the Official Plan's Future Land Use Map and the City of Charlottetown Zoning and Development Bylaw (Bylaw) Appendix "H" Zoning Map.

[4] Following due public notice and specific notice with information packages sent to residents within a 100-metre radius of the Subject Property, the City held a public meeting on April 30, 2014. Minutes of this public meeting are provided at Tab 17 of the Record filed by the City as Exhibit R1. The public meeting lasted approximately one hour and was attended by only six neighbouring residents of the Subject Property and one member of the public who did not live in the immediate area. The meeting proceeded with a description of the project by John Mantha, provincial land surveyor, as spokesman for Hanmac. The comments from the public were the usual comments that would be expected from neighbours of a proposed new development. There were questions asking for clarification as to how the development would proceed, whether the units were to be rented or sold, concerns that the project was originally proposed to be developed in stages, concerns that there would be dust during the building stage, questions around the value of the units to be built, whether or not the construction would interfere with water main and other infrastructure on the property and water run-off and drainage. All questions that the members of the public put to the meeting were answered by Mr. Mantha on behalf of Hanmac, Councillor Rob Lantz or by Laurel Palmer-Thompson, City planner. Two members of the public raised concerns with respect to traffic. However, their concerns related more to the fact that Kensington Road had become a thoroughfare and was being used by tractor trailers. Councillor Rob Lantz directed the city staff "to contact Police to review and to inquire if there are any existing traffic studies or reports for the area, and asked that the developers look into a possible road access from the site on to Walker Drive". The member of the public who does not live in the area of the subject property objected on the grounds that in his opinion this was spot zoning and that spot zoning was something that should not be done by the City. Spokespersons for the Belvedere Golf Club also spoke at the meeting and addressed questions with respect to the golf club's practices and concerns raised at the meeting about the amount of water being used by the golf course. According to the Minutes no member of the public or anyone else in attendance at that public meeting brought up or even mentioned any concern with respect to whether or not it was appropriate to rezone a portion of an outdoor urban recreational space to a zone that would permit medium density residential use. As will be discussed later, the verbatim transcript of the public meeting showed that one person in attendance did mention that the area was a green zone and was under the impression that it could not be developed.

[5] The City's Planning and Development Officer processed the application to rezone the Subject Property and prepared a report to the City's Planning Board delivered to its meeting on May 5, 2014. This report noted in part:

This form of development is prevalent in many other larger urban centres and tends to attract, executive professionals and middle aged to retirement aged persons who are looking to downsize from larger single detached dwellings. Housing alternatives may be beneficial for the area as it provides more choice for people who want to locate to the area or for people who are looking to downsize as they age but want to remain within their neighbourhood. The Official Plan states, "If Charlottetown is going to continue to grow as a healthy community, affordable housing for all segments of society must generally be available throughout the City."

The City is currently reviewing its existing Official Plan and through this review policies for alternate forms of housing are being explored. Denser development with narrower frontages is more sustainable as it makes for more efficient use of municipal services and uses less land resources. Kensington Road is also a bus route and it is good planning practice to locate this form of development in areas where residents can take advantage of public transit.

Staff feels that this request is consistent with good planning principles and are recommending for approval of this application.

[6] On May 5, 2014, Planning Board met to review the application to rezone the Subject Property. Planning Board approved a recommendation to Council that Council approve the proposed amendments to the Future Land Use Map and to the Zoning Map. The minutes of Planning Board's deliberations with respect to the Subject Property are reproduced below. As the Minutes note, the City staff consulted with the City Police who reviewed the application and indicated there were limited concerns with respect to traffic and site distances were good for the location of this development. In addressing some of the concerns of the public, Planning Board concluded that rather than proceeding in stages the development should proceed as one phase and that these types of developments on city golf courses were not uncommon in other jurisdictions. It is at this stage that the issue of "public space" was raised, but was obviously not a significant concern as Planning Board unanimously recommended to Council that the application be approved.

**PLANNING AND HERITAGE COMMITTEE – PLANNING BOARD
MAY 5, 2014
4:30 P.M.**

EXCERPT
FROM
MINUTES

Present:

Councillor Rob Lantz, Chair
Councillor Melissa Hilton
David Archer, RM
Ritchie Simpson, RM
Greg Rivard, RM
Lynn MacLaren, RM
Pat Langhorne, RM
Laurel Palmer Thompson, PDO
Greg Morrison, PDO

Councillor Jason Coady
Lou Barry, RM
Lea Macdonald, RM
Roger Doiron, RM
Joan MacKinnon, RM
Pat Thompson, RM
Donna Waddell, DCS
Alex Forbes, PHM
Brad Wonnacott, AA

Regrets:

Mel Cheverie, CBI

Linda Thorne, AA

1. 1 Greensview Drive (PID# 279091)

This item is a request to rezone a portion of the Belvedere Golf Course from Open Space to R-3 to permit the development of 3 townhouses comprised of six dwellings each for a total of 18 units. An Official Plan Map amendment from Open Space to Medium Density Residential is also required. Please see attached staff summary. On April 7, Planning Board requested that this application be sent to a public meeting. The meeting was held on Tuesday, April 30, 2014 (Minutes are attached).

Staff reviewed the proposal and covered key areas of concerns brought up at the Public Meeting. Staff pointed out that they do not regard this application as a “Spot Zoning”. City Police have reviewed the application and have limited concerns regarding traffic as site distances are good at this location. To minimise construction impacts on the neighbourhood Staff indicated that this development should proceed in one phase and instead of three and that a development agreement could be required outlining the terms and conditions of the development process. Staff also indicated that they researched what is happening in other municipalities relating to this type of development. Research confirmed that it is not uncommon in other jurisdictions and that such development helps to offset costs for city golf courses. The Board had questions regarding the existing lane. Furthermore, they were concerned that the public views this as “Public Space” even though it is privately owned.

The developers (Cecil MacLauchlan and Thane Hansen) were on hand to speak about the proposal and answer questions. Councillor Lantz explained the process and how it would proceed on to Council. The applicants answered questions from the Board and explained that this development would be served on a public road instead of a private lane. The development would consist of 18 condominium units with approximately 1400 sq. ft.

Moved and seconded that the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be recommended to Council for approval.

CARRIED

[7] The recommendation of Planning Board was sent to Council and was dealt with at its meeting on June 9, 2014. Council approved a one-month deferment of consideration of the motion with respect to the Subject Property. The minutes note that the delay was requested by the applicant to address ongoing concerns from local residents.

[8] Hanmac dealt further with the residents of the area but no further objections beyond those that had already been raised were brought forward. The matter was then forwarded to Council for decision.

[9] At a regular meeting of Council on July 14, 2014, Council rejected Hanmac's rezoning application with respect to the Subject Property. The verbatim transcript of Council's deliberations is reproduced below.



Verbatim Excerpt re:
1 Greensview Drive

Regular Meeting of Council
Monday, July 14, 2014 at 4:30 PM
Council Chambers, City Hall

R10

Mayor Clifford Lee presiding

Present: Deputy Mayor Stu MacFadyen
Councillor Cecil Villard
Councillor David MacDonald
Councillor Edward Rice
Councillor Mitchell Tweel

Councillor Jason Coady
Councillor Melissa Hilton
Councillor Rob Lantz
Councillor Danny Redmond

Also: Roy Main, CAO
Alex Forbes, PM
Randy MacDonald, FC
Craig Walker, UM
Wayne Long, EDO
Laurel P. Thompson, PDO
Allan MacKenzie, FO
Greg Morrison, PDO
Tracey McLean, RMC

Donna Waddell, DCS
Paul Smith, PC
Mandy Feuerstack, HRM
Ron Atkinson, EconDO
Donna Hurry, TO
Ramona Doyle, SC
Belinda Rogers, FC
Karen Campbell, CS

Regrets: Councillor Terry Bernard
Scott Ryan, FM

Paul Johnston, PWM
Sue Fraser, PRM

Regular Meeting of Council
Verbatim Excerpt re: 1 Greensview Dr.

2

July 14, 2014

Councillor Danny Redmond: Council, this application has been around for a few months now. First of all, I want to thank the developer for taking their time to come out and present the application to Council and also to meet with the residents in the immediate area; some of them are here this evening and want to thank them for showing up. As of last month, as I understand, they pulled the application off the table because they want to see if there are any more concerns. I haven't heard of any of the residents that have been spoken to since then. I still have concerns about this application. As we all know, we have an Official Plan review underway and I think with an application such as this and we are looking at rezoning it to an R-3; I think it is going to change the landscape of the area, traffic and whatever. I am concerned about the lack of information regarding the traffic study. I am not quite sure what the Police Department did in terms of that. They did give comments that they had no concerns. I am not sure what the information is however to me when I look at R-3 to me its spots only and I don't think that is something the residents in the area like to see. So having said that, Your Worship and Members of Council, I am going to vote against the application because I see it as not the perfect fit for that area.

Mayor Clifford Lee: Councillor Tweel.

Councillor Mitchell Tweel: Councillor Lantz. Councillor Redmond represents the area that talked about some of the issues that have been identified by the residents. The question that I have is whether it is increased traffic, the change of zoning and other issues that were highlighted by the area residents. Was there more time and effort given to addressing those issues and was that information relayed back to the residents to see whether they approve or disapprove?

Councillor Rob Lantz: Your Worship, this item has been around for a couple of months and as you know, Councillor Tweel, we had a public meeting about this item and a number of issues were discussed. I am the Chair of Planning Board and these applications come to Planning Board for our ten resident members, our three Councillors that sit on the Board to adjudicate. At that Planning Board meeting, ultimately, the recommendation was to approve the development. I can tell you there was some discussion about the concerns that were raised by residents at the public meeting. It was felt the primary concern was around the traffic issues which Councillor Redmond referred to and the Board was anxious to hear from our traffic authority, the Police, and how they felt about that and frankly the response we got from them and I can't tell you what they did in terms of research or what they do as the traffic authority to determine these things but their response was that the development would have no significant impact on the traffic in the area.

With that and with the other information that the Board discussed came the recommendation to approve. We deferred this resolution for a couple of months now at the request of the developer. They have done some further research on some of the other issues which were raised with regard to potential water run-off. I think Council received a draft drainage plan by a certified civil engineer that the applicant had drawn up that shows the way the water flows on the property. The developers organized an open house that was not very well attended but I don't know how the invitations for that went out but to their credit they made an effort to communicate with the public. I am here as the Chair of the Board representing the resolution and recommendation that came from the Board.

**Regular Meeting of Council
Verbatim Excerpt re: 1 Greensview Dr.**

3

July 14, 2014

Mayor Clifford Lee: Councillor Tweel.

Councillor Mitchell Tweel: I did attend that neighbourhood meeting and one issue that did come up was property values and the impact of the development on the adjoining property owners and their property values. I am not sure if you are in a position to talk about property values or not but in your personal assessment, would this increase or decrease the neighbours property values?

Councillor Rob Lantz: Your Worship, I can't answer that question. I am absolutely not in a position to answer that at all.

Mayor Clifford Lee: Seeing no further questions, all those in favour of the motion. Those opposed. Motion is Lost with a 5-3 vote with Councillors Coady, Lantz and Hilton in favour.

So the motion is lost. Could we have a new resolution to reject the application?

Roy Main, CAO reads the following resolution:

Moved by Councillor Mitchell Tweel

Seconded by Councillor Danny Redmond

RESOLVED:

That the request to consider an amendment to Appendix "A" – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be rejected.

Mayor Clifford Lee: Questions called. All those in favour. Those opposed. Motion is Carried 5-3 with Councillors Coady, Lantz and Hilton opposed.

[10] The above July 14, 2014 verbatim minutes were summarized into the following minutes of Council reproduced below.



DRAFT

**Regular Meeting of Council
Monday, July 14, 2014 at 4:30 PM
Council Chambers, City Hall**

Mayor Clifford Lee presiding

<u>Present:</u>	Deputy Mayor Stu MacFadyen Councillor Cecil Villard Councillor David MacDonald Councillor Edward Rice Councillor Mitchell Tweel	Councillor Jason Coady Councillor Melissa Hilton Councillor Rob Lantz Councillor Danny Redmond

<u>Also:</u>	Roy Main, CAO Alex Forbes, PM Randy MacDonald, FC Craig Walker, UM Wayne Long, EDO Laurel P. Thompson, PDO Allan MacKenzie, FO Greg Morrison, PDO Tracey McLean, RMC	Donna Waddell, DCS Paul Smith, PC Mandy Feuerstack, HRM Ron Atkinson, EconDO Donna Hurry, TO Ramona Doyle, SC Belinda Rogers, FC Karen Campbell, CS

<u>Regrets:</u>	Councillor Terry Bernard Scott Ryan, FM	Paul Johnston, PWM Sue Fraser, PRM

2. Planning & Heritage – Councillor Rob Lantz

Councillor Lantz indicated his Committee's report was included in the weekend package.

Councillor Villard declared a conflict of interest and left the Chambers for the following motion.

Moved by Councillor Rob Lantz
Seconded by Councillor Jason Coady

RESOLVED:

That the request to consider an amendment to Appendix "A" – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be approved.

Concerns were raised with respect to traffic in the area, type of zoning (R-3) proposed and

drainage.

DEFEATED 5-3

Councillors Lantz, Coady & Hilton recorded “yea” votes

**Moved by Councillor Mitchell Tweel
Seconded by Councillor Danny Redmond**

RESOLVED:

That the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be rejected.

CARRIED 5-3

Councillors Lantz, Coady & Hilton recorded “nay” votes

[11] The City's Planning and Development Officer then notified Hanmac of Council's decision to reject the rezoning application in a July 15, 2014 letter, which is reproduced below.



PLANNING, DEVELOPMENT & HERITAGE DEPARTMENT

July 15, 2014

Mr. Thane Hanson
Hanmac Inc.
106 Kensington Road
Charlottetown, PE C1A 5J5

Dear Mr. Hanson:

Charlottetown City Council passed the following resolution at the regular monthly meeting held on July 14, 2014:

“That the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) **be rejected**.”

Council felt that it was not appropriate to re-zone a portion of an outdoor urban recreational space to a zone that would permit a medium density residential use.

In accordance with Section 4.28 of the City of Charlottetown Zoning & Development Bylaw you may, within 21 days from Council's decision, request a reconsideration of Council's decision or appeal the decision to the Island Regulatory and Appeals Commission. The process for which is attached for your reference.

If you require any further information, please contact the Planning Department at 629-4158.

Yours truly,



Laurel Palmer Thompson, MCIP
Planning & Development Officer

/ldt
Enclosure

233 Queen Street, PO Box 98, Charlottetown, PE, Canada C1A 7K2
t (902) 629-4158, f (902) 629-4156, e planning@charlottetown.ca, w www.charlottetown.ca

[12] Hanmac's legal counsel filed a Notice of Appeal with the Commission on August 4, 2014. The Commission gave due public notice of the appeal and the matter was heard before the Commission on October 22, 2014 and November 18, 2014.

2. Testimony & Discussion

Hanmac's Position

[13] Hanmac presented two witnesses, Cecil MacLaughlin and Jeff Ready.

[14] Cecil MacLaughlin, an officer and part owner of Hanmac gave evidence that the Subject Property borders Kensington Road and the 4th hole of the golf course. Mr. MacLaughlin testified that the Subject Property was approximately two acres of land being 500' by 170'. He testified that the Subject Property was a left over part of the golf course, was essentially scrub land upon which trees and debris were placed and had approximately 10 years of uncontrolled growth on it. He explained that Hanmac would like to build three six unit buildings. Mr. MacLaughlin testified that to his recollection the loss of open or green space was never mentioned by members of the public at any public meeting. As a developer he indicated that the rejection of Council for reasons

that he does not understand and the only reason given to him is as set out in the letter addressed to Hanmac on July 15, 2014. He expressed frustration that Planning Board staff were in favour of the development, Planning Board unanimously approved the development and then the Council rejected the development and he still does not know why.

[15] Jeff Ready, the President of Belvedere Golf Club gave evidence that Hanmac had approached Belvedere seeking to purchase the Subject Property for development and Belvedere thought that Hanmac's proposal for development was a great idea. Mr. Ready noted that the Subject Property is land attached to Belvedere's golf maintenance shed. The Subject Property has a berm on it to block the view of the back of an adjacent commercial building owned by a third party. The Subject Property has trees, brush and "scrub" on it and it is excess land not used by the golf course. He noted that there is already a private roadway to the maintenance shed and the Subject Property separates this roadway from the 4th hole. Mr. Ready testified that the golf course development was being pursued by the developer as this had been done in other golf courses where, to support the operations of the golf course, portions of the land were sold to raise funds. He indicated that this had been done at the Glen Arbour Course in Nova Scotia and the Fox Creek Course in Moncton.

[16] Counsel for Hanmac presented oral submissions that may be summarized as follows:

- The City's Council cannot arbitrarily reject a proposal and then later justify their decision based on sound planning. Council is required to consider and apply sound planning principles when making their decision.
- If Council makes a decision contrary to the advice of the City's Planning Board, Council must give sufficient reasons for its decision and these reasons must be based on sound planning principles.
- The City's Planning and Development Officer and the City's Manager of Planning and Heritage are both experts in land use planning. These City planning professionals both agree that Hanmac's application is consistent with sound planning.
- Council did not base its decision on a loss of open or green space. Nowhere in the verbatim minutes of Council's July 14, 2014 meeting is there any mention of open or green space.
- The Subject Property is not used as open space or green space by the public. The Subject Property is excess land belonging to a golf course and contains construction debris and scrub vegetation on it.

- The verbatim minutes of Council's July 14, 2014 meeting refer to traffic, spot zoning and drainage.
- In response to an inquiry by the City's Planning and Development Officer, the City's traffic authority advised that it had no traffic concerns with respect to Hanmac's proposed development.
- The City's Planning and Development Officer stated in her May 5, 2014 report to Planning Board that the re-zoning proposed by Hanmac is not spot zoning.
- Hanmac retained the services of an engineer to consider drainage issues. A summary of the engineer's report and an attached storm water concept plan were emailed to the then Chair of Planning Board on July 8, 2014.
- The July 14, 2014 verbatim minutes reveal that one Councillor had concerns over property values. Hanmac submits that such a concern is not relevant to sound planning.
- The Commission gives deference to municipal councils when rational reasonable reasons are apparent from the minutes of a council's deliberations.

[17] Hanmac submitted that the City's Council failed to apply sound planning principles when it made its July 14, 2014 decision to deny Hanmac's rezoning application. As sound planning principles were not followed, no deference should be given to the City's Council, the Commission should reject Council's decision and the Commission should approve Hanmac's application on its merits.

The City's Position

[18] The City presented two witnesses, Laurel Palmer-Thompson and Alex Forbes.

[19] Laurel Palmer-Thompson is a Planning and Development Officer for the City. Ms. Palmer-Thompson is a land use Planner by profession and she testified before the Commission that she has been employed with the City for ten years. She noted that Hanmac's development proposal is consistent with the City's Official Plan and promotes density, provides a good mix of housing forms and choices and gives nearby residents the option to downsize yet remain in their neighbourhood. She noted that Hanmac's proposal would front onto an industrial / commercial area and back onto an open space. She stated that the golf course provides a vast open area within the City. The proposed development would make efficient use of infrastructure resulting in less cost to provide municipal services. The City's Future Land Use Map designates the intended future use of properties within the City. For Hanmac's application to proceed

to development, the Future Land Use Map would need to be amended along with the City's zoning map. She reviewed Hanmac's proposal along with the City's Official Plan and the surrounding land uses. She noted that the moderate densities proposed by Hanmac provided no adverse effect on adjacent properties. She submitted that Hanmac's proposal for development of the Subject Property did not constitute spot zoning and is consistent with sound planning principles. She noted that if the rezoning is approved the City's staff would review the drainage plan in detail at the building permit stage.

[20] Ms. Palmer-Thompson briefly reviewed portions of the City's Official Plan during her testimony. She noted section 3.2 which speaks to sustaining existing neighbourhoods and section 3.2.1 which refers to the footprint, height and massing of buildings pertaining to the distinct character of the City's neighbourhoods. She referred to section 3.2.2 which permits moderately higher residential densities. She referred to section 5.1 of the Official Plan that speaks to recreational needs and section 5.2.1 which refers to open spaces.

[21] Ms. Palmer-Thompson testified that in her review of the proposed application and how it fit with the future plan for the City she noted that it is good planning to promote moderate density use in areas as they provide a good buffer between open areas and other housing, and offer a good range of housing to the public. She testified that the City Police had no real concerns with respect to traffic or access with the new development and that any concerns with respect to dust and construction time could be dealt with in a development agreement.

[22] She indicated that it was her understanding from what was expressed at public meetings that there was a concern with respect to the loss of open spaces. However, on cross examination Ms. Palmer-Thompson confirmed that there was no reference in the record as to any concerns having been made with respect to a loss of open space. She was questioned with respect to the reference in her report to Council that dealt with these concerns and indicated that she stated she remembered hearing some citizens at a meeting voice this concern. Ms. Palmer-Thompson's handwritten notes of the meeting do contain one reference to a single comment on the loss of open space. She recorded one member of the public as having commented - it's a green zone and that he was under the impression it wouldn't be developed.

[23] She confirmed that the portion of the golf course in question was, in fact, a maintenance access area that contained brush or was treed. She did not dispute that there was a ready supply of open land but she did note that there are two different views on the use of golf course properties for other development. She testified that the proposal as presented did not interfere with any recreational needs of the City. She agreed that the proposed development of Hanmac would use less than 1% of the golf course area.

[24] During redirect examination City legal counsel suggested that the verbatim transcript of the public meeting might provide for clarification on the public's objection to the rezoning of the open green space. On November 3, 2014 legal counsel for the City provided a copy of the verbatim transcript of the public meeting held on April 30, 2014. The verbatim transcript confirms the handwritten notes of Ms. Palmer-Thompson that during the entire public meeting there was only one single reference to the loss of green space or open space. The verbatim minutes of that meeting indicate that one gentleman stated:

"I knew this was coming for other reasons and I know there is going to be another up on Greenfield and that's a green zone there. I have the documents back four or five years ago. I was under the impression that it couldn't be developed and anything, you never say never, so I know with Council and it can be rezoned and it doesn't take much."

And further on in the meeting the same gentleman stated:

"Anyway, I'm not against the development."

The verbatim transcript of that meeting confirms that some of the members of the public were, in fact, not against the development and that many of the concerns voiced dealt with water and drainage on the golf course and the fact that Kensington Road had become a traffic thoroughfare for large trucks. Some members of the public did voice concerns with respect to how long the construction would take, dust, etc. and the fact that this would increase the number of people living in the area.

[25] Ms. Palmer-Thompson acknowledged that she did not provide a report to Council or Planning Board that the existing zoning is sound planning. She testified that there are no conflicting land uses in the area, noting that at the Subject Property the OS open space zone does border a light industrial M-1 zone. When asked by legal counsel for the City whether she considered that the existing zoning was consistent with good planning she stated in her oral testimony:

"When you look at the existing plan and how it is laid out and the zoning for the area, it isn't bad planning that is currently in place."

[26] Alex Forbes is the City's Manager of Planning and Heritage and is a member of both the Canadian Institute of Planners and the American Planning Association. He notes that his current work involves overseeing the work of planning staff at the City. He testified that he had reviewed Ms. Palmer-Thompson's written reports addressing Hanmac's application and he concurs with her recommendation approving the application. He noted that Hanmac's application for the Subject Property had strong support before Planning Board. He noted that the Subject Property is presently designated as OS open space and he stated that the current Official Plan is consistent with sound planning and it was developed in full consultation with the public. He noted that ultimately a decision of Council with respect to a rezoning land is a political

decision. Mr. Forbes' final position was that both the proposed development of Hanmac and the current Official Plan were both consistent with sound planning principles.

[27] Counsel for the City presented oral submissions to the Commission. A complete outline of these written submissions was filed with the Commission as Exhibit R11. Highlights of the City's submissions include the following.

- The Subject Property is currently zoned as open space (OS). This zoning has been in place for a very long time. In this case, an amendment to the Official Plan's Future Land Use Map is required in addition to an amendment to the Bylaw's Zoning Map.
- Appeals before the Commission have a twofold role. The Commission reviews the record in a way similar to a judicial review. The Commission also hears the matter afresh as a hearing de novo.
- The City submits that the Commission's reasoning in *Doiron* [Order LA10-06, *Warren Doiron v. City of Charlottetown* July 14, 2010] is applicable in the present appeal. *Doiron* also involved a rezoning application and would have required an amendment to the Official Plan's Future Land Use Map. In *Doiron*, the "consistent approach" was followed, recognizing that the Future Land Use Map is an important long-term planning tool that was developed in consultation with professional planners. *Doiron* recognized that the public is likely to rely on the Future Land Use Map when making a decision to purchase a residence in the neighbourhood.
- The City submits that Council as a group of elected officials have a vital role to protect the public interest. As a result, Council may have a different view of what constitutes spot zoning than that held by the City's Planning and Development Officer. Council's concern about spot zoning was a legitimate planning concern. While acknowledging that City planning staff were of the view that the proposed development was not an example of spot zoning, the City submits that the councillors could have a reasonable alternate view of what constituted spot zoning and filed a Wikipedia page to support his premise.
- The City submits that the traffic authority's opinion was brief and without a basis offered for the opinion. It was not detailed like a traffic study provided by an engineer. Council was concerned about traffic and felt that the response from the City's traffic authority was not enough.
- The City submits that Council does not need to articulate reasons in the same way as an administrative tribunal. Council was of the view that the proposed development was not the perfect fit for that area of the City.

- In *Seanic Canada Inc. v. St. John's (City)*, 2014 NLTD(G) 7 (*Seanic*), the test was enunciated as to whether a municipal council was "alive to the question at issue". The City submits that Council was in fact alive to the issues before it.
- There is no issue of procedural fairness in the present appeal. Reasons were given during the "continuum of process". It is not feasible to require each Councillor to verbalize their reasons for decision. Council met the standard for giving reasons as set out in *Seanic*. Even if a higher standard is required, it is submitted that Council has met such standard.

[28] For all the reasons expressed orally and as set out in depth in Exhibit R11, the City requests that the Commission deny the appeal.

3. Findings

[29] After a careful review of the evidence, the submissions of the parties and the applicable law, it is the decision of the Commission to allow the appeal.

[30] Appeals under the **Planning Act** take the form of a hearing *de novo* before 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.*

[31] 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. However, in planning matters the Commission does not lightly interfere with such decisions.

[32] The Commission finds that the two-part test that it has used in the past also serves as a guideline in determining this appeal.

- Whether the municipal authority, in this case the City, followed the proper process and procedure as required in its Bylaw, in the **Planning Act** and in the law in general, including the principles of natural justice and fairness, in making a decision on a rezoning application, requiring amendments to the Bylaw's Zoning Map and also in this case requiring a companion amendment to the Official Plan's Future Land Use Map; and

- Whether the City's decision with respect to the proposed Zoning Map and Future Land Use Map amendments have merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.

[33] In reviewing the entire application from beginning to final decision of Council the Commission notes that the City's Planning and Development office handled this application in a good, business like and exemplary manner. The application for rezoning was filed with the Planning and Development office and was processed by that office in a timely manner. Public notices were given and public meetings were held, minutes produced and recommendations made based on facts made available to Planning and Development staff. Reports were written and recommendations made to Planning Board. Planning Board accepted the recommendations and issued its own recommendation to Council for approval of the application and the rezoning. It is clear from the record that the matter was given and received due consideration from individuals and committees that took the time to inform themselves to the issues involved in the matter before them. It is clear from the minutes of Council that the councillors who chose to speak had not bothered to inform themselves on the matter of the application before them. Those councillors spoke of concerns for which there were answers in the record, expressed concerns about matters which could have been and should have been canvassed by them long before they entered the Council chamber for a vote on such an important matter. At the Council meeting the chairman of the Planning Board addressed these issues and answered them in a full and complete manner. Three of the councillors voting against the motion did not even see fit to make comment at the meeting.

[34] In the minutes for Council's July 14, 2014 meeting dealing with Hanmac's rezoning application, the sole reason and explanation for the denial and rejection of the application was noted as follows:

Concerns were raised with respect to traffic in the area, type of zoning (R-3) proposed and drainage.

[35] The Commission is concerned with the inaccuracies as set out in these minutes of the meeting. The verbatim Minutes of Council show that there were no concerns raised with respect to drainage. The only reference to drainage was a confirmation from the chairman of Planning Board that the developers had provided a draft drainage plan by a certified civil engineer. Drainage matters may have come up earlier in the application process but they certainly were not a concern at the regular meeting of Council on July 14, 2014 and it was improper for that concern to have been stated as such, in the minutes of Council.

[36] Following the decision of Council to reject the application, the Planning and Development officer then forwarded a letter, dated July 15, 2014 to Hanmac setting out the following reason for Council's rejection, it reads:

Council felt that it was not appropriate to re-zone a portion of an outdoor urban recreational space to a zone that would permit a medium density residential use.

[37] The Commission is very concerned with the letter noted above that was forwarded to the developer. This is the only communication sent to the developer to explain to the developer the reason why its application was rejected by Council. The reason and rationale set out in this letter is not the reason that is recorded in the Council's Minute of July 14, 2014 and cannot be gleaned from the verbatim transcript of the Council meeting. It is not acceptable that the written explanation given to the developers as to why their project was rejected states a reason that was not even an issue at the Council meeting.

[38] In his summation, Counsel for the City referred the Commission to the decision of the Newfoundland and Labrador Supreme Court (Trial Division) in *Seanic, supra*, and submitted to the Commission that the Commission should not interfere with the decision of a Council where it is clear that the councillors were "alive to the issue" before them. It is apparent to the Commission that the councillors were most definitely not "alive to the issue" that was before them. It is also apparent to the Commission that although this application had been before the City for months, councillors expressed questions and concerns that could easily have been answered by discussing the matter with Planning Department staff and by a review of the application material that had been provided to them by Planning Board staff. But, instead, as the record confirms, they chose to enter the Council chamber and vote on a matter for which they were not fully informed.

[39] The Commission finds that the reason set out in the July 15, 2014 letter from the Planning and Development Officer to Hanmac does not reflect either the written minutes or the verbatim transcript of the meeting of Council on July 14, 2014 pertaining to Hanmac's application.

[40] In *Seanic, supra*, the Court referred to a decision of the Supreme Court of Canada in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, 2004 SCC 48. In that decision, McLachlin C.J. noted the following at paragraphs 12 and 13:

12 The five Baker factors suggest that the Municipality's duty of procedural fairness to the Congregation required the Municipality to carefully evaluate the applications for a zoning variance and to give reasons for refusing them. This conclusion is consistent with the Court's recent decision in Prud'homme v. Prud'homme, [2002] 4 S.C.R. 663, 2002 SCC 85, at para. 23, holding that municipal councilors must always explain and be prepared to defend their decisions. It is also consistent with Baker, where it was held, at para. 43 dealing with a ministerial decision, that if an organ of the state has a duty to give reasons and refuses to articulate reasons for exercising its discretionary authority in a particular fashion, the public body may be deemed to have acted arbitrarily and violated its duty of procedural fairness.

13 Giving reasons for refusing to rezone in a case such as this serves the values of fair and transparent decision making, reduces the chance of arbitrary or capricious decisions, and cultivates the confidence of citizens in public officials. Sustained by both law and policy, I conclude that the Municipality was bound to give reasons for refusing the Congregation's second and third applications for rezoning. This duty applied to the first application, and was complied with. If anything, the duty was stronger on the Congregation's second and third applications, where legitimate expectations of fair process had been established by the Municipality itself. Emphasis added by the Commission

[41] The direction from the Supreme Court of Canada is clear: a municipality must carefully evaluate an application, give reasons when refusing the application and municipal councillors “must always explain and be prepared to defend their decisions”.

[42] A careful evaluation of Hanmac's application was given by the Planning and Development Officer and by Planning Board and these evaluations supported Hanmac's rezoning application. While Council is free to make a decision contrary to the recommendation of its staff and its Planning Board, as noted in *Congrégation*, a municipality must undertake a careful evaluation of the application before it in order to meet the duty of procedural fairness. The verbatim minutes of July 14, 2014 persuade the Commission that there is insufficient evidence to support a finding that Council carefully evaluated the application before it. The Commission finds that the City did not meet the duty of procedural fairness as it failed to decide Hanmac's application on its merits.

[43] In considering whether Hanmac's application is consistent with sound planning principles, the Commission is mindful that the City's Planning and Development Officer is an experienced professional planner who prepared her report for Planning Board and testified before the Commission. Indeed, the Planning and Development Officer has testified before the Commission on several matters over the years and the Commission remains impressed with her knowledge, professionalism and candour. The City's Planning Board also recommended in favour of granting Hanmac's application for rezoning.

[44] However, the Commission must also be satisfied that an application for rezoning has the support of the Official Plan. The Commission notes the following provisions of the Official Plan that are germane to an assessment of both Hanmac's application and the existing status of the Subject Property from the perspective of sound planning principles.

3. DIRECTING PHYSICAL GROWTH

The City of Charlottetown will strive to create for its residents a truly unique environment in which to live, work, and play. It will protect the distinct character of the municipality while at the same time encouraging compact urban form and creative approaches to residential, commercial, and industrial development. The City will continue to build on its past by stimulating the revitalization of heritage resources; maintaining the special qualities of Charlottetown's neighbourhoods; and safeguarding the municipality's open space characteristics and view corridors.

3.1 Guiding Settlement

Starting Point

As a recently amalgamated municipality, Charlottetown has a unique window of opportunity to create a growth profile that will help shape the City's urban fabric well into the 21st century. In large measure, the way in which the municipality now chooses to guide its settlement patterns will provide the template that molds urban development--and the quality of life issues which arise from it--for many years to come.

...

An effective municipal growth management program is founded on the principles of fiscal efficiency, environmental conservation, and urban containment. In Charlottetown, this means that the City will maximize the use of existing underground services before new water and wastewater lines are extended into areas that are essentially undeveloped. Finally, it means that moderately higher density development may be permitted in existing commercial areas and arterial corridors where it does not interfere with existing built-up residential neighbourhoods...

Collectively, these measures will promote compact and contiguous development patterns, the deployment of efficient municipal services, and the preservation of significant resource areas for present and future generations. This approach will enable the City to anticipate growth, identify areas and services which can accommodate it, while also minimizing fiscal expenditures and environmental impacts. To this extent, it will ensure that urban growth in Charlottetown takes place in a rational,

efficient, and orderly fashion, as well as being consistent with the provincial government's general land-use policy.

...

Defining Our Direction

Our goal is to develop settlement patterns which are efficient in their use of land resources and cost of servicing, encourage equitable and harmonious community relationships, and help to sustain Charlottetown's distinctive character and identity.

1. *Our objective is to contain urban sprawl by introducing a staging strategy for new development, and to ensure that there is concurrency between proposals for new development and the provision of underground municipal services.*

- *Our policy shall be to direct urban growth to land that is a logical extension of an existing urban area, or neighbourhood, and will be serviced by municipal water and wastewater systems;*

- *Our policy shall be to monitor the long-term public costs of additional infrastructure, public services, and public service facilities prior to approving development proposals.*

- *Our policy shall be to place each key re-urbanization area identified in subsection 3.6 in a Comprehensive Development Area zoning designation until such time as a detailed concept plan has been prepared and adopted.*

- *Our policy shall be to have the responsible municipal departments ensure that adequate infrastructure and servicing facilities are in place prior to, or are developed concurrently with, new development.*

2. *Our objective is to promote compact urban form and infill development, as well as the efficient use of infrastructure and public service facilities.*

- *Our policy 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.*

- *Our policy shall be to encourage in-fill development through public land assembly initiatives, flexible zoning provisions and the reduction or waiver of development fees for small or irregularly shaped lots and, when warranted, the use of tax incentives within fully serviced areas of the City.*

- *Our policy shall be to use existing underground services to its fullest practical capacity before public funds are used to extend new water and wastewater lines into areas that are essentially undeveloped.* [Emphasis added by the Commission]

3.2 Sustaining Charlottetown's Neighbourhoods

Starting Point

In most municipalities, the neighbourhood is the basic building block of residential development and community identity. Every neighbourhood has its own distinguishing characteristics which help to identify it as an individual entity, as well as to set it apart from adjoining areas. In Charlottetown, the former communities which now comprise the new municipality, retain their distinctive characteristics and sense of identity. Indeed, even within the former communities there are several districts -- such as Brighton, Spring Park, Marysfield, and Lewis Point -- which are seen as distinct neighbourhoods.

In order to preserve the unique characteristics of Charlottetown's neighbourhoods the CHARLOTTETOWN PLAN introduces policies which promote both stability and community identity. The aim is to sustain vibrant neighbourhoods which have a distinct sense of community, are places of close social contact, and are generally enjoyable. This is the clear preference of Charlottetown's residents.

However, it is also important to recognize that change which results from economic and social transformation is already having an impact at the neighbourhood level. Smaller households, a decrease in family-oriented households, an aging population base, and an increase in home-based businesses are several of the factors for some needed flexibility in housing densities, design options, permitted uses, and lot sizes within Charlottetown's neighbourhoods. With some future adjustments in development standards, the City's residential communities will be better able to sustain a diversity of household types and lifestyles, and continue to be vibrant places to live.

Similarly, if Charlottetown's neighbourhoods are to remain healthy and sustainable, the policies of this plan should enable people to continue to reside in their residential communities as they move through various ages and stages of their lives. The provision of community-based services, appropriate public realm amenities, and reasonable access to shopping and facilities are measures which will support this aim.

As a new municipality, it is also important for Charlottetown to find ways to embrace its various neighbourhoods and bind them into the larger community. To some extent, the passage of time -- along with the equitable distribution of municipal services and amenities -- will help to solve this issue. However, the City also needs to provide physical linkages which will connect each neighbourhood to others, as well as to the downtown core and the suburban centres. The green space connector system shown on the Future Land-Use Map lays the foundation for these physical connections. Upon its completion, it will not only help to link neighbourhoods together, but also provide residents with the opportunity to walk or cycle to a variety of destinations within the City.

Defining Our Direction

Our goal is to maintain the distinct character of Charlottetown's neighbourhoods, to enhance the special qualities of each, and to help them adjust to the challenges of economic and social transformation.

1. *Our objective is to preserve the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surroundings.*

- *Our policy shall be 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.*

- *Our policy shall be to establish an appropriate relationship between the height and density of all new development in mixed-use residential areas of existing neighbourhoods.*

2. *Our objective is to allow moderately higher densities and alternative forms of development in any new residential subdivisions which may be established, provided that this development is well planned overall, and harmonious with existing residential neighbourhoods.*

- *Our policy shall be to permit moderately higher densities in new neighbourhoods and to permit in-laws suites in residential land use designations and to make provision for higher density residential projects located in the Downtown Growth Area which is located in the Downtown Core Area and to permit multiple unit developments in suburban areas provided that it is development at a density which will not unduly adversely affect existing low density housing.*

- *Our policy shall be to allow a mix of residential, commercial, institutional, and recreational uses in new subdivisions which are established, provided that there is a comprehensive site plan which ensures that development is well-related to both its internal and external environments.*

...

5.1 Addressing Recreational Needs

Starting Point

The demand for recreation and leisure activities in Charlottetown -- and throughout Canada -- is changing. Increasingly, people are demanding a greater variety of facilities and programs. In the years to come, the challenge for the City will be to provide traditional recreation and leisure activities while at the same time responding to changing demands. The trends and issues that will increasingly begin to influence the delivery of these services are:

- *an aging population base;*
- *changes in the type of activities demanded by this population; and*

- *the ability of the City to respond to these changing demands.*

...

5.2 The City's Public Places

Starting Point

The way in which we inhabit the land is often articulated through our public places. These special spaces... be they natural, groomed, or fabricated features in the community, are elements that make our daily lives richer and more vivid ... and by the physical facts of their location provide a deeper resonance with the place that is Charlottetown.

In addition to sustaining special relationships between people and their surroundings, the City's public places directly affect both residents and visitors' perceptions of Charlottetown's quality of life. Indeed, there is a very positive public image of the City because of its many public places, its harbour setting, and its collection of heritage buildings. The civic squares, for example, are firmly rooted in the City's earliest plans, and are an integral part of Charlottetown's image and identity. Indeed, all of Charlottetown's public places allow us to gain knowledge about the seasons, the structures, the incidents and lives--human and otherwise--that exist in our home territory. As such, it is important to preserve and build on these fundamental elements which contribute so much to the City's image and sense of place.

Defining Our Direction

Our goal is to provide a diversity of public places throughout Charlottetown to ensure that residents and visitors can relax, celebrate, and enjoy the City's many distinct urban and natural environments.

1. *Our objective is to encourage the upkeep, and to nourish the creation, of open spaces and public places of a grander scale which befit Charlottetown's role as the provincial capital.*

- *Our policy shall be to manage the large open spaces of Charlottetown as part of the growth management strategy, and to ensure that they are protected as long as is reasonably possible from urban development.*

- *Our policy shall be to protect, maintain, and enhance the public places of Charlottetown.*

[45] Sections 5.1 and 5.2.1 have been referenced in the oral testimony of the City's Planning and Development Officer as some of the provisions within the Official Plan which lend support to a retention of the current open space zoning for the Subject Property. Section 5.1 pertains to the City's recreational needs while section 5.2.1 pertains to the City's public places.

[46] The Subject Property is privately owned and thus it should not be confused with a publicly owned open or "green" space such as municipal parkland. The Subject Property, although zoned open space, is not one of the City's public places.

[47] The testimony before the Commission is that development of the Subject Property in no way restricts the existing recreational services provided by Belvedere. Indeed, such development may assist Belvedere in remaining viable and thus continuing to provide an important recreational need.

[48] Section 29 of the City's By-law sets out the provisions with respect to the Open Space Zone (OS). Section 29.1 list the permitted uses within that zone:

29.1 PERMITTED USES

- .1 active and passive recreation;*
- .2 band shell;*
- .3 Campground;*
- .4 curling Club;*
- .5 Golf Course and driving range;*
- .6 Officers Club;*
- .7 Open Space;*
- .8 Park;*
- .9 pavilion;*
- .10 Public Park;*
- .11 public recreation centre; and*
- .12 trails and fields.*

[49] The Commission notes that a rejection of Hanmac's rezoning application maintains the open space zoning of the Subject Property and as such, the permitted uses applicable to a private landowner would be rather limited. The Commission finds that the Subject Property is privately owned, underutilized, and, according to the evidence presented to the Commission, it is of little benefit to the operations of its present owner.

[50] The Commission finds that Hanmac's application for rezoning promotes compact urban form, while offering a medium-density development that is more compatible with the existing residential neighbourhood than a high-density residential development. The subject parcel is well within existing water and service lines and is adjacent to Kensington Road, a major street within the City. Hanmac's application also assists in providing some visual buffer between the commercial and residential portions of the immediate neighbourhood. As a limited scale development using under-utilized golf course land, it does not negatively impact upon the adjacent developed green space occupied by the golf course. As a medium density development located adjacent to a golf course and a commercial area, it does not negatively impact upon the existing neighbourhood. It provides housing variety within the neighbourhood which will allow residents in transition, or those undergoing "economic and social transformation" to remain within their neighbourhood, a factor of considerable importance referred to in

the Official Plan. Hanmac's development is rational, efficient, orderly and addresses the needs for housing diversity.

[51] Counsel for the City submits that the application for rezoning would result in what is referred to as spot zoning. This assertion is contrary to the determination of the City's own Planning Department and the opinion of the City's own planners as noted in the Planning Department's report to Planning Board for its consideration of this application. This Commission finds that based on the evidence before it this application for rezoning is not spot zoning.

[52] In Charlottetown (City) the Island Reg. & Appeals Com. 2013 PEICA 10, Chief Justice Jenkins of the Court of Appeal stated:

40... However, where, as here, Council fails to decide an application for development on its merits in accordance with the applicable municipal law, which is enabled by the Planning Act, and decides the application based on irrelevant considerations, then there is no basis for deference. That is because there is no decision upon which to defer. In the Commission's words, deference to a decision maker is earned when the decision maker follows the process set out by the bylaw and is fair to all parties. Where, as here, the process was not so followed, the Commission was unable to show deference to Council's decision.

[53] In the present appeal, the Commission finds that the Council failed to decide the application for the development on its merits in accordance with the applicable municipal law and finds that Hanmac's proposal for development of the Subject Property demonstrates clearly superior planning compared with the current use of the property.

[54] The appeal is allowed, and the City's July 14, 2014 decision to deny Hanmac's rezoning application is hereby reversed. The Commission orders the City to approve an amendment to Appendix "A"- Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" - Zoning Map of the City of Charlottetown Zoning and Development By-law from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091).

4. Disposition

[55] An Order allowing the appeal and requiring the rezoning of the Subject Property and related amendment to the Future Land Use Map follows.

IN THE MATTER of Erreur ! Source du renvoi introuvable.

Order

WHEREAS the Appellant Hanmac Inc. has appealed a decision of the City of Charlottetown dated July 14, 2014;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on October 22, 2014 and November 18, 2014 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 allowed.
2. The July 14, 2014 decision of the City of Charlottetown pertaining to this matter is hereby reversed.
3. The City of Charlottetown is hereby ordered to approve an amendment to Appendix "A"- Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" - Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in

order to rezone a portion of the property at 1 Greensview Drive (PID# 279091).

DATED at Charlottetown, Prince Edward Island, this **Erreur ! Source du renvoi introuvable.** day of **Erreur ! Source du renvoi introuvable.**, **Erreur ! Source du renvoi introuvable.**

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

Erreur ! Source du renvoi introuvable.

(sgd.) Douglas Clow

Douglas Clow, Vice-Chair

(sgd.) John Broderick

Erreur ! Source du renvoi introuvable.

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)

Tab 6.

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192...

KeyCite treatment

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Stanley Bridge \(Resort Municipality\) v. Prince Edward Island \(Island Regulatory and Appeals Commission\)](#) | 2014 PECA 19, 2014 CarswellPEI 61, 29 M.P.L.R. (5th) 199, 1109 A.P.R. 332, 357 Nfld. & P.E.I.R. 332, 246 A.C.W.S. (3d) 468 | (P.E.I. C.A., Oct 31, 2014)

2013 PECA 10

Prince Edward Island Court of Appeal

[Charlottetown \(City\) v. Prince Edward Island \(Island Regulatory and Appeals Commission\)](#)

2013 CarswellPEI 29, 2013 PECA 10, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181,
231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192, 56 Admin. L.R. (5th) 175

City of Charlottetown, Appellant and Island Regulatory and Appeals Commission and Atlantis Health SPA Ltd., Respondents

David H. Jenkins C.J.P.E.I., John A. McQuaid, Michele M. Murphy JJ.A.

Heard: February 25, 26, 2013

Judgment: August 1, 2013

Docket: S1-CA-1248

Counsel: David W. Hooley, Q.C., Bria M. Brown, for Appellant
Kevin J. Kiley, for Respondent, Island Regulatory and Appeals Commission
Jonathan M. Coady, for Respondent, Atlantis Health Spa Ltd.

Subject: Public; Property; Civil Practice and Procedure; Municipal

Related Abridgment Classifications

Administrative law

III Standard of review

III.2 Reasonableness

III.2.c Miscellaneous

Municipal law

XVIII Planning appeal boards and tribunals

XVIII.1 Jurisdiction

XVIII.1.c Miscellaneous

Municipal law

XVIII Planning appeal boards and tribunals

XVIII.4 Miscellaneous

Headnote

Administrative law --- Standard of review --- General principles

Corporate respondent A Ltd. applied to appellant municipality C to allow mixed use development of units on vacant lot on waterfront — C's council rejected application on grounds that project did not conform to existing waterfront plan — A Ltd. appealed to Island Regulatory and Appeals Commission ("IRAC") — IRAC declared decision invalid — IRAC found council made legal error by failing to decide application on merits according to process set out in law — IRAC found council acted unfairly toward A Ltd. by basing decision on irrelevant considerations — IRAC allowed appeal — C appealed — Appeal dismissed — IRAC found proposed development was consistent with sound planning principles — IRAC properly performed function as appeal tribunal on planning appeal — Both decisions were reasonable — IRAC could reasonably find council made error of law and acted unfairly toward A Ltd. by not deciding application in accordance with requirements of planning legislation and making decision based on consideration of extraneous matter — It was within IRAC's mandate to decide application on

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192. — IRAC did not usurp legislative and contractual powers of council to administer C's planning legislation — IRAC did not fail to consider relevant factors.

Municipal law --- Planning appeal boards and tribunals — Jurisdiction — General principles

It is integral to Island Regulatory and Appeals Commission's legislative mandate as appeal tribunal for [Planning Act](#) appeals to review decision of council for compliance with municipality's by-laws and procedural error — Island Regulatory and Appeals Commission Act and Planning Act should be viewed together as legislative scheme.

Municipal law --- Planning appeal boards and tribunals — Miscellaneous

Island Regulatory and Appeals Commission Act and Planning Act should be viewed together as legislative scheme.

A Ltd., the corporate respondent, applied to C, the appellant municipality, to allow a mixed-use development of units on a vacant lot on the waterfront. C's council rejected the application on the grounds that the project did not conform to the existing waterfront plan.

A Ltd. appealed to the Island Regulatory and Appeals Commission ("IRAC"). The appeal was allowed. IRAC declared the decision to be invalid.

IRAC found that C's council had made a legal error by failing to decide the application on its merits, according to the process set out in law. IRAC also found that the council had acted unfairly toward A Ltd. by basing its decision on irrelevant considerations. C appealed IRAC's decision.

Held: The appeal was dismissed.

Per Jenkins C.J.P.E.I. (Murphy J.A. concurring): The provincial legislature established the Island Regulatory and Appeals Commission ("IRAC") as an amalgamation of many tribunals and conferred upon it various mandates involving appellate, regulatory and administrative functions relating to various legislation. The analysis in the present case applied only to an appeal from IRAC acting as the appeal tribunal for the province under [s. 28 of the Planning Act](#).

The nature of the questions of law in the present appeal involved consideration of whether council followed the municipal planning law that it enacted pursuant to its authority conferred by the [Planning Act](#), whether council made procedural errors by denying the developer the required level of procedural fairness, and whether IRAC properly performed its appellate role when it substituted its decision for council's decision on whether the proposed development and accompanying by-law amendment were in accordance with sound planning principles.

These questions of laws were all central to IRAC's delegated mandate as the planning appeal tribunal and engaged its specialized expertise. IRAC, acting as an appeal tribunal, was interpreting its home statute and statutes closely connected with its function, with which it had particular familiarity. Reasonableness was therefore the applicable standard of review.

IRAC properly performed its function as the appeal tribunal on a planning appeal, and its decisions to quash council's decision based on procedural error and to substitute its decision to approve the developer's application were both reasonable.

It is integral to IRAC's legislative mandate as the appeal tribunal for [Planning Act](#) appeals to review the decision of council for compliance with C's by-laws and for procedural error. The [Planning Act](#) does not limit the scope of an appeal.

IRAC's finding that council sidestepped the merits of the application in pursuit of its desire for a new waterfront plan was reasonable. There was a sufficient basis upon which IRAC made its conclusion.

This court held 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. Although IRAC usually employed deference toward council's planning decisions, where council decided the application based on irrelevant considerations, then there was no basis for deference because there was then no decision upon which to defer. IRAC's conclusion was consistent with sound planning principles and was a reasonable decision.

Per McQuaid J.A. (concurring in the result): When hearing an appeal from the planning decision of a municipality, the review is not restricted to the "record" before the municipality when it made the decision.

IRAC applies a two-part test when deciding appeals under the [Planning Act](#). First, IRAC decides whether the municipality followed the proper processes as required by the by-laws; if it did, IRAC takes the position it will not interfere.

If IRAC finds the municipality's decision does not comply with the by-laws, only then does it take the position that it will hear the matter afresh. That is not the manner in which *de novo* appeal powers are to be exercised. If IRAC erred in first adjudicating the appeal on the record, the error was rendered immaterial by the fact that IRAC proceeded to hold the hearing *de novo*.

IRAC is a unique tribunal with both a regulatory and appellate function. It is difficult to conclude what might be considered its "home statute" and the level of expertise the legislature intended to accord to its jurisdiction, because its powers of appeal

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 492. The from not only the IRAC Act itself, but other statutes. Accordingly, the most appropriate way to establish the standard of review on an appeal to this court from an IRAC decision is on a case-by-case basis.

An appeal to this court must be brought on a question of law or jurisdiction. Pursuant to s. 13(1) of the IRAC Act, questions of fact and mixed fact and law are beyond the scope of this court's power of review.

The appeal raised questions of law related to the proper interpretation of C's by-law and the resolution of these legal questions will set the parameters for IRAC's exercise of discretion. It is reasonable to conclude IRAC has a fair measure of expertise relative to that of a court. Considering all the factors in the standard of review analysis, the standard to be employed in reviewing its decision is that of reasonableness. IRAC's decision to allow the appeal from C's decision was reasonable.

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Generally — referred to

s. 13(1) — considered

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s. 3 — referred to

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s. 5 — considered

s. 6 — considered

s. 13(1) — considered

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Generally — referred to

Pt. V — referred to

s. 28 — considered

s. 28(1.1) [en. 2006, c. 15, s. 2] — considered

s. 28(7) — considered

s. 28(8) — considered

s. 28(9) — considered

s. 37 — considered

Words and phrases considered:

vires

[*New Brunswick (Board of Management) v. Dunsmuir* [2008] S.C.R. 190] (at para.59) advises that administrative bodies must be correct in their determinations of true questions of jurisdiction or *vires*. However, *Dunsmuir* uses the term "*vires*" to distance the discussion from the extended definition of jurisdiction. "Jurisdiction" is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. True jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter.

reasonableness

Reasonableness is founded on the principle that with respect to some questions determined by administrative tribunals, there could be more than one specific result. The application of the standard of reasonableness engages the court in a consideration of whether there is justification, transparency and intelligibility within the tribunal's decision-making process and whether the decision falls within a range of acceptable outcomes which can be defended, considering the facts and the applicable law

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Reasonableness does not mean a court acquiesces in the decision of the tribunal nor does it mean the court can address the concept of reasonableness and then proceed to replace the tribunal's decision with its own. There is a distinction between judicial acquiescence and judicial restraint. A decision reviewed on the standard of reasonableness reflects the latter.

The concept of reasonableness implies that a court on reviewing the decision of the tribunal will give due consideration to the conclusion reached by the tribunal.

APPEAL brought by municipality from order made by commission on planning appeal.

David H. Jenkins C.J.P.E.I.:

1 The City appeals from an Order made by the Commission on a planning appeal.

1. Proceedings leading up to this appeal

Application for development/City Council decision

2 In August 2011, Atlantis applied to the City to allow a mixed use development of commercial, office and residential units on its vacant lot on the Charlottetown waterfront. The property is located between Atlantis' condominium development at 4 Prince Street and Founders Hall. The application proceeded through the Planning Board and Public Meeting stages. In November 2011, Council rejected the application. The City informed Atlantis that Council felt that the project did not conform to the existing Waterfront Plan.

Developer appeal to Commission/Commission decision

3 Being dissatisfied by this decision of City Council, Atlantis appealed the decision to the Commission. The Commission is the appeal tribunal in this province for municipal planning appeals. Atlantis' grounds of appeal were that in making its decision Council failed to apply sound planning principles, failed to consider relevant factors, and considered irrelevant factors.

4 The Commission held a hearing. It considered the City planning legislation, including the Official Plan and the zoning bylaw applicable to the Comprehensive Development Area ("CDA") zone in which the subject property is situate; the record of proceedings that was before City Council on the Developer's application, including the Developer's application and supporting submissions from its architect, the Recommendations and Reports of the City's Director of Planning and of the City's Planning Board, first to proceed to the Public Meeting, and second to approve the proposed change to the Waterfront Plan to allow the development, by amending Appendix "G" of the Zoning and Development Bylaw for the Waterfront CDA Zone as well as the Waterfront Concept Plan, and the Developer entering into a Development Agreement; and the record of the public meeting and the meeting of City Council; and the Commission heard oral evidence from the Developer, his architect, a City Planning Officer, an external planning consultant presented by the City, and two members of the public.

5 In deciding the appeal, the Commission made two essential findings and determinations. First, it found that the Council made a legal error by failing to decide the application on its merits according to the process set out in the present law, and acted unfairly toward the Developer by basing its decision on irrelevant considerations. As a result of those errors, it declared Council's decision invalid. Second, the Commission then proceeded to review the evidence on the appeal and determine the Developer's application for approval, thus deciding the matter anew as if it was the original decision-maker. Upon weighing the evidence, the Commission found that the proposed development for the subject property, as put forward by Planning Board to Council, is consistent with sound planning principles. The Commission determined that the appeal should be allowed.

City Appeal from Commission Order

6 While the Legislature constituted the Commission as the appeal tribunal for planning appeals, it also provided a limited right of appeal to the Court of Appeal from a decision or order of the Commission. This right of appeal does not duplicate the

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192. Planning appeal from a decision of City Council to the Commission. It is an appeal from the Commission's decision or order, only on a question of law or jurisdiction.

7 The City appealed from the Order of the Commission. The City's grounds of appeal assert the Commission made errors of law and exceeded its jurisdiction: 1) it usurped the legislated and contractual powers of City Council to administer the City's planning legislation by conducting the appeal as a hearing *de novo* without due consideration for the circumstances of the case, by improperly substituting its discretion for that of the elected Council, and by failing to have due regard for the contractual relationship between the City and the Developer under the Development Agreement made regarding permissible use of the condominium property at 4 Prince Street; 2) by finding the City made procedural errors or omissions in its consideration of the application; 3) by failing to consider and give adequate weight to relevant factors, including the prior course of dealing between the Developer, the City, and CADC; Council's deliberations over expressions of public concern about waterfront development; and expert evidence that Council's decision to deny the Developer's application for a piecemeal development pending a comprehensive review of the waterfront development is consistent with good planning principles; and 4) by misinterpreting the presentation by the Chair of the City's Planning Board to Council as requiring Council to approve, as opposed to process, the application.

2. Court of Appeal standard of review regarding Commission decision

8 The first question on an appellate review of a decision of the Commission acting as a planning appeal tribunal is the applicable standard of review to be applied by the Court of Appeal on reviewing decisions made by the Commission in the course of its conduct of the planning appeal. This question needs to be determined at the outset because it governs the review that the Court of Appeal will perform.

9 The right of appeal from a decision or order of the Commission to the Court of Appeal is created by statute. The *Island Regulatory and Appeals Commission Act*, R.S.P.E.I. 1988, c-18, [I-11](#), which constitutes the Commission and sets out the parameters of its functions and jurisdiction, states at s.13(1) that an appeal lies from a decision or order of the Commission to the Court of Appeal on a question of law or jurisdiction. This appeal is direct from the Commission to the Court of Appeal.

10 The question in the present case regarding the applicable standard of review is whether the past practice of applying the standard of correctness to questions of law should be continued or alternatively whether the post-*Dunsmuir* and post-*Alberta Teachers' Association* jurisprudence applies to this appeal process so that the standard of review applicable to questions of law that involve the Commission interpreting its own statute or statutes closely connected with its function with which it will have particular familiarity should be reasonableness. In my opinion, the latter scenario applies, and the applicable standard of review for the questions of law that the Commission decided in this case is reasonableness.

11 While this analysis may be perceived as having broad application regarding appeals to the Court of Appeal from the Commission, it is my intention that this analysis applies only to an appeal from the Commission acting as the appeal tribunal for the province under [s.28 of the Planning Act](#). The Legislature established IRAC as an amalgamation of many tribunals and conferred upon it various mandates involving appellate, regulatory and administrative functions relating to various legislation. Within its function as an appeal tribunal, it serves as the appellate body from decisions by tribunals under various legislation. Other legislation obviously serves other purposes, and consequently might be expected to have specific provisions that are different from the provisions of the *Planning Act* differing mandates and provisions regarding appeals. The applicable standard of review for appeals from the Commission acting as an appellate tribunal under other statutes can be addressed when appropriate cases arise.

12 *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 (S.C.C.) ("*Dunsmuir*") (at paras.62-64) provides direction for carrying out a standard of review analysis. Where a court ascertains that the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question, it is unnecessary to proceed to a contextual analysis.

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13 The Court of Appeal employed this practice recently in an appeal from the Commission on a planning appeal in *Doiron v. Prince Edward Island (Island Regulatory & Appeals Commission)*, 2011 PECA 9 (P.E.I. C.A.), at para.9. Without engaging in a standard of review analysis and for reasons of practicality, the Court viewed it as previously determined that questions of law or jurisdiction arising from decisions of the Commission shall be reviewed on the standard of correctness.

14 The *Doiron* decision referred to precedents, including *Prince Edward Island (Tax Commissioner) v. Maritime Dredging Ltd.*, [1997] P.E.I.J. No. 112 (P.E.I. C.A.), an appeal under the sales tax legislation. The *Maritime Dredging* case provided a full standard of review analysis applied generally to appeals under s.13(1) of the *Island Regulatory and Appeals Commission Act*. It addressed the four contextual factors in the previously named pragmatic and functional analysis which are substantially carried forward by *Dunsmuir* as the renamed standard of review analysis. It is useful to refer to that analysis at this time. The following excerpt which addresses three of the factors is instructive for its description of IRAC as a tribunal and for an understanding of the approach taken to determining the applicable standard of review on questions of law. McQuaid J.A. stated:

[13] The Island Regulatory and Appeals Commission is established pursuant to the *Island Regulatory and Appeals Commission Act*, *supra*. It receives its power and jurisdiction from this Act and numerous other pieces of legislation which confer jurisdiction on the Commission. It is a regulatory agency regulating utilities and petroleum products. The Commission decides matters relating to land use, and it is an appellate tribunal vested with jurisdiction to hear appeals from the decisions of certain persons. See: Sections 5 and 6 of the *Island Regulatory and Appeals Commission Act*, *supra*, and the *Petroleum Products Act*, R.S.P.E.I. 1988 Cap. P-5.1

[14] The membership of the Commission is made up of two full-time Commissioners, the chair who is the chief executive officer of the Commission, the vice-chair who is to assume primary responsibility for land issues, one other commissioner and not more than five part-time commissioners who are to be knowledgeable in one or more of the areas of accounting, agriculture, municipal planning, engineering, business, environmental matters, finance, economics, law, utilities, taxation and consumer protection. See: s-s.3(1) of the *Act*.

[15] Generally speaking, a review of the *Island Regulatory and Appeals Commission Act*, *supra*, and the various other statutes vesting the Commission with jurisdiction, discloses the Commission is an administrative tribunal vested both with the responsibilities of a regulator and an appeal tribunal. Whether the Legislature intended to vest it with relative expertise in all these areas may only be discerned from these statutes. For example, pursuant to the *Petroleum Products Act*, R.S.P.E.I. 1988 Cap. P-5.1, the Commission is vested with broad powers to regulate the sale and distribution of petroleum products in Prince Edward Island prompting this Court to hold the Commission possesses relative expertise in this area and based on the principle of the specialization of duties deference should be shown to decisions of the Commission on issues within the parameters of that expertise. See: *Irving Oil Limited v. Elmsdale Corner Grocery Limited*, *supra*. A similar conclusion might also be reached with respect to the Commission's role in regulating a utility as it is defined in s.1(e) of the *Island Regulatory and Appeals Commission Act*, *supra*. Thus, where the Commission acts in a regulatory capacity, vested with broad powers to determine what is in the public interest and to make some policy in relation to the subject matter being regulated, such as utilities and petroleum products, the Commission's duties are specialized, and in relative terms, it would possess expertise greater than the reviewing court. Acting within the scope of that expertise, the Commission's decisions on matters of law and jurisdiction are entitled, even where there is a statutory right of appeal and no privative clause, to a high degree of deference because of the principle of specialization of duties. Its decisions would be reviewable on the standard of reasonableness.

[16] On the other hand, from reading the *Island Regulatory and Appeals Commissions Act*, *supra*, and the other statutes which establish the Commission as an appellate tribunal, it is clear the Commission has not been vested with any responsibility to regulate in the particular subject area of the appeal nor does the Commission appear to have a policy-making role in these areas. The Commission's role and function is that of an intermediate appellate tribunal with no particular expertise or specialization on matters of law and jurisdiction that might be under consideration on appeal. Therefore, where there is a statutory right of appeal from these decisions of the Commission on questions of law and jurisdiction, the decisions of the Commissions are reviewable on the less deferential standard of correctness.

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[17] The nature of the problem before the Commission was an appeal from a decision of the Provincial Tax Commissioner which raised questions of law alone. While one of the not more than five part-time Commission members is to be knowledgeable in tax, this fact in itself is not sufficient indicia of an intent on the part of the Legislature to vest the Commission with expertise in the legal issues which might arise in sales tax, or indeed other tax matters. In addressing the issues before it on the appeal from the Provincial Tax Commissioner, the Commission was obligated to interpret certain provisions of the *Revenue Tax Act*, *supra*, as well as to interpret and apply a body of common law on the issue of what constituted territorial waters. Exercising these functions in an appellate role, it is my view the Commission does not possess any greater expertise than that of a reviewing court. Consequently, the scope of review is broad and is at the least deferential end of the spectrum referred to by Iacobucci J. in *Pezim*. The standard of review to be employed in considering the questions of law raised by the appeal of the Provincial Tax Commissioner to this Court is correctness.

15 With the benefit of such precedents, more recent Court of Appeal decisions tended to focus on the matter of relevant expertise of the Commission to decide questions of law when determining the applicable standard of review. In the majority decision in *Maritime Electric Co. v. Prince Edward Island (Island Regulatory & Appeals Commission)*, 2011 PECA 13 (P.E.I. C.A.), McQuaid J.A. stated at para.16:

(i) Standard of review

[16] As the issues under review raise questions of law where the Commission would not be considered to have any specialized expertise, the standard of review to be employed by this court is that of correctness. Furthermore, the court has held in previous cases that this standard is to be applied to a review of the Commission's decisions on questions of law which are beyond the scope of the Commission's expertise in regulatory matters. See: *Island Telecom Inc. v. Prince Edward Island (Regulatory and Appeals Commission)*, [1999] P.E.I.J. No. 63 at para. 3 (C.A.). *Island Telecom Inc. v. Prince Edward Island (Regulatory and Appeals Commission)*, [2001] P.E.I.J. No. 110 at para. 13 and 15 (C.A.). See also *Summerside (Town) v. Maritime Electric Co.*, [1993] P.E.I.J. No. 104 at paras. 14, 19, and 24 (C.A.).

16 As a comparison of pre-*Dunsmuir* practice, it is interesting to note that the Ontario Court of Appeal gave a wider berth to deference to be afforded to the planning appeal tribunal for Ontario. It recognized that a distinction should be made, so that questions of law within the specialized expertise of the Ontario Municipal Board should be accorded deference. In 2002, in *London (City) v. Ayerswood Development Corp.* [2002 CarswellOnt 4301 (Ont. C.A.)], 2002 CanLII 3225, the Court stated:

[7] In our view, the Divisional Court erred in its conclusion as to the appropriate standard of review. The matter came before the Divisional Court by way of an appeal under s. 96(1) of the *OMBA*, which provides for an appeal from the Board to the Divisional Court, with leave, on a question of law. The proper standard of review was one of either correctness or reasonableness, depending on the nature of the particular question of law. Questions of law that engage the specialized expertise of the Board, such as the interpretation of its own statute, attract a standard of reasonableness. Questions of law that are of general application for which the Board has no special expertise are reviewed on a standard of correctness. See for example: *Moreau-Bérubé v. New Brunswick (Judicial Council)*, 2002 SCC 11 (CanLII), 2002 SCC 11, 209 D.L.R. (4th) 1 at para. 61. ...

While the Ontario Municipal Board is constituted by particular Ontario legislation and there is some suggestion that it is more specialized than IRAC, OMBA and IRAC have a common denominator. They are both standing tribunals that perform similar functions as provincial planning appeal tribunals.

17 In 2008, *Dunsmuir* (at para.49-56) made it clear that questions of law decided by a tribunal can no longer be treated all the same. The majority judgment states that deference will usually result where a tribunal is interpreting its own statute or statutes closely connected with its function, with which it will have particular familiarity. It considered that certain factors - a privative clause; a discrete and specialized administrative regime in which the decision maker has special expertise; and a question of law that does not rise to the level of being of central importance to the legal system and outside the specialized area of expertise - may be compatible with a reasonableness standard. If these factors, considered together, point to a standard

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 462. Reasonableness, the decision-maker's decision must be approached with deference in the sense of giving due consideration to the determinations of decision makers. The majority decision adopted the explanation of D.J. Mullan that such a policy of deference "*recognizes the reality that, in many instances, those working day-to-day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field a sensitivity to the imperatives or nuances of the legislative regime.*"

18 Post-*Dunsmuir* jurisprudence indicated there was continuing uncertainty about the standard of review when the issue is the tribunal's interpretation of its home statute or a statute with which it has a working familiarity. This uncertainty was addressed and substantially ameliorated by a number of decisions, including notably *Alliance Pipeline Ltd. v. Smith*, 2011 SCC 7 (S.C.C.); *M.A.H.C.P. v. Nor-Man Regional Health Authority Inc.*, 2011 SCC 59 (S.C.C.); *A.T.A. v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61 (S.C.C.) ("*Alberta Teachers*"); and recently *Whatcott v. Saskatchewan Human Rights Tribunal*, 2013 SCC 11 (S.C.C.). The majority judgment of Rothstein J. in *Alberta Teachers'* (at para.30-51), clarifies the direction in *Dunsmuir* and then sharpens that direction by developing a rebuttable presumption that reasonableness will be the applicable standard of review. Where the question before the tribunal involves interpretation of a provision of its home statute, and does not fall within one of the mentioned exceptions but engages considerations and gives rise to consequences that fall squarely within the tribunal's expertise, it should be presumed to be a statutory interpretation that is subject to deference on judicial review. Conversely, for the correctness standard to apply, the question has to be one that is both of central importance to the legal system and outside the tribunal's specialized area of expertise.

19 In *MacMaster v. Prince Edward Island (Workers' Compensation Board)*, 2012 PECA 19 (P.E.I. C.A.), this Court decided that the applicable standard of review on a question of law involving an interpretation of its home statute in an appeal from a Workers Compensation Appeal Tribunal decision should be determined pursuant to the directions in *Alberta Teachers'* and other Supreme Court *Dunsmuir* and post-*Dunsmuir* jurisprudence. This decision was a departure from the previously employed application of the correctness standard of review or appeals from WCAT decisions to the Court of Appeal. The Court stated (at para.41): "*Following the directions in Alberta Teachers', where, as here, the question of law is regarding interpretation of its home statute, and none of the mentioned exceptions apply, deference should presumptively be accorded and the reasonableness standard of review applied.*"

20 *Alberta Teachers'* (at para.44) also provided guidance regarding the appropriate way to carry out a standard of review analysis. Following up on the guidance in *Dunsmuir* as to how the standard of review might be determined summarily without requiring a full standard of review analysis, one method is to identify the nature of the question at issue, which would presumptively determine the standard of review. Where the standard of review can be determined summarily, it is not necessary to retreat to the application of a full standard of review analysis.

21 The nature of the questions of law in the appeal from the Commission to the Court of Appeal involve consideration of: whether City Council followed the municipal planning law that it enacted pursuant to its authority conferred by the Legislature under the *Planning Act*; whether Council made procedural errors by denying the Developer the level of procedural fairness that was required in the circumstances; and whether the Commission properly performed its appellate role when it substituted its decision for Council's decision on the ultimate question of whether the proposed development and accompanying bylaw amendment were in accordance with sound planning principles.

22 In my view, questions of law of these kinds are all central to the Commission's delegated mandate as the planning appeal tribunal. They engage the specialized expertise of the Commission, as that concept is characterized by *Dunsmuir* and by D.J. Mullan. They involve interpretation of the Commission's home statutes as the planning appeal tribunal, i.e. the *Planning Act*, and statutes closely connected with its function, i.e. delegated municipal legislation authorized pursuant to the *Planning Act*. In order to obtain a full appreciation of the Commission's role and function, the *Island Regulatory and Appeals Commission Act* and the *Planning Act* should be viewed together as a legislative scheme. This exercise demonstrates for me that in deciding such questions of law, the Commission acting as an appeal tribunal is indeed interpreting its home statute and statutes closely connected with its function, with which it will have particular familiarity, and that none of these questions are questions that rise to the level of being central importance to the legal system and outside the specialized area of expertise of the Commission

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192 as an appeal tribunal. It is thereby revealed that the presumption is engaged and that reasonableness is the applicable standard of review regarding such questions.

23 There is no privative clause. However, the Commission is constituted as an independent and impartial tribunal. It is a standing tribunal to which the Legislature has assigned province-wide jurisdiction for planning appeals. Its mandate is defined, and its enabling legislation contemplates it will have expertise. In my interpretation, the Legislature intended the tribunal to be viewed as having specialization and familiarity in planning matters.

24 The City's appeal also asserts that the Commission exceeded its jurisdiction by rendering a decision that usurped the legislated and/or contractual powers of the elected officials of City Council to administer the City's bylaws. Following the Supreme Court's direction in *Dunsmuir* and *Alberta Teachers'*, I would treat that assertion as a question of law rather than a question of jurisdiction.

25 *Dunsmuir* (at para.59) advises that administrative bodies must be correct in their determinations of true questions of jurisdiction or *vires*. However, *Dunsmuir* uses the term "*vires*" to distance the discussion from the extended definition of jurisdiction. "Jurisdiction" is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. True jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. This goes to the fundamental principle of delegation of statutory authority. A tribunal must interpret its grant of authority correctly or its action will be found to be beyond its authority.

26 In *Alberta Teachers'* (at paras.38-42), Rothstein J. grappled with the question of what constitutes a true question of jurisdiction and how reviewing courts should deal with the issue. He observed that the "true questions of jurisdictions" category has caused confusion to counsel and judges alike and has unnecessarily increased costs to clients before getting to the actual substance of the case. He proposed what he viewed as a natural extension of the approach to simplification set out in *Dunsmuir*: true questions of jurisdiction are narrow and will be exceptional. When considering a decision of an administrative tribunal, in interpreting or applying its home statute, it should be presumed that the appropriate standard of review is reasonableness. As long as the true question of jurisdiction category remains, a party seeking to invoke it must be required to demonstrate why the court should not review the tribunal's interpretation of its home statute on the deferential standard of reasonableness. Rothstein J. adopted the reasoning of Justice Evans of the Federal Court of Appeal to the effect that a very strong presumption of deferential review when a statutory authority is interpreting its home, or constitutive statute, or any other frequently encountered statute, or even common or civil law principle. He suggested the practical approach is to direct the courts and counsel that at this time, true questions of jurisdiction will be exceptional and should the occasion arise to address in a future case whether such a category is indeed helpful or necessary.

27 This proposal and suggestion being made within the majority decision in *Alberta Teachers'*, it comprises the directions to be followed in the present case.

3. Decision on appeal

Summary decision

28 In my opinion, the Commission properly performed its function as the appeal tribunal on a planning appeal, and both of its decisions: 1) to quash Council's decision based on procedural error; and 2) to substitute its decision to approve the Developer's application, were reasonable. There being no reviewable error, I would dismiss the City's appeal.

Delegated authority and appellate review

29 The Legislature created the City, and vested its administration in Council. The Legislature conferred the primary authority over planning upon Council. Under the *Planning Act*, R.S.P.E.I. 1988 P-8, upon adopting an Official Plan, Council is thereupon responsible for administration of the City's Official Plan. Specific *Planning Act* provisions authorize mechanisms for administration of the planning process. These include the appointment of the Planning Board, the assistance and advice of staff and consultants on preparation and administration of the Official Plan regarding zoning and development, the composition

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. of Planning Board, and the office of Chair of the Planning Board, Planning Board powers and duties including recommending by-laws and alteration of bylaws to Council in respect of the Official Plan, and the conduct of public meetings in pursuit of the objective of providing an opportunity for public participation in the planning process. The *Act* authorizes Council to make and amend bylaws implementing the Official Plan for the City, with the provisos that bylaws are subject to approval by the Minister of Finance and Municipal Affairs and an opportunity for public input through a public meeting.

30 While the Legislature made Council responsible for administration of its Official Plan, it created a right of appeal from Council's decision. Section 28(1.1) of the *Planning Act* provides (with some exceptions) that any person who is dissatisfied by a decision of Council may appeal to the Commission.

Review of Council decision for compliance with bylaws and procedural error

31 In my opinion, it is integral to the Commission's legislative mandate as the appeal tribunal for *Planning Act* appeals to review the decision of Council for compliance with City bylaws and procedural error. The right of appeal from City Council acting as a decision-making tribunal affecting rights is statutory. The Legislature fully vested the Commission with the function of appeal tribunal, and directed aggrieved persons to appeal to the Commission rather than to the superior courts for redress. The *Planning Act* does not limit the scope of an appeal. The fundamental principle of administrative law is that any tribunal exercising delegated statutory power must exercise its legal authority only in accordance with the provisions of its enabling and operating legislation. Otherwise, its decisions are unlawful and subject to being set aside on appeal. A person who is dissatisfied with a decision of Council appeals to the Commission with the objective of having the Commission overturn the decision subject to appeal. In order to fulfill its mandate as the appeal tribunal, the authority to review the decision appealed from for compliance with the bylaws and procedural error is necessary.

32 I would endorse the Commission's two-step approach that it employs as a guideline when determining appeals under the *Planning act*. Once the Commission confirms that a planning appeal is within its jurisdiction to decide, its initial review of the decision appealed from is for procedural error. Because such applications are essentially for rezoning or bylaw amendment, in which Council's decisions affect rights, such an error may render the decision under review subject to being declared invalid.

33 It is also my view that upon carrying out its review of the evidence, the Commission could reasonably find, as it did, that Council made an error of law and acted unfairly toward the Developer by not deciding the application in accordance with the requirements of the City's planning legislation, and instead making its decision based on consideration of extraneous matters.

34 The CDA Bylaw stipulates mandatory requirements for Council in considering a Development Concept Plan. They include: the quality of architectural design of all proposed buildings; their compatibility with the architectural character of adjacent development; and the extent to which the Development Concept Plan reflects the development principles as are otherwise set out in the CDA Bylaw. The Planning Board Report to Council, which recommended approval of the proposed change to the Waterfront Plan to allow the development, canvassed all of these criteria, sensitively and in considerable detail. The minutes of the Council meeting in which the decisions to reject the application were made contain very little reference either to any of the criteria listed in the Bylaw approval procedure or to any substantive content of the Planning Board Report to Council. On the other hand, the minutes of the Council meeting report the questions and answers that did transpire.

35 It is another fundamental principle of administrative law that a council is required to decide an application based on the planning law that is currently in place. Laurel Palmer-Thompson, who is a City planning officer, also confirmed that this is an accepted principle of planning. Council is required to decide an application in accordance with the substantive criteria listed in the CDA Bylaw. Everyone affected by Council's decision is entitled to know the rules that Council will employ in deciding an application, and that upon making its decision Council has duly considered the Developer's application by deliberating on the criteria listed in the bylaw.

36 In this case, the Commission's reasons demonstrate that it understood that Planning Board's role is advisory - its recommendation being "something that should be considered seriously but not tying the hands of Council"- and that Council as the decision maker could reach a different conclusion. The Commission stated its expectation that where Council makes such a

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. decision against Planning Board's recommendation, that Council would explain its thought process and analysis. In the absence of a record of Council having considered the statutory criteria, and in the presence of a record that Council did consider other matters, the Commission formed the view that Council did not decide the Developer's application based on its respective merits or lack thereof, as its Chair of the Planning Board advised it to do, but instead appeared to have been concerned about other matters, including Planning Board's recommendation having been circulated in the media, whether compromise was possible, and the need for a new waterfront plan. Ultimately, the Commission found that Council sidestepped the merits of the application in pursuit of its desire for a new waterfront plan. This crucial inference made by the Commission appears reasonable to me. Without commenting on the level of information that Council should provide to make its decision amenable to effective review, in this case the presence of a fully explained Planning Board Recommendation for approval, the absence of Council reference to the statutory criteria, and the verbatim report of the Council discussion being focused on other considerations, there is a sufficient basis upon which the Commission sitting as the appeal tribunal to have made its conclusion.

37 It is significant to appreciate that my review of the Commission's decision to quash Council's decision involves the issue of proper process. The expressed desire to pursue a grand vision for the City's waterfront is no doubt laudable. There was considerable evidence before the Commission about the present concept plan being relatively dated, and the need for revisiting the Waterfront Plan due to the inherently incremental nature of development in a CDA, and the wide-ranging array of recently approved developments in the waterfront area: the new convention centre, the new concert site, the adjacent condominium developments east and south of the subject property, the new marina, and change of use of Founders Hall. Indeed, counsel for the City informed the Commission in the City's opening statement on the appeal that the City does not contend that its Director of Planning or the Planning Board were off base with their Recommendations for approval in terms of planning principles. Counsel informed the Commission that the nub of its case is that spot or piecemeal development on the subject property is premature because the City is about to embark on a grand vision for the waterfront, taking a holistic look at the waterfront lands that remain undeveloped. Along with Council's discussion and decision, and the evidence on the planning appeal, this description of the nub of the City's case makes it abundantly clear to me that the Commission well and fully understood that Council did not comply with its bylaws and the source of this error. Council did not follow the process required by the bylaw. It chose to not follow the advice and caution of the Planning Board Chair that it was required by law to process the Developer's application in accordance with the applicable bylaw *before* making any further decisions about a new and revised Waterfront Master Plan.

Hearing and deciding the application anew

38 In my opinion, it was also within the Commission's mandate to decide the application on its merits. Following a *Reference* in 1997, the Court of Appeal held that the Legislature contemplated and intended that appeals under the *Planning Act* would take the form of a hearing *de novo*, after which the Commission, if it so decided, could substitute its decision for the one appealed (*Prince Edward Island (Island Regulatory & Appeals Commission), Re, [1997] P.E.I.J. No. 70* (P.E.I. C.A.)).

39 Following the *Reference* case, the Commission formalized a two-part test that summarized its previous analysis of its role. The Commission employs this test as a guideline in determining planning appeals. As it applies to the circumstances of this case, after carrying out step one and quashing the Council decision for failing to follow proper process and procedure, the Commission could and should move forward to step two. Here, the Commission considers whether the City's decision with respect to the proposed rezoning and bylaw amendment has merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.

40 I agree with both the Commission's usual approach where it finds no procedural error, and its approach in this case where it finds procedural error and quashes the decision of a municipal council. As would be expected, the Commission usually employs deference toward planning decisions by Council that are properly made. That approach is consistent with the statutory scheme of the *Planning Act*. The Legislature vested City Council with responsibility for administration of its Official Plan and created a right of appeal to the Commission. The Commission noted that its discretion should be exercised carefully, which it interprets, consistently with the directions in the *Reference* case, as meaning that the Commission ought not to interfere with a decision merely because it disagrees with the end result. However, where, as here, Council fails to decide an application for development on its merits in accordance with the applicable municipal law, which is enabled by the *Planning Act*, and decides the application based on irrelevant considerations, then there is no basis for deference. That is because there is then no decision

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192n. which to defer. In the Commission's words, deference to a decision-maker is earned when the decision maker follows the process set out by the law and is fair to all the parties. Where, as here, process was not so followed, the Commission was unable to show deference to Council's decision.

41 Upon reviewing the record before the Commission, including the City's Official Plan, CDA Bylaw, and related documentation regarding the Waterfront Concept Plan, all the oral evidence, and the Commission's decision and reasons, I am satisfied that the Commission's conclusion that the Developer's proposal development for the subject property, as put forward by Planning Board, is consistent with sound planning principles, is a reasonable decision. The Commission weighed the evidence. It could weigh the evidence as it did, and prefer the Reports and Recommendations of the City's Director of Planning and of the Planning Board, and the opinions of the City's Development Officer over the opinion of the planning consultant witness, who also gave expert evidence at the request of the City. The Commission had before it a full and complete evidentiary basis upon which to determine that the proposed development, and required amendment to Appendix G Permitted Uses of the CDA Bylaw, complies with all of the stated statutory criteria and is consistent with sound planning principles.

Conclusion on decision

42 I believe that the forgoing reasons address the City's grounds of appeal, either expressly or by implication. I would dismiss the appeal.

4. Further comments

43 I wish to include further comments regarding some issues and grounds that were raised during the appeal from the Commission to the Court of Appeal. These comments form part of my reasons. They are added at the end because I view them as ancillary and explanatory regarding the foregoing decision.

4.(a) Hearing de novo: Did the Commission usurp Council powers?

44 I have previously explained the source of the Commission's mandate to review a Council decision for error of law in procedure and process, the rationale for deference to planning decisions made by Council since it is delegated the responsibility for municipal planning, and the source and proper operation of the Commission's mandate to make the ultimate planning decision anew in the circumstances of this case where the decision of Council is declared invalid. In view of the City's ground of appeal that asserts that the Commission improperly substituted its discretion for that of the elected Council, I add this additional explanation.

45 In my view, the Commission did not usurp the legislated and contractual powers of City Council to administer the City's planning legislation.

46 Council decisions are subject to appeal under the *Planning Act*. Any suggestion that Council's decisions are insulated from review because Council is elected and the Commission is not has to be considered in context and appropriately moderated. The constraints on Council's discretion depend on the role being performed by Council. The legal constraints will be different depending on the nature of the function being performed. Council's decisions must always be based on relevant criteria and a decision based upon extraneous considerations is susceptible to being invalidated. Beyond that, when Council is exercising political decision making authority, making policies, enacting legislation, and carrying out operations, it may be that Council is not expected to adhere to standards of fairness or that such standards may be circumscribed. On the other hand, when Council is deciding whether to approve an application for development, it is acting as a tribunal performing a quasi-judicial function. When it is called upon to exercise its discretion in such a matter that affects the rights of persons to have the matter decided in accordance with particular rules, such as the CDA Bylaw, the Official Plan, and the *Planning Act*, then Council must exercise its discretion in accordance with the enactment containing those rules (*Wiswell v. Greater Winnipeg (Metropolitan)*, [1965] S.C.R. 512 (S.C.C.), at paras.32-36, applied in *Welbridge Holdings Ltd. v. Greater Winnipeg (Municipality)* (1970), [1971] S.C.R. 957 (S.C.C.), at pp.968-969; *St. Peters Estates Ltd. v. Prince Edward Island (Land Use Commission)*, [1990] P.E.I.J. No. 121 (P.E.I. T.D.), at pp.34-35; David G. Boghoslan, LL.M., and J. Murray Davison, Q.C.: *The Law of Municipal Liability in Canada* (LexisNexis, 1999), pp.1.15-1.17. See also: *Catalyst Paper Corp. v. North Cowichan (District)*, 2012 SCC 2 (S.C.C.), at

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192, 10-12, which in the course of considering the validity of legislative power by a municipality, described the source and limits of delegated authority, and advised that all kinds of municipal decisions may be reviewed for compliance with the governing legislative scheme and applicable procedural fairness.)

47 In *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 (S.C.C.), Sopinka J. (writing for a 5/4 majority) described the various roles of a municipal council and the associated constraints on exercise of discretion this way:

[92] The powers of a municipality are classified for some purposes. The classifications include legislative functions, quasi-judicial functions and business functions. The nature of the function may affect the duties and liabilities of the municipality. Accordingly, it may be liable in contract or tort in respect of its business function but civil liability in respect of its legislative or quasi-judicial function is problematic. In its quasi-judicial function, Council may have a duty of fairness which does not apply in respect of the exercise of its legislative powers. See *Welbridge Holdings Ltd. v. Metropolitan Corporation of Greater Winnipeg*, [1971] S.C.R. 957, and *Wiswell v. Metropolitan Corporation of Greater Winnipeg*, [1965] S.C.R. 512. As creatures of statute, however, municipalities must stay within the powers conferred on them by the provincial legislature. In *R. v. Greenbaum*, [1993] 1 S.C.R. 674, Iacobucci J., speaking for the Court, stated, at p. 687:

Municipalities are entirely the creatures of provincial statutes. Accordingly, they can exercise only those powers which are explicitly conferred upon them by a provincial statute.

[93] It follows that the exercise of a municipality's statutory powers, whatever the classification, is reviewable to the extent of determining whether the actions are intra vires. Normally this is done by a motion to quash or a declaration of invalidity with respect to the act of Council which is impugned. ...

48 The following passage from the judgment of Kerans J.A. in *Atkins v. Calgary (City)*, [1994] A.J. No. 950 (Alta. C.A.), in yet another municipal bylaw case, is instructive:

[11] The power of a municipal government under the *Planning Act*, R.S.A. 1980, c. P-9 to enact land use by-laws, and to designate permitted uses for specific parcels, can and often does raise a narrow planning issue between competing citizens, the persons who propose a re-designation of their land and the neighbours who oppose. Alberta has a long legal history that also views decisions of that sort, even though by amendment to the by-law, as more judicial than legislative. The legal rules about what is relevant to planning apply, and resort to its planning power to accomplish a purpose not relevant to the rules about what is a valid planning factor is illegal. See *Campeau Corporation v. Council of City of Calgary* (No. 1) (1978), 12 A.R. 31, 7 Alta. L.R. (2d) 294 (S.C.A.D.) and *Re Tegon Developments Ltd. et al. and the City of Edmonton et al.* (1977), 81 O.L.R. (3d) 543 and *Re Dallinga and City of Calgary [supra]* and *Hartel Holdings Co. v. Calgary*, [1984] 1 S.C.R. 337. On the other hand, where the nature of question before Council raises a matter of public policy, a prior commitment by a councillor to a certain position does not disqualify him. See *Campeau Corp. v. Calgary* (No. 2) (1980), 112 D.L.R. (3d) 737, 22 A.R. 572, 12 Alta. L.R. (2d) 379 (C.A.).

49 In the present case, the decision before Council had legislative and judicial aspects. The resolution was for an amendment to the CDA Bylaw to add to the existing Permitted Uses as described in Appendix G. In the concept of a CDA, any development can be sought but is always subject to the broad discretion of Council. The CDA Bylaw states that Uses permitted in a CDA Zone are those uses that are approved by Council in accordance with the bylaw, and "may include any Uses or Mix of uses allowing in any zone of this Bylaw and Innovative mixed use developments...". Development within particular areas of a CDA Zone, such as the Waterfront, which contemplates innovative applications for various kinds of development, render the planning considerations somewhat different than those applicable to an application for rezoning to permit a non-conforming use in a specific purpose zone. That is why Bylaw 28 contains special provisions, including particular criteria to be considered in the decision-making when deciding upon an application for development. This is reflected in the Report of the Director of Planning dated September 7, 2011: "This is in the CDA zone and would require an amendment to the concept plan given the concept plan does not show a building on this location." Carrying out its function of considering an additional development, the same in kind as existing uses of properties in the Waterfront but not yet a listed Permitted Use for the subject property, the function of Council is mainly judicial in nature. The application engages competing rights and interests.

4.(b) Revisiting the Reference case

50 The City requested the Court to consider whether the *Reference* case should be revisited in light of intervening events during the years since it was decided in 1997. The thrust of the City's submission is that clarification is necessary regarding the guidelines the Commission follows when reviewing decisions of municipal councils. The City referred to three sources of change: 1) legislative amendments to the Planning Act; 2) the Supreme Court of Canada jurisprudence regarding the role of municipal councils; and 3) many previous decisions of the Commission itself. Counsel for both the Commission and the Developer, while willing to participate in the exercise, advised the Court that such developments in the legislation and jurisprudence have not introduced any call for revision of the directions in the *Reference* case. I agree.

51 By the way of preliminary observation, I note that the scope of any "revisiting" is circumscribed by the circumstances in which this request occurs. The present case is a statutory appeal. It is neither another *Reference* initiated by the Commission, nor an appeal from the 1997 decision of this Court on the *Reference*. In that scenario, the exercise is limited to considering whether the Commission properly performed its mandate in the present case. The starting point is that the *Reference* case is a correct statement of the law: appeals under the *Planning Act* take the form of a hearing *de novo*, after which the Commission if it so decides can substitute its decision for the one on appeal; however, the Commission does not have unfettered discretion or unbridled power to deal with and decide appeals any way it likes; but is bound to hear, consider, and decide the issues of the case in accordance with the requirement and objects of the *Planning Act*.

52 My second reservation to venturing on a revisiting exercise is that in the circumstances it may not have much utility. The City's submissions regarding the Commission exercising its *de novo* authority are based on the premise that Council did not make a legal or procedural error that would render its decision invalid. That foundation now being removed, such a revisiting of the *Reference* case is mostly unnecessary.

53 In any event, I will state my opinion that none of the mentioned legal developments suggest a need for clarification or change of the Commission's mandate or function.

Legislative amendments

54 The amendments to the *Planning Act* do not purport to change, expand, or restrict the power of the Commission acting as the appeal tribunal on a municipal planning appeal, or to change the way in which an appeal is to occur. The amendments address notification to affected parties.

Supreme Court of Canada jurisprudence

55 The City's submission is that these decisions suggest some revision of the applicable standard of review of a municipal council's decisions. I do not see that message or direction in those decisions.

56 The City referred to *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231 (S.C.C.). First of all, that is not a decision issued subsequent to the *Reference* case; and the Court of Appeal would have been aware of it. This appeal hearing cannot be used as a collateral challenge to the decision in the *Reference* case. In any event, great care has to be taken in how statements of law in these cases are applied. *Shell Canada* dealt with the validity of a policy decision - whether Vancouver could decide not to do business with a company with South Africa connections. It did not deal with a planning and zoning decision involving a municipal council's quasi-judicial function.

57 *Nanaimo (City) v. Rascal Trucking Ltd.*, 2000 SCC 13 (S.C.C.), is not directly applicable either. My reading of the case advises that the passages which the City now urges upon the Court were employed by the Supreme Court in support of a different proposition and the case itself does not provide much guidance for the present case. Care always has to be taken to consider judicial statements in context so that they not be overextended or misapplied.

57 In *Nanaimo*, the Supreme Court considered two issues. The first issue was whether the municipal legislation empowered Nanaimo to pass resolutions declaring a pile of soil a nuisance and ordering its removal. This question involved consideration

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 462. The approach a court should take when construing municipal bylaws. The Supreme Court considered this to be an exercise in statutory interpretation, and held that a broad and purposive approach should be employed. On that basis, Major for the Court found that the legislation did empower the municipality to issue the resolutions. That decision in turn raised a second question, which was the standard of review applicable to the Nanaimo's decision. Major J. referred back to the *Shell* decision, which he classified (at para.27) as a review of a municipal policy making decision. He then distinguished *Nanaimo* from *Shell*, because the issue in *Nanaimo* was the standard of review of a municipality's adjudicative function as opposed to its policy making function. He stated (at para.28) that the decision was clearly adjudicative as it involved an adversarial hearing, the application of substantive rules to individual cases, and a significant impact on the rights of the parties. Major J. then applied the pragmatic and functional approach to determining the issue of the appropriate level of deference. His reasoning was that the applicable municipal legislation required the municipal council to apply principles of statutory interpretation in order to answer the legal question of the scope of its authority. Major found that municipal councils do not have any particular advantage in deciding such a jurisdictional question in the adjudicative context. Accordingly, the applicable standard of review was held to be correctness. This is the point in the *Nanaimo* reasons where the discussion now relied upon by the City occurred. Major J. referred to and relied upon the plenary and political nature of municipal government in developing his view that municipal counselors, being politicians without particular planning or administrative law expertise, their decisions regarding the scope of their authority are reviewable with close scrutiny. Hence, he chose the standard of correctness. This part of the *Nanaimo* decision does not support the submission that greater deference should be accorded on that account for that kind of decision.

59 The mentioned statements by Sopinka J. in *Shell* and Major J. in *Nanaimo* explain why on the one hand courts and appeal tribunals like the Commission closely scrutinize council decisions pertaining to the proper exercise of legal authority, and on the other hand practise a deference of respect regarding discretionary decisions validly made within a council's powers. Major J. (at para.27) adopted Sopinka J.'s statement that the exercise of a municipality's statutory powers is reviewable to the extent of determining whether the actions are *intra vires*, and then (at para.33) he concluded his standard of review analysis regarding adjudicative decisions this way:

[33] The fact that councillors are accountable at the ballot box, is a consideration in determining the standard of review for *intra vires* decisions but does not give municipal councillors any particular advantage in deciding jurisdictional questions in the adjudicative context. As a result, the courts may review those jurisdictional decisions on a standard of correctness.

60 Major J. found Nanaimo was correct in construing the legislation as permitting the resolutions to deal with the nuisance. He went on from there to find that the manner by which Nanaimo arrived at its *intra vires* decision was reviewable on the then most deferential standard of patent unreasonableness.

The Commission's own jurisprudence

61 The Commission responded to the Court of Appeal directions in the *Reference* case by formalizing its two-stage approach to decision making. As far as I can see, this test or statement of approach first appeared in the Commission's decision in *Dr. and Mrs. Vincent Adams - Order LA97-02*, which preceded the *Reference*; was applied in *Tiny Tots Day Care Inc. - Order LA97-14*, and in *Gary Paynter - Order LA97-16*, which were released shortly after the *Reference*, and the Commission has employed the test ever since. In my view, the Commission's test is an effective response to and application of the *Reference*. It takes a balanced approach in reflecting the legislation governing municipal planning. Acknowledging that it has the authority to substitute a decision of Council with its own decision, the Commission accords appropriate respect to Council as the decision-making body to which the Legislature by virtue of the *Planning Act* has assigned the responsibility for municipal planning. This respect is manifested in the concept of deference. The Commission thereby tempers or moderates its role as the appeal tribunal, even though it is hearing the matter anew, and perhaps considering additional evidence beyond that which was before Council when it made its decision.

62 Within its consideration of how an application for development fits with sound planning principles, the Commission considers the initial application and how Council dealt with it. It appears to me that the Commission grappled with reconciling two directions in the *Reference*: first, "*The findings of the person or body appealed from are irrelevant;*" and second, the direction to decide the matter "...in accordance with the requirements and objects of the *Planning Act*." The Commission treats the latter

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192. I will follow the Commission's approach as the prevailing direction. In my view, that approach accords with the general principle of statutory interpretation and planning law. Statutory interpretation involves a consideration of the ordinary meaning of the words used and the statutory context in which they are found: Words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." (*Celgene Corp. v. Canada (Attorney General)*, [2011] S.C.J. No. 1 (S.C.C.), citing 65302 *British Columbia Ltd. v. R.*, [1999] 3 S.C.R. 804 (S.C.C.), at para.50.) Within planning law jurisprudence, courts afford deference to municipal councils because they are the statutory body imbued with delegated authority to make such discretionary decisions.

63 The *Reference* directions and the foregoing discussion address stage two of the Commission's test or approach. As the appeal tribunal, the Commission first carries out its stage one exercise of reviewing the Council decision to determine whether the decision is in compliance with the municipal laws that were enacted pursuant to the *Planning Act*, and whether Council conducted its proceedings properly and fairly. As previously discussed, the required content of procedural fairness depends on the circumstances.

64 The appropriate balance between deference and independent decision making at the appeal stage was set out in *Doiron*, *supra*. In that case, there was no challenge for failing to comply with the law or procedural fairness, and the developer's appeal to the Commission focused on the planning decision. In the appeal from the Commission to the Court of Appeal, in response to the developer's assertion that the Commission had accorded too much deference to Council and had merely rubber stamped its decision, Murphy J.A. for the Court stated:

[20] It is within the province of the Commission to agree with the decision of Council, or as Mitchell J.A. stated in the *Reference* case, "if it so decided, could substitute its decision for the one appealed" [emphasis mine]. The Commission gave some weight to the decision of City Council but it did not rubber stamp it. The Commission made its own decision on the merits of the application and therefore, properly conducted the appeal.

65 The distinction from *Doiron* in the present case is that in the present case the developer appealed from the City's decision based on Council's failure to comply with its own bylaw and procedural unfairness, and on that basis the Commission quashed Council's decision. Upon that Council decision being rendered invalid, there was no decision by the City upon which to defer. The Commission then had to hear and decide the matter anew, in accordance with the direction in the *Reference* case.

66 The planning law regime in this province is formulated by the Legislature. Should the City wish to see the authority of the Commission as the appeal tribunal revised or restricted, then its efforts to seek redress should be addressed to the Minister responsible for the *Planning Act*, and ultimately the Legislature.

4.(c) *Failing to consider relevant factors*

67 The City submits that the Commission failed to consider or give adequate weight to relevant factors. Consideration of this ground of appeal has caused me to fully scrutinize the evidence, the criteria for Council's decision making, and the Commission's reasons. In the end, I see no basis for this ground of appeal.

68 In my view, the Commission provided reasons that flow logically and are readily amenable to appellate review. Those reasons contain considerable explanation as to how the Commission carried out its analysis. The Commission set out its authority, role, and the process it followed; the municipal planning law regime that governs waterfront development that was to be followed by the Developer, Planning Board and Council; the particulars of the Developer's application for development and bylaw amendment that was under consideration; the City approval process that occurred, from start to finish; the Commission's finding that Council did not comply with the applicable bylaw, and the basis for that finding; its decision to proceed onward to decide the application; the planning evidence that was before the Commission; and how in the Commission's view the evidence fits with the City's municipal planning regime for development in the waterfront area. In particular, the Commission related the application to the aspirations of Section 3.5 of the Official Plan and to the criteria for consideration set out in s. 28.5 and of the CDA Zoning and Development Bylaw. Finally, the Commission found that the evidence, including the recommendations of

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192 City's planning development and Planning Board, supported a determination that the proposed development appropriately reflects the stated criteria, and is consistent with sound planning principles.

69 The appeal from the Commission to this Court being confined to questions of law and jurisdiction, I will address the first concern - whether the Commission failed to properly consider relevant factors - but not the second - whether it gave adequate weight to relevant factors. The issue of weight is not a question of law. It is not the role of this Court on an appeal from the Commission decision as the planning appeal tribunal to second guess the weight accorded to the various evidence. (*Lehmann v. Thorhild (County) No. 7*, 2011 ABCA 344 (Alta. C.A.); *Oliveira v. Ontario (Director of Disability Support Program, Ministry of Community, Family & Children's Services)*, 2008 ONCA 123 (Ont. C.A.), at para.33.)

70 In my view, there is no demonstration that the Commission failed to consider relevant evidence. All of the factors now mentioned by the City - which can be summarized as the prior development agreements, prior applications by the Developer, and what the Developer knew about the use of infill property when Mr. Madden acquired the whole 4 Prince Street property - were in the record that was before the Commission, and the Commission's reasons suggest to me it was alive to all of those matters. The reasons are sufficient. While the Commission is expected to give reasons, a decision maker "*is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion.*" (*S.E.I.U., Local 333 v. Nipawin District Staff Nurses Assn.* (1973), [1975] 1 S.C.R. 382 (S.C.C.), at p.391, cited in *N.L.N.U. v. Newfoundland & Labrador (Treasury Board)*, 2011 SCC 62 (S.C.C.), at para.16.)

71 In any event, these submissions are not sustainable. None of the mentioned factors precludes a new development. This City's submission does not account for the fundamental nature of ongoing development in a CDA. New proposals for development that seek to become part of the future fabric of the area are entertained in accordance with the zoning and development bylaw. The evidence before the Commission proceeded on the premise that the waterfront plan is a concept plan that envisions change and is not static, and that the CDA is a zoning and development bylaw. Development has been ongoing and incremental for over three decades; concept plans have been updated and changed. For instance, it is now known that some developments proposed in the CADC, CHAI, City Development Agreement of 2006 will not occur. The 2008 Development Agreement between the City and the Developer does not preclude another application for development to change the use of the subject property from parking lot to mixed use development as proposed from being approved by the City.

72 It appears to me that the Commission understood the function of the Development Agreement made between the Developer and the City regarding the permitted use of the Developer's approved condominium property at 4 Prince Street. The Development Agreement is an implementation mechanism made pursuant to under the CDA Bylaw. As submitted, it does not permit further uses on the subject property; but neither does it preclude the Developer from applying to Council for a further permitted use or Council from considering and approving another application for development that would involve another amendment in the form of addition to Appendix G. The Development Agreement is subordinate to the Bylaw in the planning hierarchy.

73 According to the Chronology filed by the City, the City was aware in 2010 when it approved the subdivision parcel PID841536 into two parcels Lots 10-1 and 10-2 that the northern portion would be "*developed or sold, as the case may be.*"

74 The Commission's reasons demonstrate that it was understood the conceptual nature of the waterfront development plan, that waterfront development is a continuum, the role of development agreements, the previous development agreements relating to the subject property, the history of previous applications and why they were rejected, the concept of "infill," "piecemeal," and new development, the aspirations for the Waterfront Plan, including the potential for revision following the 2011 500 Lot Study and numerous developments of contiguous and neighbourhood properties over the past couple of years, the role of Planning Board under the *Planning Act* and the City's Official Plan, and Council's wide discretion in a CDA and more particularly on the Waterfront to decide whether or not to improve a use or mix of uses.

75 My second comment is that the City basically set the record before the Commission. The City determined what history of applications and dealings would constitute the record. The City advised what documents and events would be relevant. Counsel informed the Commission at the outset of the appeal hearing that the City had minimized the very large volume of documents at City Hall regarding previous applications. It substituted a Chronology of events prepared by the City's development officer

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192 many of the documents, and then the development officer presented before the Commission and examined in the hearing on the Chronology.

76 Upon viewing everything, I do not see that the Commission failed to consider relevant factors.

4.(d) Commission interpretation of opening remarks by Chair of Planning Board to Council

77 This ground of appeal does not appear to me to involve a question of law. In any event, I do not see any basis for the contention that the Commission misinterpreted the language used or its meaning. The Chair of Planning Board was clear with his advice and directions that Council needed to "deal with" and to "process" the application, and that the application was a separate matter to be processed "before" Council would make any further decisions regarding the Waterfront Master Plan. The Commission's reasons for decision suggest to me that the Commission understood that, and also understood the difference between those actions and the verb "approve."

Michele M. Murphy J.A.:

I AGREE:

John A. McQuaid J.A. (concurring in the result):

Introduction

78 I agree with the Chief Justice the appeal should be dismissed; however, I reach that conclusion for different reasons. I will commence my reasons with an overview as to how I reach this result and then provide a more detailed explanation.

79 In this case the City's appeal from the decision of the Island Regulatory and Appeals Commission (the "Commission") is by way of *de novo* hearing. As a result, the Legislature has vested the Commission with the jurisdiction to consider the application of Atlantis afresh without regard to the record before City Council and the decision made by City Council. Accordingly, in this particular case the Commission's role was to consider the evidence adduced before it in the hearing *de novo* and consider whether in its discretion the application met the criteria for a development in the applicable Comprehensive Development Area Zone ("CDA Zone").

80 Because the decision made by the Commission in this case primarily involved an exercise of discretion, the decision should be reviewed by this Court on the standard of reasonableness. Again, I reach this conclusion on the standard of review for different reasons than the Chief Justice. In the result, the Commission's decision meets the standard of reasonableness, and this Court is unable to intervene to set the decision aside.

Background and Facts

81 Atlantis is the owner of a parcel of land located on the waterfront in the City of Charlottetown (the "City").

82 The land is situated within what is referred to in the City of Charlottetown By-Laws as a CDA Zone. A concept plan for the development of the land had been approved. The application by Atlantis to the City which gave rise to this appeal was to amend the initial concept plan. Atlantis sought permission to change the use of the land from residential to commercial/office/residential.

83 Regardless of the use being proposed by an owner of land within a CDA Zone, development within the Zone requires approval of the City. Each application is considered on the basis of the criteria listed in the by-law establishing the CDA Zone.

84 The following provisions of the by-law are helpful in understanding the scope of the City's discretion when considering whether to approve a proposed development within the CDA Zone.

28.1 PERMITTED USES

Uses permitted in a CDA Zone Shall be those approved by Council and May include any Uses or Mix of Uses allowing in any zone of this Bylaw and Innovative mixed-Use Developments and Council Shall give due consideration to other sections of this bylaw, but Council May approve any Use or Development in a CDA Zone which it deems to be in the public interest notwithstanding all other sections of this bylaw but only after following the procedures sections of this [Section 28](#).

28.3 DEVELOPMENT APPLICATIONS IN THE CDA ZONE

.1 No Development consisting of new Buildings or the demolition or relocation of Buildings Shall take place in a Comprehensive Development Area until a Development Concept Plan has been proposed and adopted by Council.

.2 The Council, before approving a Development Concept Plan, Shall consider the following:

(a) the Maintenance of Design Standards of the proposed Buildings and their acceptability with respect to land Uses and the character and scale of Existing and proposed Development in the vicinity;

(b) the preservation of Existing site features of unique quality and the preservation of the natural beauty of the area;

(c) the type of Ownership;

(d) the proposed population density of the area, the floor space ratio, the adequacy of Open Space areas, Building form, Parking, pedestrian walkways, Streets, water supply, sanitary and storm sewers; and

(e) any other factors recommended by Planning Board.

.3 Applicants for Development approval in the CDA Zone May put forward Development Concept Plans, and such Development Concept Plans, if approved by Council, Shall serve as the elements of a Development Concept Plan for the portion of the zone in which they were situated.

.4 Development Concept Plans for sites in the CDA Zone Shall be prepared having regard to the site Development principles as set out in Section 4.60 of this By-law.

28.5 APPROVAL PROCEDURE

.1 In considering a Development Concept Plan put forward by an applicant, Council Shall deliberate the quality of architectural Design of all proposed Buildings, their compatibility with the architectural character of adjacent Development, and the extent to which the Development Concept Plan reflects the site Development principles as set out in Section 4 of this By-law.

.2 Subsequent to approval of the Development Concept Plan, the working site plan and Buildings Shall be approved on the recommendation of Planning Board for each Phase within the Comprehensive Development Area provided it is, in the opinion of Council, consistent with the overall Development Concept Plan and any schedule attached thereto.

.3 Before Council approves or amends a Development Concept Plan in a Comprehensive Development Area, a public hearing Shall be called in the same manner, *mutatis mutandis*, as if an amendment to this By-law were being considered.

.4 Changes to a Development Concept Plan that do not change the approved intent of the Use or Lot such as minor additions to a Building, Lot Subdivision or consolidation will not be considered an amendment to the Development Concept Plan and May be approved by the Development Officer.

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85 Based on evidence given before the Commission by City employees and the expert witness testifying on behalf of the City, CDA zones are established to give municipalities broader discretion in permitting the land within the zones to be put to more diversified uses. As long as the provisions of the by-law establishing the CDA Zone are followed, the City has the discretion to approve the use even though it may be a use which is unique to the area and a use that is not necessarily in common with other uses within the zone.

86 Atlantis' application proceeded through the normal channels of approval required by the City by-laws. The Planning Department gave the proposal its approval. The application was approved by the City's Planning Board. After holding the required public consultation, Planning Board approved the proposal provided for in the application.

87 The application came to City Council for approval. By a vote of 7 to 2 Council denied the application.

The Appeal

88 Pursuant to [s.28 of the Planning Act, R.S.P.E.I. 1988 Cap. P-8](#), Atlantis appealed to the Commission. The appeal was heard over a four-day period and on June 19, 2012, the Commission issued an order allowing the appeal, quashing the decision of City Council and ordering the City to amend Appendix G to the CDA Zone to allow commercial, office and residential units on the land in question.

89 The City appealed to this Court pursuant to [s.13\(1\) of the Island Regulatory and Appeals Commission Act, R.S.P.E.I. 1988, Cap. I-11](#) (referred to as the "[IRAC Act](#)").

Grounds of Appeal

1. Section 13(1) of the *Island Regulatory and Appeals Commission Act*, R.S.P.E.I. 1988, Cap.1.11.

2. The Commission erred in law and/or exceeded its jurisdiction by rendering a decision that usurped the legislated and/or the contractual powers of the elected officials of Charlottetown City Council to administer the City's bylaws pursuant to the *Charlottetown Area Municipalities Act*, R.S.P.E.I. 1988, which decision of the Commission was outside the scope of the Commissions' legislative authority and exceeded the scope of the Commission's jurisdiction pursuant to this Honourable court's decision in the case of *Re: Island Regulatory and Appeals Commission*, [1997] P.E.I.J. No. 70 (P.E.I. C.A.) including by:

- a. Proceeding by way of a hearing *de novo* with little or no consideration as to whether or not this was an appropriate case in which to do so;
- b. Improperly substituting its discretion for that of the elected Council with little or no regard for the deference due to Council, the greater public interest and/or the respective roles of City planning staff, City Planning Board, the elected representatives on Council and the Commission;
- c. Issuing an order without any or due consideration as to the resultant interference of its order with the pre-existing contractual relationship voluntarily entered into between the City and the Respondent, Atlantis provided for under the June 15, 2006 and June 30, 2009 Development Agreements governing the permissible use of 4 Prince Street (PID # 841536).

3. The Commission further erred in law or exceeded its jurisdiction by finding a procedural error or omission on the part of the Council when upon a proper review of the evidence in fact no such error or omission occurred. Therefore, based upon the Commission's own reasoning, the Commission ought to have deferred to Council's decision on the merits, particularly where Council's decision was strongly supported by expert evidence of, Mr. Phil Wood, and of the City's planning staff member, Laurel Palmer-Thompson, to the effect that Council's decision not to approve a proposed piecemeal intensification of the use of 4 Prince Street (PID# 851536) pending a comprehensive review of waterfront development was at least equally consistent with good planning principles as Atlantis' proposed infill project.

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4. The Commission failed to consider certain relevant factors, and considered certain irrelevant factors, in coming to its decision. More particularly, the Commission failed to consider, or attach adequate weight to:

a. The entire record, context, and extensive prior course of dealings between the City; the former owner of 4 Prince Street (PID# 841536), the Charlottetown Area Development Corporation ("CADC"); and, with the Respondent, Atlantis as evidence of due consideration and "deliberation" by Council on Atlantis' final proposal which was the subject of the most recent appeal to the Commission, including without limitation:

i. the Development Agreement entered into between the City and CADC on or about June 15, 2006 with contractually defined the approved development concept for the entirety of 4 Prince Street (PID# 841536);

ii. the Agreement of Purchase and Sale between Paul Madden (or a corporation to be named) and CADC dated November 27, 2006;

iii. the second Development Agreement between the City, CADC and Atlantis as executed by and agreed to by Atlantis on or about June 30, 2009;

iv. the conveyance of 4 Prince Street (PID# 841536) by CADC to Atlantis on or about November 24 2009;

v. that *after* execution of the Agreement of Purchase and Sale and the two (2) Development Agreements referenced above, the Respondent Atlantis closed its purchase of 4 Prince Street (PID# 851536), knowing what prescribed permissible uses were allowable pursuant to the City's Bylaw and the two (2) binding Development Agreements, one of which Atlantis itself had executed and agreed upon, only to subsequently bring forward 4 or 5 new proposals that would necessitate a rezoning; and

vi. the series of 4 or 5 varying new proposals made to the City by Atlantis commencing in or about October, 2008 through September, 2011 proposing to amend Appendix "G" of the City's Zoning Bylaw to allow for greater density at 4 Prince Street (PID# 851536) and all of the City's and Council's deliberations and public input on such proposals;

b. The verbatim minutes of City Council for November 14, 2011 which included Council's deliberation as to:

i. General public concern for waterfront development which, contrary to the Commission's findings, was not an irrelevant or extraneous planning consideration but rather upon the evidence before the Commission a compelling and relevant consideration; and

ii. The context of Atlantis extensive earlier course of dealings with the City regarding the subject property which also ought to have been considered by the Commission as a relevant consideration forming an integral part of Council's deliberations on the immediate rezoning request before it.

c. The extensive expert evidence of the City's expert planning witness, Mr. Phil Wood, and of the City's planning staff member, Laurel Palmer-Thompson, to the effect that Council's decision not to approve a proposed piecemeal intensification of the use of 4 Prince Street (PID# 851536) pending a comprehensive review of waterfront development was entirely consistent with good planning principles.

5. The Commission further erred in law or exceeded its jurisdiction by:

a. wholly misinterpreting the opening comments of Councillor Lantz at Council's meeting on November 14, 2011 as, in effect, to be saying that Council must "approve" Atlantis' application, when in fact all Councillor Lantz stated was that Council must "process" the application - which it did by refusing the requested amendment.

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b. In effect finding that Council was obliged to approve Atlantis' proposed intensification of the use of 4 Prince Street (PID#851536) as if the rezoning proposal was for an "as of right" use rather than a discretionary use which would have entailed a significant intensification of the use prescribed legislatively by the City's Bylaw; and, prescribed contractually by the June 15, 2006 Development Agreement between the City and CADC; and, by the June 30, 2009 Development Agreement between the City, CADC and Atlantis.

6. Such further or other grounds as may appear.

(i) The City's Position

90 Summarizing the City's grounds of appeal it is apparent the City takes the position the Commission erred in law when they allowed the appeal. The City also takes the position the Court should review a previous decision made as the result of a Reference to the Court by the Commission. This decision addresses the procedure to be followed by the Commission when there is an appeal to the Commission from a decision of a municipality pursuant to [s.28 of the Planning Act](#).

(ii) Atlantis' Position

91 Atlantis takes the position the Commission did not make an error of law and the City's grounds of appeal are essentially based on alleged errors of fact made by the Commission. Atlantis points out these errors are beyond the scope of this Court's power to review a decision of the Commission pursuant to s.13(1) of the *IRAC Act*.

(iii) The Issues

92 The grounds of appeal and the position of the parties raise the following issues:

- (1) In considering an appeal from a decision of a municipality pursuant to [s.28 of the Planning Act](#), is the Commission conducting a hearing *de novo* or a review on the record before the municipality?
- (2) What standard of review should be employed by this court when reviewing a decision of the Commission which comes to the Court by way of an appeal under [s.28 of the Planning Act](#)?
- (3) Employing the appropriate standard of review the Court must decide if the Commission panel erred in law or jurisdiction when they allowed Atlantis' appeal from the decision of the City?

Issue # 1

93 In *Island Regulatory and Appeals Commission (Re)* (1997), 149 D.L.R. (4th) 411, [1997] P.E.I.J. No. 70 (P.E.I. C.A.), the "Reference Case," this Court held the Commission had appellate jurisdiction pursuant to ss.28 and 37 of the *Planning Act* to review a decision made by a municipality pursuant to the *Planning Act*. At paras. 1 to 8, Mitchell J.A. reviewed the relevant provisions of the *Planning Act* and the *IRAC Act*.

94 Mitchell J.A. considered the provisions of the *Planning Act* as well as the provisions of the *IRAC Act*, and concluded the Legislature intended that appeals from a decision of a municipality to the Commission under the *Planning Act* "must" take the form of a hearing *de novo*. The Commission, after conducting the hearing, could substitute its decision for that of the municipality, and the Commission "must" decide the issue as if it were the original decision maker. The discretion to substitute its decision for that of the municipality, after conducting a hearing *de novo*, is not "unfettered" or unbridled. ... "It would be bound to hear, consider, and decide the issues of the case in accordance with the requirements and objects of the *Planning Act*."

95 At paras. 9 and 10 Mitchell J.A. concluded his review by stating:

[9] When one considers the provisions of [s. 28](#) and [s. 37](#) in conjunction with the provisions of the *Island Regulatory and Appeals Commission Act* setting forth the composition, functions and powers of IRAC and takes into account that often the appeal will be the first opportunity for all of the interested parties to fully participate, it becomes apparent that the

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192..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.

[10] The fact that an appellant must state the grounds of appeal and relief sought in writing in order to invoke the appeal procedure does not restrict the jurisdiction of IRAC in hearing or deciding the case. In situations where an appeal is by way of trial *de novo* grounds of appeal do not serve the same function as they do for instance in appeals to this court. [See: Salhany, **Canadian Criminal Procedure**, Canada Law Book Ltd, 1968 at pp. 203-4.] Their purpose in hearing *de novo* appeals is simply to alert the appeal tribunal and parties to the nature of the appellant's complaint with the decision, and the form of redress being sought. However, IRAC does not have unfettered discretion or unbridled power to deal with and decide appeals as it likes. It would be bound to hear, consider, and decide the issues of the case in accordance with the requirements and objects of the *Planning Act*. It is required by s-ss. 28(7) and 37(3) of that legislation to conduct appeals in accordance with the rules of natural justice and therefore must act judicially. It must give reasons for its decision (s-ss. 28(8) and 37(3) of the *Planning Act*) and if it exceeds its authority or errs in law it is subject to review by this court by way of an appeal under s. 13 of the *Island Regulatory and Appeals Commission Act*. All of the forgoing being so, I am unable to conclude that either s. 28 or 37 of the *Planning Act* are inconsistent with the rule of law.

96 Part V, ss. 28(1.1) of the *Planning Act* provides for the right of appeal from a decision of the municipality to the Commission respecting a building, development or occupancy permit. Sections 28(7), (8) and (9) of the *Planning Act* vest the Commission with the power to determine its own procedure on an appeal, subject to the rules of natural justice as well as the power to hear and decide the appeal, to issue an order and to give reasons.

97 Furthermore pursuant to s.3(11) of the *IRAC Act*, the Commission has the power to not only compel the attendance of witnesses but as well, to compel the production of documentary and other evidence necessary to decide the appeal. Ancillary to these powers, the Commission has the power to find people in contempt for failing to respond to an order directing them to attend or provide the documentation.

98 When hearing an appeal from the planning decision of a municipality, it is clear the review is not restricted to the "record" which was before the municipality when it made the decision. To the contrary, the Commission has been delegated by the Legislature with authority to hear the case afresh and decide the matter in accordance with the *Planning Act* and any delegated legislation such as the by-laws of the municipality.

99 While the legislation vests the Commission with the power to review decisions of municipalities *de novo*, it is apparent the Commission is not exercising their powers in this manner. The Commission applies a two-part test when deciding appeals under the *Planning Act*. I refer to para.11 of the Commission's reasons where the Commission panel sets out the test it applies. The test is stated as follows:

1. Whether the municipal authority followed the proper process and procedure as required in its bylaw, in the *Planning Act* and in the law in general, including the principles of natural justice and fairness, in making a decision on what is essentially a rezoning and bylaw amendment application; and
2. Whether the City's decision with respect to the proposed rezoning and bylaw amendment has merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.

100 In the application of the test in this case, the Commission first considered the "record" before City Council. At para.24 the Commission stated:

[24] In the view of the Commission, the record suggests that despite the valiant efforts of the Chair of Planning Board to direct discussion of the matter at hand, Council did not decide Atlantis' application based on its respective merits or lack thereof. Rather, the minutes reveal that Council appeared concerned that the recommendation of Planning Board had been circulated to the media, inquired whether compromise was possible and discussed the need for a new waterfront plan.

101 At para.28 the Commission stated:

[28] The Commission finds that there is nothing in the City's Record or evidence to establish, on the civil standard of the balance of probabilities, that Council met the requirements of section 28.5.1 of the Bylaw. The verbatim minutes of the November 14, 2011 meeting of Council fail to establish that Council deliberated what is required under section 28.5.1 of the Bylaw. While other portions of [section 28](#) use the term "consider," section 28.5.1, by using the term "deliberate," requires a process more rigorous than to "consider" a matter.

102 The Commission concluded its application of the test by stating at paras.33 and 34:

[33] The Commission finds that Council's decision-making process erred in law as they failed to decide the fate of Atlantis' application on its merits according to the process set out in the present law. Further, the City's decision making process was unfair to Atlantis as it proceeded to decide its application on an irrelevant matter. Deference to a decision maker is earned when the decision maker follows the process set out by the law and is fair to all parties. The City followed its decision making process in *Doiron* and thus earned deference from the Commission. In the present case, however, the City's decision making process did not follow the process required by the Bylaw and thus the Commission is unable to show deference to the City's decision in the present appeal.

[34] The Commission will therefore review the evidence before it to determine whether or not Atlantis' application will succeed, thus deciding the matter anew as if it were the original decision maker.

103 Only after determining on the basis of the record before City Council there was a procedural error did the Commission proceed to decide the case as a hearing *de novo* and on the basis of the evidence adduced before the Commission.

104 In the application of the first part of this two-part test, the Commission is treating the appeal as if it is a review or appeal on the record. It is implicit in this procedure the Commission would not have embarked on a fresh consideration of the application of Atlantis and held a hearing *de novo* if, in the application of the two-part test, the Commission had found the City did not make a procedural error.

105 In short the Commission decides first whether the City followed the proper processes as required by the bylaws. If it did, the Commission takes the position it will not interfere. If the Commission finds the municipality's decision does not comply with the bylaws, the Commission only then takes the position it will hear the matter afresh. That is not the manner in which *de novo* appeal powers are to be exercised.

106 One of the concerns expressed by Mitchell J.A. in the *Reference* case was that the procedure provided for by the *Planning Act* complies with the rule of law. The fundamental underpinning of our legal system is that there should be certainty and consistency. In the context of appeals from the planning decisions of municipalities, the parties are entitled to know the nature of the appeal process when they appear before the Commission. Is the appeal conducted as a review on the record before the municipality or must the parties create a fresh record and leave it in the hands of the Commission to exercise its discretion in accordance with the applicable law? The process cannot be both or a hybrid of both. It was precisely for this reason Mitchell J.A. succinctly canvassed the applicable legislative regime and opined in the *Reference* that the legislation contemplated a hearing before the commission on appeals under the *Planning Act* by way of a hearing *de novo* and not by way of an appeal on the record which was before the municipality when it made the decision.

107 The Commission appears concerned about according deference to the decision of the municipality. While this concern may be well placed, the Commission has, nevertheless, been vested with the power to hear appeals *de novo*. To initially determine whether the municipality has "earned" deference is an error. There is no deference to be "earned" when the appeal process requires a hearing *de novo*. The Commission's mandate is to hear evidence and exercise its discretion within the parameters of the applicable law. That is what Mitchell J.A. meant when he said the scope of the Commission's *de novo* power of review is not unfettered. It is limited by the *Planning Act*, the applicable bylaws and any additional relevant legislation.

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108 The comments I make in the next few paragraphs are put forward to address what I consider to be a legitimate concern of the City and no doubt other municipalities in the Province regarding the power of the Commission to review decisions made pursuant to their bylaws and the *Planning Act*.

109 The City has requested the Court to reconsider the opinion given in the *Reference* case which confirms that the Commission has the power to review these decisions *de novo*. I have explained above why the Court reached the conclusion it did in the *Reference*. The reasons of Mitchell J. A. are clear. The Commission has *de novo* powers of appeal. The Commission must consider an appeal from a municipality without regard to the decision of the municipality or the record before the municipality as long as those powers of appeal are exercised in accordance with the applicable law. There have been no material changes to the *Planning Act* since the *Reference* case which would give this Court any reason to revisit the opinion of Mitchell J.A. or to modify it in the manner employed by the Commission and endorsed by the Chief Justice in his reasons.

110 The City's concerns about the Commission's powers of review are rooted in the principle that such broad powers vested in an unelected body like the Commission divests the citizens of the City of their right to have planning decisions made by their elected representatives. To be absolutely clear, the City is not advocating that its planning decisions not be reviewed in any manner by an independent tribunal like the Commission. The City is simply stating the review should be restricted to the record before the municipality and not by way of a hearing *de novo*.

111 There may be some validity to this argument; however, that is for the Legislature to decide. If the City and other municipalities across the Province feel strongly about this issues, they should seek a change in the legislation to provide for the review of planning decisions by an independent tribunal on the record before the municipality and not by way of hearing *de novo*. With today's technology and the myriad of procedures which must followed by municipalities to accord landowners and others procedural fairness, municipalities could be legislated to keep adequate records of their planning decisions which would be subject to review by the independent tribunal.

112 Returning to the case at bar the Commission, after finding City Council made a procedural error, proceeded to decide the issues on the basis of the evidence adduced in the hearing *de novo*. Therefore, if the Commission erred in first adjudicating the appeal on the record, the error was rendered immaterial by the fact the Commission proceeded to hold the hearing *de novo*.

Issue # 2

113 The second issue which arises on this appeal is that of the standard of review to be applied to this Court's review of the Commission's decision.

114 The Court has considered the standard of review in previous decisions. A brief review of these decisions is beneficial while at the same time keeping in mind some decisions were made prior to the most recent Supreme Court of Canada jurisprudence.

115 In *Prince Edward Island (Tax Commissioner) v. Maritime Dredging Ltd.* (1997), 157 Nfld. & P.E.I.R. 80, [1997] P.E.I.J. No. 112 (P.E.I. C.A.), at para.15, this Court considered the standard of review in the context of the binding jurisprudence at the time. The Court concluded that when the Commission is acting in a regulatory capacity, setting policy based on what is in the public interest, its duties are specialized and in relative terms, the Commission would possess expertise greater than a reviewing court. Acting within the scope of that expertise, the Commission's decisions should be accorded a high degree of deference, and they should be reviewed on a standard of reasonableness.

116 On the other hand, when the Commission is acting as an appellate tribunal with no power to regulate and no policy-making role, the decisions of the Commission should be afforded less deference and reviewed on a standard of correctness. See: *Maritime Dredging*, *supra* at paras.16 and 17.

117 In *Island Telecom Inc., Re*, 2001 PESCAD 27, 207 Nfld. & P.E.I.R. 161, [2001] P.E.I.J. No. 110 (P.E.I. C.A.), at para.13, the appeal was from a decision of the Provincial Tax Commissioner and involved the interpretation of a taxing statute. The

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192. The Court noted that the Commission does not regulate in this area and in effect serves as a court of first instance. The Court applied *Maritime Dredging* and applied the standard of correctness.

118 In *Chapman Brothers Construction Ltd., Re*, 2005 PESCAD 4, [2005] P.E.I.J. No. 8, 244 Nfld. & P.E.I.R. 93 (P.E.I. C.A.), the Court concluded on an appeal from the Provincial Tax Commissioner the Commission's decision should be reviewed on a standard of reasonableness. The foregoing decisions setting the standard of review at correctness were distinguished because of the importance of the factual findings of the Commission to the legal question in issue.

119 More recently this Court considered the standard of review applicable when reviewing a decision made by the Commission exercising its regulatory power under the *Electric Power Act*. See: *Maritime Electric Co. v. Prince Edward Island (Island Regulatory & Appeals Commission)*, 2011 PECA 13, 309 Nfld. & P.E.I.R. 76, 338 D.L.R. (4th) 476, [2011] P.E.I.J. No. 24 (P.E.I. C.A.). The majority of the Court found that the standard of review on issues of law which were not within the regulatory expertise of the Commission was correctness. Issues arising in the context of the interpretation of the *Electric Power Act* were within the regulatory expertise of the Commission and found to be reviewable on a standard of reasonableness in accordance with the decision in *Maritime Dredging*.

120 In *Doiron v. Prince Edward Island (Island Regulatory & Appeals Commission)*, 2011 PECA 9, 308 Nfld. & P.E.I.R. 84, [2011] P.E.I.J. No. 16 (P.E.I. C.A.), this Court held that the standard of review on an appeal from the decisions of the Commission made under the *Planning Act* was correctness. The issue in that case was jurisdictional and it was for this reason only that the Court chose correctness as the standard of review. When the issue is a tribunal's jurisdiction the tribunal must always get it right. The appellant argued on an appeal from a decision of the City of Charlottetown, the Commission lost jurisdiction because it did not conduct a hearing *de novo* as directed the *Reference* case. The Court held the Commission conducted a hearing *de novo* and did not lose jurisdiction.

121 In *New Brunswick (Board of Management) v. Dunsmuir*, 2008 SCC 9 (S.C.C.), the Court dispensed with the most deferential standard of review (patent unreasonableness) and left only the least deferential - correctness and what had been a middle of the road deferential standard - reasonableness. The Court also concluded it was no longer necessary to embark upon the pragmatic and functional analysis each time to determine the standard of review. The method for selecting the standard of review was revisited. Referring to previous case law, the court set down some guidelines that evolved from the previous case law and indicated that, by applying these guidelines, the standard of review might be ascertained in certain cases.

122 These guidelines are found at paras.52 to 61 in the reasons of LeBel and Bastarache JJ. I will summarize them:

- (1) A privative clause is indicative but not determinative of deference and review on the standard of reasonableness;
- (2) If the question is one of fact, discretion or policy deference will automatically apply;
- (3) "Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity: ...".
- (4) If the tribunal has developed an expertise in a concept of common or civil law deference will be accorded to that tribunal.
- (5) If the tribunal is part of "A discrete and special administrative regime..." and it is interpreting its own statute or a statute with which it is familiar deference should be accorded and reasonableness will be the standard of review. The area of labour relations being an example.
- (6) The tribunal will not be accorded deference and it must be correct when determining true questions of jurisdiction.
- (7) When the issue is a question of general law the court can substitute its view for that of the tribunal.
- (8) If the standard of review for a certain question or issue has not been previously determined a court or is not readily apparent on the basis of the above guidelines the reviewing court must undertake an analysis and determine the standard of review on the consideration of the following factors: whether the decision of the tribunal is protected by a privative

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192..clause; the purpose of the tribunal as determined by the legislation; the nature of the question of law and the expertise of the tribunal.

123 Two recent decisions of the Supreme Court of Canada have addressed and applied the guidelines referred to in *Dunsmuir*.

124 In *Alliance Pipeline Ltd. v. Smith*, 2011 SCC 7, [2011] 1 S.C.R. 160 (S.C.C.), the Court was considering an appeal from a decision which reviewed a decision made by an Arbitration Committee established pursuant to the provisions of the *National Energy Board Act*, R.S.C. 1985, c. N-7. In short, the issue before the Committee was whether a landowner on an expropriation proceeding could claim as part of the compensation certain legal costs and expenses. At para.22 of his reasons, Fish J. stated that the "overarching issue" was what exactly was included in the term "costs" as provided for in s.99(1) of the *National Energy Board Act*.

125 Fish J. determined the standard of review was reasonableness. He relied on the fact the Committee was interpreting a provision of the statute which created it (the "home statute"), the fact that the Committee was vested with a significant degree of discretion and the fact that the Committee in deciding the issue was involved in addressing an issue where the facts were difficult to separate from the entire issue.

126 In *A.T.A. v. Alberta (Information & Privacy Commissioner)*, 2011 SCC 61, [2011] 3 S.C.R. 654 (S.C.C.), the Court was considering an appeal from a decision which had reviewed the decision of an adjudicator delegated by the Information and Privacy Commissioner to determine if the Teachers Association had disclosed certain private information in contravention of the *Alberta's Personal Information Protection Act*.

127 The adjudicator had not complied with certain time lines for delivering a decision and the issue was whether, implicitly, there had been an extension of the applicable time line. If not, the adjudication process would terminate and the adjudicator was left without jurisdiction. The resolution of the issue involved the interpretation of the above legislation which established the office of the Privacy Commissioner and thus the statutory delegate whose decision was under review.

128 Rothstein J. found that the more deferential standard of reasonableness was applicable in this case. At para.39 of his reasons, he concluded that when a tribunal is interpreting "its home statute," the standard of review is presumed to be reasonableness. I think it is significant to remember that in this particular case the adjudicator was interpreting a specific provision of the applicable legislation regarding time lines and the possible extension of those time lines by the actions of the adjudicator.

129 Another important decision respecting the standard of review and one which precedes most of the above jurisprudence is the decision in *Baker v. Canada (Minister of Citizenship & Immigration)*, [1999] 2 S.C.R. 817 (S.C.C.). This decision decided there is no longer a difference in establishing the standard of review between decisions of tribunals which were discretionary in nature and decisions which involved the interpretation of the law. The discretionary decision of a tribunal is subjected to the judicial review analysis (at the time called the pragmatic and functional analysis), and the appropriate standard of review is determined. Furthermore, as the result of this decision I think it is fair to say that decisions involving a tribunal's exercise of discretion are to be reviewed on the more deferential standard of reasonableness.

130 Before turning to the determination of the appropriate standard of review in the case at bar, I wish to point out that I do not consider the guidelines set down in *Dunsmuir* as establishing categories or pigeon holes which automatically determine the appropriate standard of review. They are instead guidelines or signposts to assist parties as they proceed through the costly and complicated maze of administrative tribunal procedure and review. The categories approach was rejected as an approach to determining the standard of review by McLachlin C.J.C. in *Q. v. College of Physicians & Surgeons (British Columbia)*, [2003] 1 S.C.R. 226 (S.C.C.). The guidelines in *Dunsmuir* are not written in mandatory language and generally reflect that in the situations mentioned, the legislature probably intended the court would show deference. See: Diana Ginn: *New Words for Old Problems: Dunsmuir*, (2011) 37 *Advocates Quarterly* 317 at pp. 328-330.

131 This leaves the question of the appropriate standard of review to be applied to decisions of the Commission generally and, specifically, in reviewing the decision of the Commission under review on this appeal.

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132 The Commission is established pursuant to the provisions of the *IRAC Act*. Members are appointed by the Lieutenant Governor in Council. There are three full-time commissioners including a Chair and vice-chair. The *Act* provides for not more than 5 part-time Commissioners who are to be knowledgeable in accounting, agriculture, municipal planning, engineering, business, environmental matters, finance, economics, law, utilities, taxation and consumer protection. See: *IRAC Act*, ss.2 and 3.

133 It is noteworthy that while the legislation requires members of the Commission to have knowledge in certain areas, the Chair, Vice-chair and the other full-time member are not required to have and particular knowledge. Furthermore, the legislation does not contain a requirement that when a certain issue is before the Commission one or more members of the panel must possess the knowledge and expertise similar to the issue before the panel. For example there is no requirement in the legislation that when the appeal is from the planning decision of a municipality all or any member of the panel must have knowledge or expertise in "municipal planning".

134 Section 5 of the *IRAC Act* provides for the functions of the Commission. In summary the Commission has the power, subject to the provisions of the [Electric Power Act](#), R.S.P.E.I. 1988 Cap. E-4, to regulate certain utilities except sewerage and water utilities owned, operated or controlled by the City of Charlottetown and the City of Summerside. The Commission has the power to decide certain matters relating to land use, including the power to decide on the applications for the acquisition of land by non-residents and corporations. Finally, the Commission may hear and decide appeals from decisions under certain other legislation.

135 Section 5 of the *IRAC Act* provides as follows:

5. The functions of the Commission are

- (a) subject to the provisions of the [Electric Power Act](#) to regulate utilities except sewerage and water utilities owned, operated, managed or controlled by the City of Charlottetown, City of Summerside or the Towns of Charlottetown South or Charlottetown West;
- (b) to hear and decide matters relating to land use, to decide upon the disposition of applications respecting the acquisition of land by non-residents and corporations where so required by any Act;
- (c) to hear and decide appeals from decisions of
 - (i) the Director under the [Rental of Residential Property Act](#) R.S.P.E.I. 1988, Cap. R-13.1,
 - (ii) the Minister of Finance, Energy and Municipal Affairs under the [Real Property Assessment Act](#) R.S.P.E.I. 1988, Cap. R-4 or the [Real Property Tax Act](#) R.S.P.E.I. 1988, Cap. R-5,
 - (iii) the Provincial Tax Commissioner under the [Revenue Tax Act](#) R.S.P.E.I. 1988, Cap. R-14,
 - (iv) the Minister of Finance, Energy and Municipal Affairs under the Emergency 911 Act R.S.P.E.I. 1988, Cap.E-5.1; and
- (d) to perform such other functions as may be conferred on the Commission under any enactment.

136 Pursuant to s. 6 of the *IRAC Act*, the Commission also has the jurisdiction and powers which are vested in it by any other enactment as well as all other incidental powers necessary to carry out its functions.

137 The Commission is a unique tribunal and unlike any in the recent decisions of the Supreme Court of Canada which have been delivered following the decision in [Dunsmuir](#). It is a tribunal which has both a regulatory and appellate function.

138 Compared to some tribunals in this jurisdiction, the Legislature has not conferred on the Commission specialized jurisdiction such as that conferred on the Labour Relations Board and the Workers Compensation Appeal Tribunal. As a result any comparison to these tribunals in setting a standard of review in the case at bar is irrelevant.

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192...

139 It is more difficult to conclude just what might be considered Commission's "home statute" and the level of expertise the Legislature intended to accord to its jurisdiction because its powers of appeal come from, not only the *IRAC Act* itself, but other statutes. For example, the power to hear appeals from the decisions of municipalities respecting decisions they make under their planning bylaws comes from the *Planning Act* by way of s.6 of the *IRAC Act*. While it can be said the Commission has "some familiarity" with statutes other than the *IRAC Act* pursuant to which it is constituted, this is not, considering other factors, an indication of legislative intent to accord it a high degree of deference on issues of law and jurisdiction decided under these statutes including particularly the *Planning Act*. In other words the categories approach and the reasoning in cases like *Alberta Teachers* do not satisfactorily resolve the issue of the standard of review.

140 Accordingly, the most appropriate way to establish the standard of review on an appeal to this Court from a decision of the Commission is on a case-by-case basis. This is consistent with the process followed in the past in such decisions as *Maritime Dredging, Island Telecom Inc., Re, Summerside* and *Doiron*. Furthermore, this procedure is not inconsistent with the direction in *Dunsmuir* and not contrary to the decisions in *Alliance Pipeline* and *Alberta Teachers* where, in both cases, the "home statute" of the tribunal was clearly identifiable, and the question of law in those cases was clearly in relation to the interpretation of that "home statute."

141 On an appeal from a decision of a municipal council proceeding as it legislated to do by way of hearing *de novo*, the Commission steps into the place of the municipality and essentially determines if the application which was before the municipal council meets the criteria set down in the planning bylaw of the municipality. The case at bar which places the Commission in that exact position is, therefore, distinguishable from *Alliance Pipeline* and *Alberta Teachers* where the tribunals were called upon to interpret specific provisions of the legislation to determine what was included in determining compensation on an expropriation and to determine whether the time line provided in the applicable statute was mandatory.

142 I will move now to the application of the judicial review analysis to the case at bar.

143 The right of appeal to this court is narrow. The appeal must be brought on a question of law or jurisdiction. Pursuant to s.13(1) of the *IRAC Act*, questions of fact and mixed fact and law are beyond the scope of this court's power of review. The power to review questions of law and jurisdiction is not restricted by a privative clause. These factors are an indication the Legislature intended the measure of deference to be accorded decisions on these issue would be low.

144 In conducting the hearing *de novo*, the Commission's purpose is to hear the evidence, weigh the evidence, and make findings of fact. Exercising its discretion the Commission decides the issues in accordance with the applicable law whether it is the *Planning Act* or the bylaw.

145 The question of law before the Commission in this appeal is the proper application of the facts to the provisions of the bylaw. I appreciate the argument of counsel for Atlantis that the issues raised by the appeal to this court are essentially questions of fact which this Court has no power to review. Nevertheless, I do think the appeal raises questions of law related to the proper interpretation of the City bylaw and the resolution of these legal questions will set the parameters for the Commission's exercise of discretion.

146 Considering the nature of the issues before the Commission on this appeal, it is reasonable to conclude the Commission has a fair measure of expertise relative to that of a court. The Commission has authority to conduct hearings and receive evidence under various statutes including the *Planning Act*. The Commission is positioned like a court to make findings of fact and apply them to the necessary criteria set down in the bylaw.

147 Specifically, the Commission in deciding the matter by hearing *de novo* is deciding whether the concept plan put forward by way of the application complies with s.28 of the City's bylaws for a Comprehensive Development Area. The Commission conducts a fresh hearing, and the panel is essentially in the same position as the City. The Commission panel has to exercise its discretion based on the evidence presented, make findings of fact, and determine whether the application complied with the bylaw and could be approved as an amendment to the CDA Zone.

2013 PECA 10, 2013 CarswellPEI 29, 1054 A.P.R. 192, 13 M.P.L.R. (5th) 181, 231 A.C.W.S. (3d) 250, 339 Nfld. & P.E.I.R. 192...

148 Considering all the factors in the standard of review analysis, particularly the purpose of the Commission in relation to the issue under appeal as well as the nature of the issues it was called upon to decide, the standard to be employed in reviewing its decision is that of reasonableness.

Issue # 3

149 Did the Commission properly exercise the reasonableness standard of review?

150 The decision of the Commission to allow the appeal of Atlantis from the decision of the City was reasonable.

151 In *Dunsmuir* at paras.47 to 49 LeBel and Bastarache JJ. gave direction as to the meaning of reasonableness in this context. Reasonableness is founded on the principle that with respect to some questions determined by administrative tribunals, there could be more than one specific result. The application of the standard of reasonableness engages the court in a consideration of whether there is justification, transparency and intelligibility within the tribunal's decision-making process and whether the decision falls within a range of acceptable outcomes which can be defended, considering the facts and the applicable law.

152 Reasonableness does not mean a court acquiesces in the decision of the tribunal nor does it mean the court can address the concept of reasonableness and then proceed to replace the tribunal's decision with its own. There is a distinction between judicial acquiescence and judicial restraint. A decision reviewed on the standard of reasonableness reflects the latter.

153 The concept of reasonableness implies that a court on reviewing the decision of the tribunal will give due consideration to the conclusion reached by the tribunal. With the creation of tribunals like the Commission, the legislators have reserved for them the jurisdiction to decide certain issues recognizing the tribunal develops a certain degree of expertise and for the public an inexpensive and efficient way to resolve certain issues. Legislators also recognized and intended the decisions of the tribunals should be accorded a certain degree of deference when reviewed by a court.

154 In deciding the appeal by Atlantis from the decision of City Council, the Commission was required to apply the provisions of [Section 28](#) - Comprehensive Development Area - of the City's bylaws. Pursuant to s.28.1, notwithstanding any other provisions of the City's bylaws, there is created a "CDA Zone" within which any use may be approved as long as the use is deemed to be in the public interest. The one qualification is the City must follow the procedures for the approval of a concept plan within the zone and as these procedures are articulated in ss. 28.3 and 28.5, both of which are previously set out in these reasons.

155 Hearing and determining the issue of Atlantis' application for a variation of the initial concept approved within the particular CDA Zone, the Commission was obliged to apply the bylaw in the foregoing manner. The Commission heard a substantial body of evidence from representatives of the City and Atlantis. The reasons for decision delivered by the Commission panel, reviews and weighs the evidence. At para.62 of the reasons, the panel addressed the criteria set down in [s.28](#) of the bylaw and came to the conclusion the application accorded with these criteria. The panel also concluded the proposed variation in the concept plan for the use of the land in issue in this particular CDA Zone was in accord with sound planning principles. There was evidence upon which the panel could reach this conclusion and in doing so they properly interpreted the provisions of the bylaw establishing the applicable CDA Zone.

156 The procedure followed by the Commission can be justified. It is both transparent and intelligible. It clearly explains to the parties the basis on which the panel reached their conclusion. Based on the evidence adduced before the panel and the factual findings made, the result reached by the Commission panel is within an acceptable range of possible outcomes considering the criteria to be met when proposing a concept plan within this particular CDA Zone.

157 In the result, I would dismiss the appeal and confirm the order of the Commission.

Appeal dismissed.

Tab 7.



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: May 15, 2023
Docket: LA21019
Type: Planning Act Appeal

INDEXED AS: Deborah Dennis v. City of Charlottetown, 2023 PEIRAC 05 (CanLII)

Order No: LA23-05

BETWEEN:

Deborah Dennis

Appellant

AND:

City of Charlottetown

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, K.C. Chair
Erin T. Mitchell, Commissioner

CERTIFIED TRUE COPY

Philip J. Rafuse,
Appeals Administrator
Prince Edward Island Regulatory and
Appeals Commission

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Appearances & Witnesses

For the Appellant, Deborah Dennis

Counsel:

Geoff Gibson
Deanna Kerry, Articled Clerk of
Campbell Lea

For the Respondent, City of Charlottetown

Counsel:

David W. Hooley, K.C.
Maggie Hughes of
Cox & Palmer

Witness:

Alex Forbes, FCIP

1. INTRODUCTION

1. This is an appeal of the decision of the City of Charlottetown (the “City”), dated August 9, 2021, to reject a request by Deborah Dennis (the “Appellant”) for a minor variance and a major variance on a lot at Viceroy Avenue (PID #349035) (the “Property”). The minor variance would reduce the minimum front yard setback requirement from 19.7ft to 18ft, while the major variance would reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft.
2. The Appellant sought the variances in order to permit two new single-detached dwellings on the Property, which she proposed to subdivide into two separate parcels.

2. BACKGROUND

3. On November 5, 2020, the Appellant filed an Application for Subdivision and Lot Consolidation with the City.¹ The Application sought to make two residential lots out of the existing parcel.
4. Through consultation with City Planning Staff, it was determined that, because of the shape of the lots and their insufficient depth to locate a dwelling in accordance with the setback requirements of the Zoning and Development Bylaw in the R-1L (Single-Detached Residential) Zone, the Appellant would first be required to apply for and receive approval for variances before final subdivision approval could be granted.²
5. As a result, on March 23, 2021, the Appellant submitted a Variance Application with the City for approval to vary the setback requirements to build a single dwelling on each of two lots.
6. On April 15, 2021, notice was sent to nearby property owners advising them of the Variance Application, and requesting written comments for or against the requested variances.³ The City received sixteen (16) written responses, one of which was considered neutral, while fifteen (15) responses objected to the Variance Application.⁴
7. This Application was discussed at the May 3, 2021, meeting of the City’s Planning and Heritage Board (“Planning Board” or the “Board”). The Board voted unanimously to defer the Variance Application in order for the Appellant to work with Planning Staff on a revised proposal that would require less variance(s) on the Property.⁵

¹ Record of the City of Charlottetown, Tab 1. [Record]

² Record, Tab 17, pg. 229.

³ Record, Tab 4.

⁴ Record, Tab 6, pgs. 26-55.

⁵ Record, Tab 8, pg. 74.

8. On June 30, 2021, the Appellant submitted a revised Variance Application,⁶ along with a revised design proposal.⁷
9. On July 15, 2021, a second notification letter was sent to nearby residents advising them of the revised Variance Application and requesting written comments.⁸ The City received eight (8) letters of objection in response to the revised Variance Application.⁹
10. On August 3, 2021, the revised Variance Application was considered by the Planning and Heritage Board. At that meeting, the City's Planning Staff reviewed the proposal in detail, and the Appellant's architect was present to speak to the proposal and answered some questions of Planning Board members. The meeting was also attended by members of the public, and four (4) members spoke in some detail about their objection to the variance requests.¹⁰
11. At the conclusion of the August 3, 2021, Planning and Heritage Board meeting, the Board moved, 5-1, to recommend to Council that the request for one minor variance and one major variance on the Property be rejected.¹¹
12. On August 9, 2021, at the regular meeting of Council, with no discussion on the matter, Council voted 8-1 to accept the recommendation of Planning Board and reject the Appellant's revised Variance Application.¹²
13. A copy of Council's resolution to reject the revised Variance Application was sent to the Appellant via email on August 10, 2021.¹³
14. The Appellant filed a Notice of Appeal with the Commission on August 30, 2021. An amended Notice of Appeal was filed November 29, 2021.
15. After the filing of the Notice of Appeal, the Commission agreed to hold this matter in abeyance at the request of the parties while they explored possible resolutions. Commission Staff assisted with these efforts via mediation sessions; however, the Appellant notified the Appeals Administrator on September 16, 2022, that a hearing would be required, the hearing was scheduled by the Commission for December 5, 2022, being the earliest opportunity. Unfortunately, due to illness it was not possible to proceed on that date and the hearing in this matter ultimately proceeded for the morning on January 13, 2023, and continued on the morning of January 19, 2023.

3. ISSUES

16. The appeal raises two main questions for the Commission. First, the Commission must determine whether the City followed its procedure and discharged its duty of

⁶ Record, Tab 17, pg. 304.

⁷ Record, Tab 10, pgs. 93-104.

⁸ Record, Tab 9.

⁹ Record, Tab 10, pg. 81; see also, pgs. 109-121.

¹⁰ Record, Tab 12.

¹¹ Record, Tab 12, pg. 179.

¹² Record, Tab 13.

¹³ Record, Tab 17, pg. 419.

procedural fairness. Second, the Commission must consider whether the decision made by the City was one based on sound planning principles.

4. DISPOSITION

17. For the reasons that follow, the appeal is allowed and the decision of Council is quashed. The Commission orders that the minor variance and major variance be approved, with the conditions recommended by City's Planning Staff.

5. POSITIONS OF THE PARTIES

18. The Appellant raised one procedural issue, being that the City failed to provide reasons for its decision. The Appellant submitted that the minutes of the August 9, 2021, Council meeting clearly demonstrate that Council gave no reasons at all, despite being the decision-making body that is responsible to make the decision and give reasons for doing so.
19. The Appellant also argued that the City failed to apply sound planning principles to its decision by not properly considering the Report of Planning Staff and by not following the Official Plan and Bylaw. The Appellant submitted that while nearby residents raised concerns with the proposed development, those concerns were not technically relevant, and all of them were addressed by Planning Staff in their Report. The Appellant submitted that both Planning Board and Council were distracted by the concerns voiced by neighbours.
20. The City, for its part, submitted that a review of the record as a whole demonstrates that the reasons for Council's decision are clear. The City submitted that Council followed the recommendation of Planning Board without debate, and that Planning Board held a fulsome discussion at their August 3, 2021, meeting.
21. The City further argued that the evidence demonstrates the decision has merit based on sound planning principles and that Council properly considered all relevant information and complied with the Official Plan. In this case, the City submitted that Council adopted the recommendation of Planning Board which emphasized public safety, and that this is a sound planning consideration.

6. OVERVIEW OF EVIDENCE

22. The Appellant did not present any witnesses or additional evidence at the hearing. The Appellant's submission with respect to evidence was that the basis on which the City made its decision was included in the Record, and that they did not believe it needed to be supplemented.
23. At the beginning of the hearing, the Commission played a video excerpt from the August 9, 2021, meeting of Council wherein Council voted to reject the Appellant's revised Variance Application. The clip was three minutes and two seconds long and encompassed the entirety of Council's consideration of this matter.
24. Prior to the hearing, the City filed its record with the Commission. The record totaled four-hundred and twenty-four (424) pages and included each of the

Appellant's various Applications, the Reports of the City's professional Planning Staff, including all written comments submitted by members of the public, verbatim minutes of the Planning and Heritage Board meetings and the Council meeting where this matter was discussed, and all correspondence between the parties in relation to the Appellant's applications.

25. At the hearing, the City called one witness, being Alex Forbes, FCIP. Alex Forbes is the Manager of Planning and Heritage for the City of Charlottetown. He was accepted by the Commission as an expert in land use planning. Mr. Forbes signed off on the two Planning Staff reports that were presented to Planning Board and recommended approval of the requested variances. At the hearing, Mr. Forbes confirmed that he reviewed and supported both reports of Planning Staff and that both were in accordance with sound planning principles.
26. The report prepared by Planning Staff for the August 3, 2021, Planning Board meeting,¹⁴ with respect to the revised Variance Application, is comprehensive and, as this Commission has come to expect from the professional planners at the City, a thorough review of the Application. It includes an overview of the Property and surrounding neighbourhood, an analysis of a number of objectives and policies set out in the Official Plan (e.g. sections 3.1.2, 3.2.1, and 3.3.1) and relevant provisions of the Zoning and Development Bylaw, and comprehensively addresses the front and rear yard setbacks, as well as public feedback on the Application.
27. In particular, the Report highlights the Official Plan policies around encouraging infill development and the use of existing infrastructure (3.1.2).¹⁵ Planning Staff conclude that the request conforms with the Official Plan. Further, the Report highlights sections 6.1.1 and 6.2.1 of the Bylaw with respect to non-conforming and undersized lots to allow for development on irregular shaped lots. The report concludes that in this case, the unusually shallow lot depth should not deprive the Appellant of the ability to make reasonable use of the Property.¹⁶
28. The Report also lists, in some detail, the concerns raised by the public on both occasions that written comments were requested. Those concerns included the proximity of the development to the surrounding houses, loss of mature trees, the substantial reduction in the setbacks, and the impact of additional driveways and traffic generated by this development and the resulting safety concerns to young students attending West Kent Elementary School, across the street.
29. Planning Staff took care in the Report to address these concerns. For example, Planning Staff's recommendation also includes a condition that eight existing trees be retained on the property. With respect to the setback variances, Planning Staff noted that rear yard setback deficiencies are a feature of the surrounding development block and addressed concerns about the closeness of lots and privacy, recommending a condition of approval be the installation of a privacy hedge. The front yard setback was deemed supportable as it "harmonizes with the existing character of the surrounding neighbourhood."

¹⁴ Record, Tab 10.

¹⁵ Record, Tab 10, pg. 83.

¹⁶ Record, Tab 10, pgs. 84-85.

30. Finally, the Report evaluates the traffic-related concerns, indicating that feedback from Public Works was that there would be “limited negative impacts” resulting from two new homes on the Property.¹⁷
31. In his oral testimony, Mr. Forbes spoke to the general purpose of an official plan and its policies and how it is intended to guide future development in the City. He testified that it is not uncommon for the policies in the Official Plan to speak to competing interests, but that they are all rooted in sound planning and that their application is a balancing act.
32. Mr. Forbes provided evidence that when Planning Staff considers the written submissions from the public in cases like this, they try to identify whether something of a technical nature may have been overlooked or not adequately considered by Planning Staff. They then try to answer those concerns with direction in their Report.
33. On cross-examination, Mr. Forbes spoke to infill development and how it is a good thing that makes use of existing infrastructure (e.g. water and sewer lines, streets, and existing amenities in the neighbourhood). Mr. Forbes also agreed, on cross-examination, that many of the properties nearby the Appellant’s Property have similar setbacks as those sought by the Appellant in her application, and that adjacent non-conformity could lend support to a likewise non-conforming development.

7. ANALYSIS

Authority and Guideline

34. The Commission has the authority to substitute its decision for one made by a municipal council; however, the Commission does not lightly interfere with these types of decisions.¹⁸ The Commission ought not to interfere with a decision merely because it disagrees with the end result.¹⁹
35. The parties agree that the guideline developed by the Commission for exercising its appellate authority under the *Planning Act* is applicable in this case. The guideline involves two main considerations:
 - Whether the municipal council followed the proper procedure as required by its bylaw, the Planning Act and the law in general, including the duty of procedural fairness; and
 - Whether the decision made by the municipal council has merit based on sound planning principles in the field of land use planning and as enumerated in the Official Plan and Bylaw.²⁰

¹⁷ Record, Tab 10, pgs. 86-87.

¹⁸ Order LA22-07, *Landfest Company Ltd. v. Town of Stratford* at para 32. [*Landfest*]

¹⁹ Order LA10-06, *Warren Doiron v. City of Charlottetown*, at para 15. [*Doiron 2010*]

²⁰ See, for example, *Landfest* at para 32; and LA17-02, *APM Construction Services Inc. v Community of Brackley* at para 21.

36. The Commission will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the *Planning Act*, the applicable official plan and bylaw, and sound planning principles.²¹ The Commission will typically be deferential toward planning decisions by Council that are properly made.

Procedural Issue

37. The Appellant raised one procedural issue, being that the City failed to provide any reasons for its decision. In summary, the Appellant argued that no matter how generous an interpretation is given to the Record and the minutes of the August 9, 2021 Council Meeting on this issue, no reasons whatsoever are apparent. In their submission, there is nothing from Council to show why the Variance Application was rejected.
38. The City responded to this ground of appeal by imploring the Commission to consider the entire Record, including the reports of Planning Staff, the minutes of the preceding Planning Board meeting(s), and the public's objection letters. The City's position is that, upon a review of the Record as a whole, Council's decision and reasons were known to the Appellant.
39. As the Commission has previously stated, reasons are sufficient when they explain why a municipal council arrived at its decision.²² When reviewing for adequacy or sufficiency, the Commission must consider the reasons given as a whole in the context of the application before council and with an appreciation for the type of decision made.²³
40. In this instance, the Commission is not satisfied that Council provided adequate, or any, reasons to explain why it arrived at its decision.
41. The verbatim minutes of the August 9 Council Meeting in respect of this matter read, in full, as follows:²⁴

6.1 Planning & Heritage – Councillor Terry MacLeod, Chair

Moved by Councillor Terry MacLeod
Seconded by Councillor Julie McCabe

RESOLVED:

That the request for:

- One (1) Minor Variance to reduce the minimum front yard setback requirement from 19.7ft to 18ft; and

²¹ Order LA18-02, *Queen County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41. [QCC 40]

²² Order LA17-08, *Pine Cone Developments Inc. v. City of Charlottetown* (November 15, 2017) at para. 56. See generally *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at para. 12.

²³ Order LA22-07, *Landfest Company Ltd. v. Town of Stratford* at para. 46.

²⁴ Record, Tab 13.

- One (1) Major Variance to reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft,

In order to permit two (2) new single-detached dwellings on the lot at Viceroy Ave. (PID #349035) which is proposed to be subdivided into two (2) separate parcels, be rejected.

Mayor Brown: Questions?

Councillor Ramsay: Questions called.

Mayor Brown: Questions called. All those in favour, please raise your hand.

Councillor McCabe: To reject?

Mayor Brown: It's in favour to reject. Thank you for the clarification. I have Councillor Rivard, Councillor Jankov, Councillor Tweel, Councillor MacLeod, Deputy Mayor Coady, Councillor McCabe, Councillors Duffy and Ramsay in favour. Against the rejection? So it is 8-1 and that's Councillor Doiron.

**Carried 8-1
Councillor Doiron Opposed**

42. It is clear to see that Council's consideration of this matter contains zero discussion or deliberation with respect to the Application, and no rationale whatsoever for their decision to reject the Appellants variance requests. The motion was read, questions were called in a cursory fashion, and the vote was held with no comment from a single Councillor.
43. The City argued that a consideration of the entire Record, including that Council adopted both the decision and reasons of Planning Board, establishes that Council's reasons were known. They cited the Commission's comments in Order LA12-02 as support for their contention that when Council follows Planning Board's recommendation, it may fairly be said that in so doing, Council is adopting the reasoning and analysis used by Planning Board.²⁵
44. The Commission has carefully reviewed the entire Record before it, and does not agree that the it cures Council's defective reasons in this instance.
45. First, in this case, Planning Board made a recommendation to Council which was contrary to the recommendation of City Planning Staff. On this point, the Commission has been clear: where that happens, there is an added obligation on Council to demonstrate sound planning reasons for not following the advice of its professional planning staff.²⁶ Council's decision-making process should clearly demonstrate what factors were considered that support the final decision.²⁷

²⁵ Order LA12-02, *Atlantis Health Spa v. City of Charlottetown*, at para 23.

²⁶ *Landfest*, at para 48; see also Order LA20-04, *Jessie-Frost Wicks et al. v. City of Charlottetown*, at para 35.

²⁷ *Landfest*, at para 48.

46. The City pointed the Commission to a discussion among Councillors at the August 9, 2021, Council Meeting about an unrelated application for a different property, several streets away, that occurred after the vote to reject this Application, to say it demonstrates that Council knew that Planning Board considered public safety in reaching its decision. The Commission does not accept this argument. Council's discussion about an unrelated matter, after they already voted to reject this Application, does not serve as reasons, even with the most generous interpretation.
47. Second, Planning Board's August 3, 2021, minutes reveal similarly deficient reasons.²⁸ The meeting opened with a thorough review of the Application by Planning Staff, which was followed with some questions and general discussion between Board members and Planning Staff. For example, Councillor McCabe raised the traffic and safety concerns resulting from West Kent Elementary School, and Planning Staff responded by explaining that the City's engineer is satisfied that the introduction of two new dwellings will not produce any additional safety impacts on Viceroy Avenue. Councillor Jankov asked some questions about the privacy hedge maintenance, the driveway condition, and the as-of-right development conditions on the Property, which were all addressed by Planning Staff. The Appellant's architect then made a presentation to the Board and answered questions from Councillors and Resident Members. Afterward, members of the public were invited to speak at the meeting and ask questions of Planning Staff.
48. After this general review and discussion of the Application, the Board went immediately to a motion without any discussion between Board members about the information they heard, the answers they got from Planning Staff and the Appellant, or their thoughts or opinions on the merits of the variance requests.²⁹
49. In summary, even the most scrutinous review of the minutes of Council's August 9, 2021, meeting, the minutes of Planning Board's August 3, 2021, meeting, and the Record as a whole, does not reveal sufficient reasons *why* Council arrived at its decision to deny the Appellant's variance requests. To find otherwise would be to speculate.
50. At the risk of being redundant, the Commission reiterates that Council **must** provide thorough, cogent, and thoughtful reasons when evaluating planning applications from the City's residents. Procedural fairness requires, and the Commission expects, that every municipal council provide sufficient reasons, based on sound planning principles, to justify its decision. More is expected when an application has been the subject of a public meeting, when written submissions for and against the application have been received from members of the public, and when Council has received adverse recommendations from their professional staff. Those recommendations are not binding and may be overcome; however, there must be sufficient information presented to the Commission to demonstrate a careful evaluation by Council and that the final decision was motivated by planning-related considerations.³⁰

²⁸ Record, Tab 12.

²⁹ Record, Tab 12, pgs. 178-179.

³⁰ *Jessie-Frost Wicks*, para 36

51. To conclude, this ground of appeal is accepted by the Commission. Council failed to discharge its duty of fairness as the primary-decision maker. The effect of this defect is that the Commission is not required to show deference to the decision made by Council.³¹

Sound Planning Principles

52. It is well-settled that the Commission must be satisfied that the final decision made by Council was animated by sound planning principles. In the absence of reasons from Council, the Commission will, therefore, review the evidence before it to determine whether or not the Appellant's revised Variance Application will succeed, thus deciding the matter anew as if it were the original decision maker, and providing reasons for same.
53. The Appellant's revised Variance Application sought a minor variance and a major variance for her Property on Viceroy Avenue. The minor variance would reduce the minimum front yard setback requirement from 19.7ft to 18ft, while the major variance would reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft.
54. As already stated, the report prepared by Planning Staff with respect to the revised Variance Application,³² is comprehensive, professional, and a thorough review of the Application. The recommendation from Planning Staff clearly demonstrates a detailed consideration of the applicable policies of the Official Plan and sections of the Bylaw as they relate to the variance requests.
55. The positive attributes of the variance requests, as concluded by Planning Staff, include:³³
- Supporting Official Plan policies for infill development on vacant lots that maximizes the use of existing underground services near centre of employment.
 - Proposed single-detached dwellings represent low-intensity use that is consistent with dwelling type on surrounding properties.
 - Proposed dwellings meet minimum width and requirements for single-detached dwellings established in Zoning By-law definition.
 - Subject property is large in size, with future lot frontages and areas (post subdivision) exceeding R-1L Zone requirements.
 - Proposed dwelling height is less than the maximum permitted height in R-1L Zone.
 - Traffic generated by proposed two new single detached dwellings on Viceroy Avenue will be minimal.
 - Proposed retention of eight (8) existing trees on the property.

³¹ *Landfest*, para 33.

³² Record, Tab 10.

³³ Record, Tab 10, pg. 84.

56. These positive attributes are well explained and supported throughout the Report. For example, it analyzes a number of objectives and policies set out in the Official Plan, including the policies around encouraging infill development and the use of existing infrastructure (3.1.2).³⁴ It also summarizes, in detail, the compliance of the proposed development with several provisions of the Bylaw (e.g. pursuant to requirements in the Single Detached Residential Zone).
57. The shortcomings of the variance requests were identified as being primarily those issues raised through public objection:³⁵
- Deficient lot depth on subject property.
 - Proposed proximity to dwellings to the south.
 - Inadequate site design on adjacent school site (e.g. insufficient on-site parking and lack of on-site vehicle queuing space) results in congestion/traffic violations and pedestrian/vehicular safety concerns on Viceroy Ave during peak school times.
58. These deficiencies are similarly addressed in Planning Staff's Report and recommendation. For example, the recommendation includes a condition on approval that a privacy hedge be installed to mitigate privacy concerns due to the proximity of dwellings. The evidence supports that the Appellant was agreeable to this condition. A second condition of approval regarding the driveway access was, in part, intended to address the possibility of cars turning in the driveways and exacerbating the traffic issues.
59. The Report evaluates the traffic-related concerns, and aptly identifies the traffic issues as "a direct result of the site design issues on the school side" and advised that these deficiencies should not preclude the Appellant from making reasonable use of the Property.³⁶
60. On this point, the Commission accepts that the traffic concerns of residents are legitimate. However, it is not satisfied that they are germane to the approval of varied front and rear yard setbacks to permit two new single-family dwellings in this neighbourhood. While the Official Plan does address "Safety in the Community" at section 5.7, stating that public safety is of great concern to the residents of Charlottetown, the evidence does not demonstrate that the Appellant's requested variances offend this notion. The City's Manager of Public Works raised no concerns with the development, finding there would be no traffic concerns.³⁷ Charlottetown Police Services commented that two new driveways could "complicate an already challenging situation", but attributed that situation to the drop off times at West Kent Elementary School.³⁸ Mr. Forbes testified on cross-examination that there is no real appreciable difference to any of these safety

³⁴ Record, Tab 10, pg. 83.

³⁵ Record, Tab 10, pg. 84.

³⁶ Record, Tab 10, pgs. 86-87.

³⁷ Record, Tab 17, pgs. 285-87.

³⁸ Record, Tab 17, pg. 274.

concerns if a dwelling is setback 19.7ft versus 18ft from the front of the property line.

61. Public participation is an important element of the planning process. This is evidenced in the objects of the *Planning Act*, the objectives and policies of the Official Plan, and the provisions of the Zoning and Development Bylaw requiring Council to seek public input on certain planning decisions. The Commission does not underestimate the importance of the public's feedback when evaluating an application such as the one at issue here. However, the Commission has regularly emphasized to municipalities the need for objective decision-making and not exercises in subjectivity. Reliance must be placed on the assessments, opinions, and reports of trained professionals as opposed to the hue and cry of neighbours or politicians. For example, in *Biovectra Inc. v. City of Charlottetown*, the Commission stated:³⁹

At common law, a property owner may do with his land what he wishes, subject to the rights of surrounding property owners, for example, the law of nuisance. However, these rights may be restricted by statute, regulation or bylaw. Such restrictions must be expressed clearly and with solid legislative authority. To the extent that discretion is permitted by the statute, regulation or bylaw the wording must be clear and the criteria objective. Arbitrary discretion is to be avoided.

62. In other words, the discretion of Council when making a planning-related decision is not unfettered. Their discretion has to be exercised in furtherance of the City's Official Plan and Bylaw, which have had input and contribution from the residents of Charlottetown as a whole.⁴⁰ While Council is expected to accept and consider public feedback in respect of a particular application, they must also filter that feedback through the lens of the Official Plan and the Bylaw and ensure that its final decision, while informed by that public feedback, is ultimately animated by sound planning considerations.
63. In this case, in particular, the Commission can clearly see from the evidence before it that the residents and neighbours who raised safety issues related to the traffic congestion outside of West Kent Elementary School have been frustrated and concerned about this issue for quite some time. The Commission empathizes with them. However, when tasked with reviewing a planning-related application on its merits, these kinds of concerns have to be weighed appropriately. The City has an obligation to deal with traffic problems near schools. They are safety and enforcement issues that call for a coordinated solution and action by the City and by the School administration. They are not issues to be dealt with in a development application, unless there is a clear nexus between the proposed development and the safety problem. That is not the case with this Application.
64. In this case, sections 6.1.1 and 6.2.1 of the Bylaw with respect to non-conforming and undersized lots, allow for development on irregular shaped lots, and the Commission agrees with the conclusion of Planning Staff that the unusually shallow lot depth should not deprive the Appellant of the ability to make reasonable

³⁹ Order LA11-01, *Biovectra Inc. v. City of Charlottetown*, at para 61.

⁴⁰ City of Charlottetown Official Plan, July 1999, s. 1.2.

use of the Property, absent compelling reasons based in sound planning. No such reasons exist here.

65. In summary, having received, considered and weighed the evidence provided by the City in the form of the Record and the expert evidence given by Mr. Forbes, the Commission has sufficient evidence before it to decide the merits of this Application. In concert with reviewing and considering the policies of the Official Plan and sections of the Bylaw that apply to these variance requests, the Commission finds that varying the front and rear yard setbacks of the Property to permit two single-family homes in this neighbourhood is consistent with the policies of the Official Plan, the Zoning and Development Bylaw, and has merit based on sound planning principles.
66. In closing the Commission can not let the conduct of the Mayor and Councillors at the Council meeting where this decision was made go without further comment. The Commission has reproduced, above, the entirety of what was said in the consideration of and rejection of this Application. There was no debate and no reasons given. Council is well aware of the direction provided repeatedly by this Commission and the Courts on the requirement to provide reasons rooted in the Official Plan, Bylaws, and sound planning principles when making its decisions. Failure to do so is unfair to applicants who often spend significant time and resources to navigate the City's processes, only to be left wondering why their development was not approved. Applicants for developments within the City and the public in general deserve far better, and the Commission trusts that Council will endeavor to improve its practices in this regard.

8. CONCLUSION

67. For the reasons above, the appeal is allowed and the decision of the Council is quashed. The Commission orders that the minor variance and major variance be approved, with conditions as outlined below.
68. The Commission thanks the Appellant and the City for their submissions in this matter.

9. ORDER

69. The appeal is hereby allowed. The decision of Council is quashed. The Commission orders that:

The request for one (1) minor variance to reduce the minimum front yard setback requirement from 19.7ft to 18ft, and one (1) major variance to reduce the minimum rear yard setback requirement from 24.6ft to 15.2ft, in order to permit two (2) new single-detached dwellings on the Property (PID #349035 on Viceroy Ave.) which is proposed to be subdivided into two (2) separate parcels be approved subject to the following conditions:

- a) Driveway access into the side yard (east or west) of each dwelling is maintained and driveway access is no wider than 3 metres at Viceroy Avenue.

- b) A privacy hedge is planted along the full extent of the south property limit to the satisfaction of the City's Forestry and Environmental Officer prior to Occupancy Permit approval.
- c) Eight (8) existing trees are retained on the property.

DATED at Charlottetown, Prince Edward Island, **Monday, May 15, 2023**

BY THE COMMISSION:

(sgd.) *J. Scott MacKenzie*

J. Scott MacKenzie, K.C., Chair

(sgd.) *Erin T. Mitchell*

Erin T. Mitchell, 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.

NOTE: In accordance with IRAC'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.

Tab 8.



**Docket LA15010
Order LA17-06**

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

BEFORE THE COMMISSION
on Thursday, the 10th day of August, 2017.

J. Scott MacKenzie, Q.C., Chair
Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

IN THE MATTER of an appeal by Donna
Stringer of a decision of the Minister of
Communities, Land and Environment, dated
August 12, 2015.

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IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Appearances & Witnesses

1. For the Appellant Donna Stringer

Counsel:

John D. Stringer, Q.C.

Witnesses:

Donna Stringer

Leland Wood

2. For the Respondent Minister of Communities, Land and Environment

Counsel:

Robert MacNevin

Witness:

Jay Carr

3. For the Developers Betty Ann Bryanton and Gareth Llewellyn

Counsel:

Steven Forbes

Witness:

Betty Ann Bryanton

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Reasons for Order

1. Introduction

(1) On August 19, 2015, the Appellant Donna Stringer (the "Appellant") 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**").

(2) The Appellant appealed an August 12, 2015 decision of the Respondent Minister of Communities, Land and Environment (the "Minister") granting Development Permit No. M-2015-0087 ("Permit 87") and Development Permit No. M-2015-0088 ("Permit 88") to the Developers Betty Ann Bryanton and Gareth Llewellyn (the "Developers") to change the permitted use of an existing non-commercial storage building to a summer cottage (Permit 87) and to relocate three non-commercial storage buildings (Permit 88) on Provincial Parcel Number 931741, located on the south side of 158 Paradise Drive, in the Community of Little Pond (the "subject property").

(3) The Commission forwarded letters to the Minister and the Respondents advising of the Appeal and requesting that the Minister provide a copy of the development application file. On September 4, 2015 a copy of the application file was received and forwarded via email to the Appellant and the Developers.

(4) On September 15, 2015, Commission received a letter submission from Robert MacNevin, legal counsel for the Minister. Mr. MacNevin acknowledged that "Evidently the non-commercial storage buildings are used, from time to time, to accommodate people who use them to sleep at night during the summer months". Mr. MacNevin further advised that as these "non-commercial storage buildings are not hooked up to water or sewer systems, they are not considered to be "dwellings". He further submitted that "There was nothing in the **Planning Act** Subdivision and Development Regulations that regulate either the number or use of non-commercial storage buildings". Mr. MacNevin submitted that "There was no basis for the appeal to be successful".

(5) On September 18, 2015, the Commission's Appeals Administrator emailed the parties to facilitate the filing of written submissions and noting that the Commission was prepared to hear the appeal as early as November 2015.

(6) Submissions from Appellant's Counsel were received by the Commission on October 13, 2015. Submissions were received from the Developers on November 2, 2015.

(7) On December 9, 2015 counsel for the Minister provided a further submission by letter, departing from the original position taken in his September 15, 2015 letter, now stating that "It is the Department's position that non-commercial storage buildings, which is what Permit No. N-2015-0088 allows, are not intended to be used as sleeping quarters, or "bunkies"." [emphasis added] He further submitted that there was a gap in the Subdivision and Development Regulations that has been recognized by the Department and he advised that the Department "Will be creating Regulations to specifically address this issue in the near future, and he noted that the regulatory changes will be made in the new year, and as such I suggest that this appeal be put on hold until the new Regulations come into force. At that time the Department officials will be in a position to determine if Ms. Bryanton's units are in compliance with the new Regulations." In response to this submission the Appellant's Counsel responded noting that statutes and Regulations are not to be construed as having retrospective operation unless they are expressly or by necessary implication required in the language of the regulation. He noted that "It is the view of the Appellant that any retroactive or retrospective future legislation would be prejudicial to the rights of the Appellant, thereby giving rise to a presumption against retroactivity." He requested that the appeal proceed to a public hearing to have the matter adjudicated.

(8) On January 15, 2016 the Commission advised the parties that the appeal would proceed to a hearing and invited the parties to indicate their available dates. After consulting with the parties, the Commission scheduled the appeal to be heard on June 9 and 10, 2016.

(9) On March 15, 2016, Steven Forbes advised the Commission that he would be representing the Developers. On March 18, 2016 the Commission received a letter from Mr. Forbes requesting a change in the hearing date to July 2016. Mr. Forbes also requested the opportunity to file written submissions. On March 22, 2016, John D. Stringer, Q.C., Counsel for the Appellant, advised the Commission that he did not object to a July or August hearing. On March 22, 2016 the Commission's Appeals Administrator contacted counsel for the three parties to encourage the parties to reflect on the possibility of alternative dispute resolution ("ADR") and offer the Commission's assistance in providing ADR services. Subsequently all parties and the Commission agreed to hearing dates of July 21 and 22, 2016. Dates for filing written submissions and rebuttal submissions were also agreed to.

(10) Following the receipt of the various written submissions, Counsel for the Appellant canvassed counsel for the other parties inquiring whether there was interest in pursuing ADR. By June 3, 2016 all counsel had expressed a willingness to participate in ADR.

(11) With the agreement of all parties and their legal counsel, ADR was held on the morning of July 21, 2016 with the Commission's Appeals Administrator as mediator. The parties were unable to reach a mediated solution and requested that the appeal be heard by the Commission.

(12) The Commission heard the appeal commencing on the afternoon of July 21, 2016. Legal counsel for all three parties filed an Agreed Book of Documents which was entered as Exhibit E-1. The hearing concluded on the morning of July 22, 2016.

2. Discussion

Appellant's Testimony and Submissions

(a) The Appellant Donna Stringer ("Mrs. Stringer") testified that she purchased her property in the autumn of 2007. Mrs. Stringer's property is located adjacent to the subject property. At the time Mrs. Stringer purchased her property, the Developers had a shed on their property and also placed a tent and a dining tent on the property for two to three weeks each year. In poor weather, the Developers slept in the shed.

(b) Mrs. Stringer testified that her cottage contains seven rooms including four bedrooms. The Appellant provided an aerial photo of the cottages on Paradise Drive (Tab 27 of Exhibit E-1). The aerial photo has been annotated to insert descriptions of the ownership of the cottages and the placement of the "bunkies". The photo shows a total of five cottages, three of which are the size of the Appellant's, one which is somewhat smaller and the Developer's converted shed cottage which is substantially smaller than the others.

(c) Mrs. Stringer testified that on July 20, 2015 a port-a-pottie or free standing portable outdoor toilet enclosure was delivered to the subject property. The next day a number of workers arrived with one shed and started putting in stakes where the shed was to be placed. The second shed arrived the next day. The sheds were put in place and windows were installed in the sheds to allow for a view of the water. Mrs. Stringer testified that the Developers informed her that they were just sheds. However, Mrs. Stringer could view the workers trying to put queen size air mattresses into the sheds. She stated that when she questioned the Developers on what permits they had obtained to be allowed to put the sheds on the property, the Developers responded that they did not need permits. The Appellant checked with Leland Wood of the Department of Communities, Land and Environment and he advised that no permits had been issued. Mrs. Stringer advised that a few days later after the initial installation the shed that was closest to the water was moved and the workmen began setting in pegs for the placement of a third shed. Pegs for a third shed were later removed.

(d) Mrs. Stringer testified that when she spoke to Leland Wood at a later time he advised her that the permits were in fact granted, directed her to the Planning website and told her that in order to get information on the permits issued to the Developers, she would have to launch an appeal to the Commission under the **Planning Act**. When she received the file as part of the appeal process, she was surprised to learn that the original shed that had been on the property was now approved through Permit 87 as a cottage. Mrs. Stringer indicated that she has a concern over the number of accessory buildings being placed on this property and was concerned that more sheds were going to be placed on the property. She also noted that to her knowledge no septic system was ever installed on the Developers' property.

(e) Under cross-examination, Mrs. Stringer acknowledged that the sheds did not impede her view of the water and that, to date, her safety and security were not compromised by the presence of the sheds. However, Mrs. Stringer did note that in her view the Developers and the Developers' guests did compromise safety and security as there were no sanitary facilities on the property and she questioned the cooking and other sanitary facilities where there was no proper disposal. Under cross-examination when she was questioned about her concerns about more sheds, she testified that originally there was pegging put in the ground for four sheds, but in the end only two sheds were actually put on the property.

(f) Leland Wood ("Mr. Wood"), is a safety standards officer employed by the Minister. Mr. Wood was called to testify by Appellant's Counsel. Mr. Wood testified that he has worked for the Minister first as a property development officer and then as a safety standards officer, for the past 13 years. He is licensed as a septic inspector. Mr. Wood is not a land use planner. He testified a summer student working at his office had taken a building permit application for two "bunkies" from Betty Ann Bryanton ("Ms. Bryanton") who is one of the Developers. Mr. Wood testified that he spoke with Ms. Bryanton who confirmed that she was seeking a permit for "bunkies". Mr. Wood testified that the original application for the "bunkies" was refused for the reason that there was no dwelling or cottage on the property at the time of the application.

(g) Mr. Wood testified that he informed Ms. Bryanton that unless the first storage shed on the property was subject to a change of use to a dwelling, there could not be any other accessory buildings placed on her property. Mr. Wood informed Ms. Bryanton that there could only be one dwelling per lot. Mr. Wood testified that he informed her that a septic permit would be required in order to change the original shed to a cottage. He noted that it was a paper application and he did not visit the subject property. He testified that without the original shed being approved through a change of use to a cottage the two additional sheds could not be approved as the "bunkies" were considered to be accessory buildings. He noted that the term "bunkies" was used in the Developer's application.

(h) When asked if 20 "bunkies" would be permitted on the subject property, Mr. Wood replied that approving that many would be questionable as that would be a large number for one building lot. He acknowledged that the Regulations do not specify how many would be permissible and noted that the number allowed is "discretionary". He stated that "lots of people have four storage sheds". Mr. Wood testified that "bunkies" are not permitted to be used as accommodations because there is no septic system connected to the "bunkies". When asked whether you could live in a "bunkie" he replied "No". Mr. Wood testified that the original application was for "bunkies" and he told the applicant that they could not have "bunkies" and he suggested that the application be changed to a request for two non-commercial storage buildings instead.

(i) Mr. Wood testified that a building may be approved as a cottage if there is a septic permit, that there is no time limit on septic approval, no system is first required and no occupancy permit is required. He stated that with regard to a septic system, staff do not know if its installed as the building is not inspected and the Department does not follow-up to determine whether a septic system has been installed. He stated that the Regulations do not specify a minimum size for a cottage.

(j) Under cross-examination from Counsel for the Minister, Mr. Wood clarified that site inspections are not performed for every development permit as resources are not sufficient to do so.

(k) Under cross-examination from Counsel for the Developers, Mr. Wood clarified that Jay Carr directed him to approve the “bunkies” as non-commercial storage buildings with the condition attached to Permit 88 that they were not to be connected to water or sewer.

(l) Counsel for the Appellant submitted that the appeal is against the Minister’s decision to issue Permit 87 and Permit 88. He submitted that there is little disagreement with respect to the facts. He submitted that where the parties do differ is on the interpretation of the **Planning Act** and the **Planning Act** Subdivision and Development Regulations (the “Regulations”). He submitted that the Regulations do not support the issuance of either permit. Highlights of his oral submissions include the following:

- The June 26, 2006 permit application for the original storage shed had the annotation “future cottage many years from now”. Exhibit E-1, Tab 19, page 4 contains a reference to “bona fide cottage” which suggests that the Developers do not consider the original shed to be a true cottage. The change of use application which resulted in the issuance of Permit 87 identified the original shed which was changed to a cottage as being 12 by 14 feet for a square footage of 168 square feet.
- The original shed, now deemed to be a cottage, does not have a sewage disposal system. All that was required was approval of a septic permit form. That paper approval was issued about one year ago yet no system has been installed and the Developer has no present intention of installing a septic system. However, such a system is the underpinning for the change of use application.
- Exhibit E-1, Tab 18, provides photographs of four structures: the original shed or “cottage”, a small plastic storage shed, a shed used as a “bunkie” and another shed used as a “bunkie”.
- No site inspection occurred for either the change of use Permit 87 or the approval of the “bunkies” Permit 88.
- Past decisions of the Commission have emphasized a need for clear wording, objective criteria and the avoidance of arbitrary discretion.
- The definition of “dwelling” under the Regulations is relevant while the definition of dwelling unit is not.
- Granting the permit after locating the structures on the property is a contravention of Sec. 31 of the Act.
- The government did not proceed properly, there is no current septic system on the property, there was no site inspection done to determine whether the structures met the cottage requirements, that both the Developers and government personnel seemed to take the position that, with septic systems, all that is required is a permit, not the installation of the system itself.
- The sewage disposal system to be installed must be the system that was approved and for which a permit was issued as this is the basis for granting a change of use to a cottage under Permit 87.

- Sec. 42(1) of the **Planning Act** states that there cannot be more than one building used as a dwelling on a lot and that these terms are defined in the Act. This provision limits the ability to construct multiple buildings and dwellings and have one lot sprinkled with numerous “bunkies”.
- “Bunkies” meet the definition of dwelling as set out in the Act.

(m) Counsel for the Appellant requested that the Commission revoke both Permit 87 and Permit 88 and require the two “bunkies” to be removed.

Testimony and Submissions on behalf of the Minister

(n) Jay Carr (“Mr. Carr”) is the Safety Standards Chief for the Minister. Mr. Carr is not a land use planner. Mr. Carr testified that he deals with the more “out of the ordinary” files. He testified that the Department will not issue permits for “bunkies”, they can’t, as they are not provided for in the Regulations. The Regulations do provide for permits for non-commercial storage buildings, that are not dwelling units. The Regulations do not state what non-commercial storage buildings may be used for and nothing in the Regulations prevent sleeping in a non-commercial storage building. Mr. Carr noted that the Minister’s staff now has one or two inquiries per year about “bunkies” and the matter is now on the Minister’s “radar” and it is expected that in the future the Regulations will be amended to address “bunkies”.

(o) Mr. Carr noted that the present matter involves three sheds on the subject property, which is a relatively large lot, and in his opinion at the time it would not have been referred to Planning for consideration for detrimental impact. He advised that as of two months prior to the date of giving his testimony the Department now has the safety standards officers under the Planning Division and that the Department was recently instructed after a decision of this Commission in another matter to have their personnel consult more with land use planners in the Department. He stated that previously it was the environmental aspects that were the focus of the Department in approving such permit applications, but now land use planners are also brought in and the planning aspect to an application needs to be considered. He stated that having three sheds on one lot was, in hindsight, not properly based on sound planning principles and if the application were received today land use planners in the Department would be consulted.

(p) Mr. Carr testified that the Regulations do not set out minimum size standards for a cottage. He noted that to constitute a dwelling unit a kitchen and bathroom is typically required.

(q) Mr. Carr explained that licensed septic contractors design a system, buy registered documents, fill the documents out, send the documents back to the Minister’s staff and are required to notify the minister’s staff when the system is going to be installed. The Minister’s staff does not inspect every system but do random inspection audits. He testified that if an audit is done and they find a system that has not been installed then they proceed to enforce the septic tank permit.

(r) Under cross-examination from Counsel for the Appellant, Mr. Carr testified that the application filed by the Developers was for “bunkies” but the permit issued was for non-commercial storage buildings. Mr. Carr stated that non-commercial storage buildings are accessory buildings and must be accessory to a main use. Mr. Carr also reiterated that there is no minimum size requirement for a building to be approved as a cottage. When asked what the Department would do if they determined that no septic system was installed as in accordance with the permit, Mr. Carr testified that a letter would be provided providing one month to install the system and that if nothing was done then the Department would issue an order providing one month to install the system. Further enforcement steps could be taken including pulling septic tank permit if the work was not conducted.

(s) Under cross-examination from Counsel for the Developers, Mr. Carr stated that the definitions of a “dwelling” and a “dwelling unit” are considered by the Minister’s staff to be essentially the same but they are technically separate definitions.

(t) Under questioning from the Commission’s Chair, Mr. Carr stated that internal policy now requires planners to be consulted in these type of circumstances. Mr. Carr acknowledged that sound planning principles apply to the **Planning Act** and the Regulations. Mr. Carr testified that previously sound planning principles were far down on the list of considerations with applications such as these. As of the date of the hearing he confirmed that sound planning principles are now on the top of the list of considerations that must be dealt with. With respect to the consideration of premature development, Mr. Carr stated that premature development mostly applies to subdivision matters but could also apply with respect to the building of rental cottages.

(u) Counsel for the Minister, departing again from the previous written submission of December 9, 2015 where it was clearly stated that commercial storage buildings were not intended to be used as sleeping quarters or “bunkies”, submitted that the use of non-commercial storage buildings as “bunkies” was not prohibited and as such there was no basis to allow the appeal and rescind the permits. Counsel for the Minister presented further oral submissions in support of the Minister’s decisions, highlights of which include the following:

- There is nothing in the **Planning Act** or the Regulations to prohibit the storage of people in non-commercial storage buildings.
- These bunkies might only be used a handful of times per twelve-month period.
- The bunkies were unfinished inside and provided protection from the rain.
- It would be absurd to consider these structures to be dwellings. By way of example, if someone fell asleep in a gazebo, would that fact make the gazebo a dwelling?
- It was not warranted to send the matter to the Minister’s planners.
- “Bunkies” are a new phenomenon in Prince Edward Island and new Regulations are being considered to address them.
- Sound planning principles are now, as of the date of this hearing, being used in development applications by the Department.

- Having this number of storage sheds on a property is not unusual, twenty such sheds would be unusual, but here the number involved was not enough to trigger any kind of a planning review.
- “Bunkies” cannot be considered to be dwellings as defined in the Act.
- Sec. 9 of the Act is a saving provision that allows permits to be issued where development occurs and it is then determined that an application should have been applied for.

(v) Counsel for the Minister submitted that Permit 87 and Permit 88 should be upheld and the appeal denied.

Developers’ Testimony and Submissions

(w) Betty Ann Bryanton (“Ms. Bryanton”) is the co-owner of the subject property. She purchased the property in 2003-2004. Ms. Bryanton told the Commission that she resides in Ontario. Ms. Bryanton testified that she was born and raised on Prince Edward Island and wanted a summer cottage “spot”. She visits the subject property a minimum of a week per year to a maximum of five weeks per year, with the average visit being two to three weeks.

(x) Ms. Bryanton told the Commission that at first she had a tent on the property and went to Sally’s Beach to use the washroom facilities there. Ms. Bryanton stated that she needed a well and a building for the well. In 2006 storage shed #1 was placed on the property and she tented next to the building, with the building itself being used to store “our stuff” (e.g. camping gear). There is now a full kitchen in shed #1. One year prior to the application for Permit 87 and Permit 88 an eight foot by eight-foot shed was put up. Prior to receiving the septic permit a portable chemical toilet was used.

(y) Ms. Bryanton testified that Leland Wood helped her with the applications and that she met him to ensure that they complied with all of the set-back requirements and placements. After consulting him she ended up moving one of the placements of the “bunkie” further back up on the property as she was advised that it was not placed properly. Draft applications were prepared and they were then reviewed by Mr. Wood and that was when Mr. Wood told her to correct the placement for the lower “bunkie”. She testified that she had told Mr. Wood that she bought sheds hoping that people would be able to stay in them. Mr. Wood, however, advised her that there are no “bunkies” permitted in PEI. She was told that only non-commercial accessory buildings could be used and that fit best for her as their plan was to use the “bunkies” as storage as well. She testified that when it came to the placement of the shed, she placed them on the left side of her property away from the Stringer’s property and out of view of their cottage so that there would be privacy for anyone who stayed in the “bunkies”. She testified that she never intended to have four “bunkies” on the property, only two “bunkies”.

(z) Ms. Bryanton testified that the “bunkies” are small pre-built sheds that were placed on the subject property and were then upgraded with vinyl siding and windows. The “bunkies” would allow her guests to sleep in them rather than in tents when it was raining. The “bunkies” do not have running water or electricity. An air mattress is used for sleeping. The original shed has a kitchen and waste is taken care of. The change of use for the original shed is representative of what it is. In the summer of 2015 there were more people at the subject property due to the activity of placing and upgrading the sheds and an outside portable toilet was used. The “bunkies” are not presently rented out

and she testified that she has no intention to rent out the “bunkies”. When questioned Ms. Bryanton testified that she did not anticipate putting anymore “bunkies” on the lot.

(aa) Under cross-examination by Counsel for the Appellant, Ms. Bryanton testified that she would consider using an outside portable toilet again as she had discovered that it was much more convenient than using the chemical toilet located in the original shed, now the cottage. She has not ordered an outside portable toilet so far this year. Ms. Bryanton testified that the cost of installing a septic system would exceed the benefit of such a system. She maintained that a septic system was not required; rather only a permit for such system. She stated that composting toilets were something she was looking into. Waste water from washing dishes, known as “greywater”, goes through a trough and is drained underneath into gravel and goes into the ground.

(bb) Ms. Bryanton testified that the change of use for the original shed was filed at Mr. Wood’s behest. When not used for sleeping, the bunkies are also used for seasonal storage of items such as a picnic table, wheel barrow, shovels, rakes, chairs etc.

(cc) Under re-direct examination from Counsel for the Developers, Ms. Bryanton testified that she is willing to investigate alternate waste disposal methods with the Minister’s staff.

(dd) In response to questions from the Commission panel, Ms. Bryanton testified that she never had any intention of installing a septic system for two weeks per year use. She then added that she would install such a system if she had to, but she would prefer to utilize a composting toilet. Ms. Bryanton confirmed that the “bunkies” were unfinished on the inside and had standard shed type doors.

(ee) Counsel for the Developers presented oral submissions in favour of upholding Permit 87 and Permit 88. These oral submissions include the following points:

- With respect to Permit 87, the change of use permit for the original shed now a cottage, a change of use represents an authorization to do rather than a certification of what has been done. Ms. Bryanton has testified that she will consult with the Minister’s staff to deal with alternative options to deal with waste and if necessary, she is open to installing a septic system.
- Both Permit 87 and Permit 88 exist for a period of twenty-four months from the date of issue. As that time period has not passed yet, there is no issue of non-compliance today.
- With respect to Permit 88, that permit is for three non-commercial storage buildings. Of these three buildings, two are used as “bunkies” for at most ten days per year. At all other times, they are used for storage. The mere fact that an air mattress is placed on the floor for a few days per year does not turn a shed into a dwelling.
- In this matter there are only two small buildings being considered as bunkies and this would not be of a sufficient degree to constitute a detrimental impact. Therefore, there is no need to have the application evaluated by the Minister’s planning staff.

- Bunkies are not a prohibited use and there would need to be clear and express wording to prohibit using non-commercial storage buildings as bunkies. A right to restrict should be interpreted narrowly while a right to permit should be interpreted broadly. There is no clear wording to prohibit the use of these buildings as bunkies.
- With respect to the definitions of dwelling and dwelling unit: a dwelling is a home, apartment building, a duplex etc. while a dwelling unit is a base unit such as an apartment in an apartment building. Thus, the definition of dwelling and dwelling unit, which are found in the same section of the Regulations, should be applied in the same way.
- The Developers contend that both Permit 87 and Permit 88 were validly granted. However, in the event that the appeal was successful, what would be an appropriate remedy? Permit 87 is a matter of compliance only. As for Permit 88, if the two non-commercial storage buildings used as bunkies were considered to be dwellings, then the only proper remedy would be to prohibit their use for sleeping as there would be no reason not to use them for non-commercial storage.

(ff) Counsel for the Developers submit that Permit 87 and Permit 88 should be upheld by the Commission and the appeal dismissed.

3. Findings

(13) After a careful review of all documents in evidence, the oral testimony of the witnesses, the written and oral submissions of counsel for the parties and the applicable law, it is the decision of the Commission to allow the appeal.

(14) Subsection 28.(1) of the **Planning Act** sets out the Commission's jurisdiction to hear this appeal of both Permit 87 as a change of use permit and Permit 88 as a development permit:

28. (1) Subject to subsections (1.2) to (4), any person who is dissatisfied by a decision of the Minister that is made in respect of an application by the person, or any other person, pursuant to the Regulations for

(a) a development permit;

(b) a preliminary approval of a subdivision or a resort development;

(c) a final approval of a subdivision;

(d) the approval of a change of use; or

(e) any other authorization or approval that the Minister may grant or issue under the Regulations,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

Emphasis added.

(15) The objects of the **Planning Act** are set out in section 2:

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.

(16) The following definitions found within section 1 of the Regulations are noteworthy:

(a) "accessory building" means a building whose use is incidental and subordinate to, and consistent with, the main or approved use of the lot upon which the building is located;

...

(c) "building" means any structure having a roof supported by columns or walls intended for the shelter, housing or enclosure of any person, animal, or chattel, and includes a mini home or mobile home;

...

(d) "change of use" means

(i) altering the class of use of a parcel of land from one class to another, recognizing as standard classes residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional uses, or

(ii) a material increase in the intensity of the use of a building, within a specific class of use as described in subclause (i), including an increase in the number of dwelling units within a building;

...

(f.3) "detrimental impact" means any loss or harm suffered in person or property in matters related to public health, public safety, protection of the natural environment and surrounding land uses, but does not include potential effects of new subdivisions, buildings or developments with regard to

(i) real property value;

(ii) competition with existing businesses;

(iii) viewscales; or

(iv) development approved pursuant to subsection 9(1) of the Environmental Protection Act;

...

(g.1) "dwelling" means a building or portion thereof designed, arranged or intended for residential occupancy, and

(i) "dwelling unit" means one or more rooms used or intended for domestic use of one or more individuals living as a single housekeeping unit with cooking and toilet facilities,

(ii) "single unit dwelling" means a building containing one dwelling unit and does not include mobile homes, but does include mini homes,

...

(v.2) "summer cottage" means a single unit dwelling that is intended to be occupied primarily during the summer months;

(17) At the hearing, Counsel for the Minister took the position that the Minister was correct in issuing both Permit 87 and Permit 88. However, Counsel for the Minister had taken a different position in his December 9, 2015 letter to the Commission, as he stated that it was the Department's position that non-commercial storage buildings are not intended to be used as sleeping quarters or bunkies. He advised that Regulations to address the issue would be prepared in the near future and requested that the appeal be put "on hold" until the new Regulations come into force.

(18) For the record, the appeal was not held in abeyance and there is no evidence before the Commission that such regulatory additions have been made.

(19) From a review of the file and the testimony of Mr. Carr, it is clear that the Minister did not consult with a professional land use planner prior to issuing either Permit 87 or Permit 88. This causes the Commission concern, especially where there are compelling reasons to seek the expertise of a professional planner. The testimony of Mr. Carr also indicates that the Minister's internal policy now provides for staff planning professionals to be consulted on applications such as those filed by the Developers. The Commission commends the Minister for this change in policy to now use land use planners on these types of applications.

(20) In the context of municipal planning decisions, the Commission has often utilized a two-part test to guide its consideration of an appeal. The Commission is of the view that the same test should be applied to appealable Ministerial decisions made under the **Planning Act** and the Regulations. In the context of Ministerial decisions, that test is:

- Whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the **Planning Act** and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for a development permit, including a change of use permit; and
- Whether the Minister's decisions with respect to the applications for development and the change of use have merit based on sound planning principles within the field of land use planning and as identified in the objects of the **Planning Act**.

The Commission's Consideration of Permit 87

(a) Permit 87 grants permission to the Developers to change the use of a non-commercial storage building previously permitted by permit K-095-2006 to a summer cottage on parcel number 931741 located on the south side of 158 Paradise Drive in the Community of Little Pond. The permit is dated August 12, 2015 and expires twenty-four (24) months from the date of issue. The permit is subject to the structure being erected in accordance with the approved application sketch and compliance with the Environmental Protection Act's 15 metre watercourse/wetland buffer zone.

(b) Permit 87 is issued under the authority of the Regulations and purports to change an existing non-commercial storage building to a summer cottage. While a summer cottage is a defined term under the Regulations, a non-commercial storage building is not defined in the Regulations. The definition of a summer

cottage references the meaning of a single unit dwelling which in turn references a dwelling unit. The definition of dwelling unit specifies a single housekeeping unit with cooking and toilet facilities. The testimony of Ms. Bryanton indicates that there is a kitchen, with wastewater from washing dishes going through a trough into a graveled area and into the ground. There is also a chemical toilet and Ms. Bryanton has considered using an outside portable toilet in the future as having used it in the summer of 2015 proved more convenient than using a chemical toilet.

(c) The evidence given at the hearing was that although a septic system is required for a dwelling unit to be considered a cottage, such a system did not have to be installed, but that all that is required is that a septic permit be obtained. This is an absurdity. While possession of such a permit may facilitate proceeding with the construction of a cottage, mere possession of a septic system permit, without installing the septic system itself, does not legitimately allow for the use of a cottage. The septic system must be installed, inspected and approved before the landowners may occupy their cottage. The presence of an approved septic system is necessary to protect the environment. The absence of the installation of an approved septic system places the environment at risk.

(d) The Commission does not endorse the actions of a property owner taking it upon themselves to install a greywater drainage system that has not been inspected and approved by the Minister's environment experts. It should be the Minister's environmental experts, not the property owner, who decides what is acceptable. The septic system, which is a condition required under Permit 87, must be used for greywater disposal as well.

(e) The Minister's staff did not perform a site inspection of the original 12 by 14 foot building prior to issuing Permit 87. In the absence of such an inspection, and given the testimony of Ms. Bryanton, the Commission finds that the 12 by 14-foot converted shed does not meet the definition of a "cottage" or a "dwelling unit" as set out in the Regulations without the installation of toilet facilities in the unit itself and without the installation of an approved septic system. The Commission, therefore, finds that the Minister did not follow an acceptable proper process of procedure as required in the Regulations in ensuring that the building that was to be subject to a change of use, complied with and met the Regulations. The Minister therefore contravened the first part of the two-part test as enumerated in paragraph 52.

(f) The second part of the two-part test enumerated in paragraph 52 requires that the Minister's decision for this change of use have merit based on sound planning principles within the field of land use planning as identified in the objects of the **Planning Act**. The evidence of the Minister's staff is that at the time this application was dealt with sound planning principles were far down on the list of considerations. As of the date of the hearing, the staff confirmed that sound planning principles are now on the top of the list of considerations that must be dealt with. This Commission has found, in numerous past decisions, that there must be evidence that a proposed development or change of use is consistent with sound planning principles (*Biovectra v. City of Charlottetown*, Order LA12-06). In determining whether or not a development proposal should go forward, the Minister must make an examination beyond the strict conformity with the Regulations and must consider sound planning principles including, but not limited to, the quality of architectural design, compatibility with architectural character of adjacent development, site development principles for the placement of structures and a thorough assessment of whether the development

is consistent with sound planning principles (*Atlantis Health Spa Ltd. v. City of Charlottetown*, Order LA12-02). The alteration of the character and appearance of the neighbourhood must also not be contrary to sound planning principles (*Compton v. Town of Stratford*, Order LA07-05).

(g) The evidence is irrefutable and the Commission finds that the Minister did not consider whether sound planning principles supported a decision to approve the change of use of the 12 by 14 foot building from “non-commercial storage building” to a summer cottage. As such, the Minister failed to demonstrate adherence to a key object of the **Planning Act**, namely efficient planning based on sound planning principles at the provincial level, and accordingly, the Commission hereby quashes Permit No. M-2015-0087.

The Commission’s Consideration of Permit 88

(h) Permit 88 grants permission to the Developer Betty Ann Bryanton to relocate three non-commercial storage buildings located on parcel number 931741 located on the south side of 158 Paradise Drive in the Community of Little Pond. The permit is dated August 12, 2015 and expires twenty-four (24) months from the date of issue. The permit is subject to the structure being erected in accordance with the approved application sketch, compliance with the Environmental Protection Act’s 15 metre watercourse/wetland buffer zone, and that none of the non-commercial storage buildings are to be serviced with sewer or water.

(61) Once again, the terminology of “non-commercial storage buildings” is neither defined nor referred to in the Regulations, although the term “accessory building” is both defined and referred to in the Regulations. It is not apparent from the face of Permit 88 that the non-commercial storage buildings are approved as sleeping quarters or “bunkies”. It was clear from the evidence that the Minister’s staff were well aware that these sheds were bought for and intended to be used so that people could stay in them. It was the Minister’s staff that advised that this was not permissible, but that the shed could fall within the Regulations and be permitted to be placed on the property as a “non-commercial storage building”. By accepting an application, knowing full well that the intended use is not what is stated on the application, the Minister therefore breached the first part of the two-part test and did not follow proper process and handling of the application.

(62) The evidence before the Commission is that at no time did anyone in the Department seek the opinion of a professional land use planner with respect to the application which resulted in Permit 88.

(63) The objects of the **Planning Act** require: efficient planning, protection of the Province’s unique environment, an effective means for resolving land use conflict and to provide the opportunity for public participation in the planning process. The Commission expects decisions made under the **Planning Act** and the Regulations to not only follow the legislative requirements but also be in accordance with sound planning principles. Adherence to sound planning principles is especially important where, as here, the legislation has not addressed a particular type of development. Sound planning principles could consider not only whether “bunkies” would or would not be permitted, but also, if deemed to be permissible, determine the number permitted on a parcel, size, location, appearance, consultation with adjacent property owners and other such factors.

(64) The Commission reiterates, as set out in paragraph 58 herein, that this type of development must have merit based on sound planning principles. Adherence to sound planning principles is especially important where there are applications to place a number of buildings on a single lot all of which, for the most part, would be used as “bunkies”. Sound planning principles would determine whether it is appropriate to have a sprinkling of sheds over a cottage lot property and, if so, what number, size and location, appearance would be permitted on the parcel, after consultation with adjacent property owners and consideration of other factors. (*Atlantis Health Spa Ltd. v. City of Charlottetown*, Order LA12-02). The **Planning Act** addresses not only municipalities with Official Plans and land use bylaws but also areas of the Province which do not have Official Plans and land use bylaws. Sound planning must be a common feature of development throughout Prince Edward Island and property owners located in areas of the Province for which there is no municipal government should not be subject to inferior land use planning rights and responsibilities. Sound planning principles are a guard against arbitrary decision making especially where a regulatory checklist does not address a concern. Sound planning principles require regulatory compliance but go beyond merely insuring such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted. The Minister’s staff admitted that, in hindsight, the decision to grant the permits for these applications allowing the placement of three sheds on one lot was not based on sound planning principles. The Minister’s staff further acknowledged that the applications, if they were now received, would not have been processed without land use planners being consulted.

(65) The Commission notes that when the Appellant contacted the Minister’s department to get information on the building permits that were issued she was advised that she would have to launch an appeal with this Commission in order to get that information. The Commission recommends that the Minister change this policy when dealing with inquiries with respect to applications or permits under the **Planning Act**. No one should be forced to launch a quasi-judicial appeal simply to obtain information with respect to a permit issued by the Minister. As the Commission has seen in the past this results in numerous appeals being filed, only to be withdrawn after there is full disclosure to the Appellant with respect to the permit. The Commission recommends that the Minister develop an internal procedure to allow for the efficient dissemination of information on permits issued so that interested parties can then make a determination as to whether or not an appeal should be filed.

(66) The Developers’ applications to designate a small storage shed a cottage and receive approval for “bunkies” were not contemplated by the Regulations and thus required consultation with a professional land use planner. As the Minister’s staff did not consult with a professional planner, the Commission finds that the Minister failed to consider sound planning principles. Accordingly, the second part of the two-part test has not been met and the Commission hereby quashes Permit No. M-2015-0088.

4. Disposition

(67) An Order allowing the appeal and quashing Permit No. M-2015-0087 and Permit No. M-2015-0088 follows.

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Order

WHEREAS the Appellant Donna Stringer appealed the decision of the Minister of Communities, Land and Environment to issue two permits, both dated August 12, 2015;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on July 21 and 22, 2016 after due public notice and suitable scheduling for the parties and their legal counsel;

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 allowed.
2. Permit No. M-2015-0087 and Permit No. M-2015-0088 issued by the Minister on August 12, 2015 are hereby quashed.

DATED at Charlottetown, Prince Edward Island, this 10th day of August, 2017.

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd.) Douglas Clow

Douglas Clow, Vice-Chair

(sgd.) John Broderick

John Broderick, 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)

Tab 9.



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: April 29, 2024

Docket: LA23019

Type: Planning Act Appeal

INDEXED AS: Geraldine Johnston-Grinton and Paul Grinton v. Town of Three Rivers,
2024 PEIRAC 4 (CanLII)

Order No: LA24-04

BETWEEN:

Geraldine Johnston-Grinton and Paul Grinton

Appellants

AND:

Town of Three Rivers

Respondent

AND:

Kreative Acres Corp.

Developer

ORDER

Panel Members:

J. Scott MacKenzie, K.C., Chair

M. Douglas Clow, Vice-Chair

Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd. Jessica Gillis)

General Counsel

Island Regulatory and Appeals Commission

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APPEARANCES & WITNESSES

- 1. For the Appellants, Geraldine Johnston-Grinton and Paul Grinton:**

Counsel:

Shea Callaghan, Key Murray Law

Witnesses:

Geraldine Johnston-Grinton

Paul Grinton

Randy K. MacDonald, CEO/Founder, RKM FIRE Safety Consulting

- 2. For the Respondent, Town of Three Rivers:**

Counsel:

Melanie McKenna, Cox & Palmer

Witnesses:

Lee Kenebel, Planning & Development Officer, Town of Three Rivers

- 3. For the Developer, Kreative Acres Corp:**

Counsel:

Nicole McKenna, Carr, Stevenson & MacKay

1. INTRODUCTION

1. This is an appeal of the decision of the Town of Three Rivers (the “Town”) to issue a development permit to Kreative Acres Corp., the Developer, to construct a mixed-use development consisting of a 22-unit apartment building with ground floor commercial space, together with a major variance for an additional 4.8ft of building height, on land at PIDs 198069, 196675 & 196642, on School Street in Montague, PEI (the “Development”).
2. The Appellants live across the street from the Development. They have argued that in approving the Development, including the major variance, the Town did not conform with its Official Plan or Development Bylaw, and made various procedural errors in the approval process.

2. BACKGROUND

3. On May 12, 2023, the Developer submitted a Development Permit Application (“Application”) to the Town of Three Rivers seeking approval to develop a 22-unit apartment building with commercial space and underground parking. The Application also sought a major variance for additional building height.
4. On May 30, 2023, Lee Kenebel, Planning & Development Officer for the Town, emailed the Developer to say the application had been “registered”. Mr. Kenebel’s email also indicated that the Town’s new official plan and bylaw had recently come into effect¹, giving the Town a way to deal with the Developer’s variance request.
5. The Town sent a notification letter to nearby property owners on June 1, 2023, advising them that the proposed major variance application would be presented to Planning Board on June 22, 2023, and to Council on July 10, 2023.
6. At the Town’s Planning Board meeting on June 22, 2023, the Planning Board voted unanimously to recommend Council approve the Development. At the regular meeting of Council on July 10, 2023, Council voted to approve the Development, including the major height variance.
7. It was after this time that an error was found in the approval with respect to the PIDs for which the Development was approved. As a result, the Town sent a second notification letter to nearby property owners on July 13, 2023.
8. At the special meeting of Planning Board on July 20, 2023, Planning Board rescinded their initial recommendation and approved a second recommendation to Council to approve the Development, with the corrected PIDs. At a special meeting of Council on July 24, 2023, Council rescinded the initial approval and unanimously approved the Development, including the major height variance, with the corrected PIDs.
9. Following Council’s approval, a development permit was issued to the Developer, on July 24, 2023, approving a 22-unit apartment building with ground floor commercial space, together with a major variance for an additional 4.8ft of building height subject to the following conditions (the “Development Permit”):

¹ The Three Rivers Development Bylaw was approved and adopted by Council on April 24, 2023, and approved by the Minister of Housing, Land and Communities on May 25, 2023.

Condition 1: The Permit is valid for 12 months from the date of issue.

Condition 2: The methodologies for erosion and sediment control before/during/after the construction process detailed on Drawing C100 shall be implemented upon the commencement of the development and remain in place until completion of the development hereby approved.

Condition 3: This applicant is required to secure any access/entrance permits through the Department of Transportation and Infrastructure.

Condition 4: The approved plans are:

- The completed application form.
- Drawings A001, A002, A030, A100, A101, A102, A200, A300, A301, & C100 dated May 12, 2023.

10. On August 11, 2023, the Appellants filed a Notice of Appeal with the Commission. The appeal was heard on February 7, 2024.

3. ISSUES

11. The appeal raises two main questions for the Commission. First, the Commission must determine whether the Town followed its process and discharged its duty of procedural fairness. Second, the Commission must consider whether the decision made by the Town was one based on sound planning principles.

4. DISPOSITION

12. For the reasons that follow, the appeal is dismissed.

5. EVIDENCE

13. The evidence before the Commission consisted primarily of the Town's record of the decision, a total of approximately 185 pages and comprised of supporting information, including: the Developer's application; correspondence between the Developer and Mr. Kenebel and the Appellants and Mr. Kenebel; the Development Report of Mr. Kenebel; and the verbatim minutes of the Planning Board and Council meetings where this Application was discussed.
14. At the hearing, the Town called one witness: Lee Kenebel, the Planning & Development Officer for the Town. The Town also made written submissions before the hearing.
15. The Appellants both testified at the hearing. They also called Randy K. MacDonald, CEO/Founder of RKM FIRE Safety Consulting, as a witness to speak to whether the Development Permit issued complied with fire safety codes.
16. In addition, prior to the hearing the Appellants made written submissions outlining their position. The submissions were supported by various documents, including minutes from previous Council meetings, photographs of the property taken by the Appellants, information respecting the Appellants' request to access the development application, and

the Appellants' notes from her presentations to Planning Board and Council in respect of this proposed development.

17. The Developer did not give any evidence, nor did he provide written submissions. At the hearing, Counsel for the Developer advised that the Developer supports the position and submissions of the Town on the matters under appeal.

6. ANALYSIS

A. Authority and Guideline

18. The parties agree that the guideline developed by the Commission for exercising its appellate authority under the *Planning Act*² is applicable in this case. The guideline involves two main considerations:³

- 1) Whether the municipal council followed the proper procedure as required by its bylaw, the Planning Act and the law in general, including the duty of procedural fairness; and
- 2) Whether the decision made by the municipal council has merit based on sound planning principles in the field of land use planning and as enumerated in the Official Plan and Bylaw.

19. The Commission does not lightly interfere with decisions made by a municipal council.⁴ The Commission will typically be deferential toward planning decisions by Council that are properly made, and will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the *Planning Act*, the applicable official plan and bylaw, and sound planning principles.⁵

B. Procedural Issues

20. The Appellant raised several procedural issues with the Town's decision. We have summarized and paraphrased them as follows:
 - i. The Application was approved under the incorrect bylaw;
 - ii. The Application was incomplete, did not include the required documentation, and is inconsistent with the approved Development Permit;
 - iii. The Appellant was not provided an appropriate opportunity to view the Application; and

² RSPEI 1988, P-8.

³ See, for example, Order LA22-07, *Landfest Company Ltd. v. Town of Stratford*, at para 32 [*Landfest*]; and Order LA17-02, *APM Construction Services Inc. v. Community of Brackley*, at para 21.

⁴ *Landfest* at para 32.

⁵ Order LA18-02, *Queens County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41. [QCC No. 40]

- iv. Council approved the major zoning variance without providing adequate notice to nearby property owners.
21. Each of these procedural issues will be addressed below. In accordance with previous Orders of the Commission, we will also consider the reasons provided by Council in approving this Development.

i. The Application was approved under the incorrect bylaw.

22. The Appellants have argued that the Developer's Application was approved under the incorrect bylaw. The Developer submitted his application on May 12, 2023, when the bylaw in force was the 2017 Town of Montague Zoning Bylaw (the "2017 Bylaw"). The new Three Rivers Development Bylaw (#2023-02) (the "2023 Bylaw") only became effective on May 25, 2023.⁶ Therefore, the Appellants have argued that the Developer's Application should have been considered in accordance with the provisions of the 2017 Bylaw in force at the time the Application was submitted.
23. The Town's position is that the Application was properly assessed in accordance with the 2023 Bylaw, because the Application was not "registered" until May 30, 2023, after the 2023 Bylaw became effective. The Town further submits that the parties mutually agreed that the Application would be registered and considered after the 2023 Bylaw became effective.
24. At the hearing, Mr. Kenebel testified that when the Town and Developer began having conversations about this Development, the parties were both aware there would soon be a new Official Plan and Development Bylaw ("2023 Planning Documents").⁷ He testified that the Application was made within days of the 2023 Planning Documents becoming effective, and was not registered until May 30, 2023, after it was reviewed and assessed by the Town's planning staff. An email from Mr. Kenebel to the Developer on May 30, 2023, states (in part):
- Just a quick update to say your application has been registered. On Monday [sic] the new official plan & bylaw came into effect. This gave us a means to deal with the height variance that is within the new bylaw provisions for major variances. Something the Montague bylaw lacked. [...]
25. Mr. Kenebel testified that it is inevitable there will be live case work ongoing when new planning documents are adopted, and a decision has to be made about which plans that live case work will be considered under. In this case, the Developer was satisfied to have the Application assessed and considered under the new 2023 Planning Documents. Mr. Kenebel further testified the Application met the requirements of the 2023 Planning Documents.
26. In this case, the Commission agrees with the position of the Town. The Town's evidence demonstrates that though the Developer submitted his application on May 12, 2023, he was aware the approval of the 2023 Planning Documents was imminent and agreed to his Application being assessed and considered in accordance with those new planning documents. The Developer did not provide any evidence to the contrary. Nor did the

⁶ Section 17 of the *Planning Act*, RSPEI 1988, P-8, states: "[Bylaws] shall be subject to the approval of the Minister and shall be effective on the date of approval by the Minister [of Housing, Land and Communities]."

⁷ Public Notice was published in the Royal Gazette on June 24, 2023, giving notice that the Minister approved the new Official Plan and Development Bylaw for the Town of Three Rivers, effective May 25, 2023.

Appellants, for that matter. The Application was registered by the Town on May 30, 2023, after the 2023 Planning Documents became effective. The Commission is satisfied that, in this case, the Application was properly considered and approved under the 2023 Planning Documents.

ii. The Application was incomplete, did not include the required documentation, and is inconsistent with the approved Development Permit.

27. The Appellants raised several issues with the Developer's Application. First, they pointed out sections of the Application that were not filled in by the Applicant, including a section relating to municipal services (i.e. water and sewer connections). They also submitted that the Application was not accompanied by all required documentation. In particular, the Appellants submitted that the plans attached to the Application did not show the setbacks to proposed structures, as required by subsection 3.2.3.2 of the 2023 Bylaw, and no survey was provided. Finally, the Appellants also submit that the approved Development Permit is not consistent with what was requested on the Application. For example, the Application requested a variance of 5 feet 10½ inches, while the approved Development Permit authorized a height variance of 4 feet 10 inches.

28. To support these grounds of appeal, the Appellants relied on a previous order of the Commission that commented on the issues with incomplete development applications. In Order LA20-03, *PEI Energy Corporation v. Rural Municipality of Eastern Kings*, the Commission held that planning and development must be approached in a professional manner, consistent with a process that provides for development permits to be issued only after all pertinent facts and information have been filed with a Municipal decision-maker. The Commission commented that this allows for an informed decision to be made to approve or reject an application and to ensure what is being proposed complies with the bylaws, the official plan and sound planning principles.

29. In response, the Town submitted:

- The Town often receives incomplete applications and works with applicants to ensure that all necessary information is provided before the application is considered by Planning Board and Council. Mr. Kenebel's testimony supported this submission.
- The Developer's Application included all required documentation, including site plans and floor plans, compliant with section 3.2.3 of the 2023 Bylaw, and Town planning staff was easily able to ascertain various measurements, including setbacks, from the plans submitted by the Developer.
- With respect to the survey, the 2023 Bylaw provides the Town with discretion to require a survey (per s. 3.2.3.5), but regardless, the Town was in possession of a survey for the relevant property that was stamped and certified by a Prince Edward Island Land Surveyor following the March 2022 lot consolidation.
- In an effort to work collaboratively with applicants, Town planning staff regularly assist applicants with amendments to their applications to ensure compliance with the Official Plan and Development Bylaw. Mr. Kenebel testified that more often than not, permit applications change throughout their processing to ensure they are accurate and comply with the Development Bylaw. In this case, the proposed

development presented to and approved by Council is consistent with the Development Permit issued to the Developer.

30. The Town distinguished Order LA20-03 from the present case by highlighting that in that case, the development permit was issued upon receipt of an incomplete application and an approval process described by the Commission as cursory, at best. Further, the development officer in that case had testified that after reading the application and meeting with the applicant, he was still not sure what the applicant intended to build. Finally, at the hearing before the Commission, the applicant still could not articulate his proposed development.
31. Based on the above, the Appellants have not persuaded the Commission with respect to these grounds of appeal. The evidence demonstrates that the Town's planning staff worked with the Applicant to ensure that a complete and supported Application was received, assessed and presented to Planning Board and Council. The Commission is satisfied, based on the Record and testimony of Mr. Kenebel, that the Developer's Application was accompanied by the required plans and information as outlined at section 3.2.3.2 of the 2023 Bylaw. Finally, the Commission accepts that permit applications often change throughout the application process. In this case, the final proposed development and height variance that was presented to Planning Board and Council, and ultimately approved by Council, is consistent with the Development Permit issued to the Developer.
32. The Commission also agrees with the Town that Order LA20-03 can be distinguished. The evidence before the Commission reflects that the Developer's proposed development was described with sufficient clarity, particularly before it was presented to Planning Board and Council, such that it allowed for an informed decision to be made to approve or reject the Application and to ensure what was being proposed complied with the bylaws, the official plan and sound planning principles.

iii. The Appellant was not provided an appropriate opportunity to view the Application.

33. The Appellants submitted that they did not have a proper opportunity to view the Developer's Application and supporting documents prior to the approval by Council. Their position is that the planning process is a public one and that residents should have access to all application information. Dr. Johnston-Grinton testified that she attended the Town's office on or around June 23, 2023, to view the Application and supporting documents, but that the detailed plans (for example, floor plans) were not included with the information made available for public viewing. She testified that Mr. Kenebel was not there the day she attended, and that Patrick Donahue, the Town's Development Technician, showed her to a table where the information was located. Dr. Johnston-Grinton also testified that she met with Mr. Kenebel twice.
34. Testimony from Mr. Kenebel contradicts this. He testified that the Application and supporting documents were available for residents to come and see. He said he could not pinpoint the date Dr. Johnston-Grinton attended the office, but that the plans were there as a printed package on a table outside his office. An email from Mr. Kenebel to Dr. Johnston-Grinton on June 26, 2023, attached "a range of site/elevation and renderings" and noted that "paper copies will remain available at the office for viewing". Mr. Kenebel sent a second email attaching plans to Dr. Johnston-Grinton on July 4, 2023. Further, email correspondence in the Record indicates that Mr. Kenebel responded to some of the

Appellants' concerns via email, and his testimony is consistent that he met with Dr. Johnston-Grinton twice.

35. The Commission agrees with the Appellants that the planning process is a public one and that residents should be afforded a full and fair opportunity to review the complete application, particularly when they are among the residents entitled to specific notice of an application in accordance with the Bylaw. In this case, the evidence discloses that Mr. Kenebel provided at least some of the plans to Dr. Johnston-Grinton via email, and the parties' evidence was consistent that they met twice to discuss the Appellants' concerns. Therefore, despite the discrepancy about what documents were available to Dr. Johnston-Grinton the day she attended the Town's office, the Commission is otherwise satisfied that the Town made good efforts to ensure the Appellants had a fair opportunity to review the Application.
36. As a final note, the Appellants also raised some issues with respect to Town's access to information process pursuant to the Town's Access to Information and Protection of Personal Property Bylaw. Those issues are beyond the jurisdiction of the Commission to comment on in this appeal. However, we will say that the Commission views the public's participation to be an important part of the planning process, particularly where public notice is required by the planning authority's bylaw or other governing documents. In order for residents to fully participate, they must have full and fair access to an application, and the Commission encourages the Town to facilitate that access.

iv. Council approved the major zoning variance without providing adequate notice to nearby property owners.

37. The Appellants also argued that proper notice of the major variance was not given to nearby property owners in accordance with section 3.8.2.b of the 2023 Bylaw. They referred to one specific property owner and submitted that their name and address is not listed in the Town's Record as having received a notification letter. The Appellants did not specify whether the issue was with the first notification letter on June 1, 2023, the second notification letter on July 13, 2023, or both.
38. The Town's evidence contradicts this submission. Mr. Kenebel testified that all property owners identified as being within 100 metres of the subject property were sent a letter dated June 1, 2023, and again on July 13, 2023, notifying them about the major variance request, in accordance with section 3.8.2.b of the 2023 Bylaw. He testified to the list(s) of property owners included in the Town's Record. One lists names and addresses, while the other lists PID numbers. Mr. Kenebel testified that the PID number of the specific property owner identified by the Appellants was included on the list of owners identified by PID numbers, and that tells him they were notified.
39. The Appellants did not provide any direct evidence to support their assertion regarding lack of notice to this one specific property owner. The Commission finds there is no evidence of any defect in the notice procedures followed by the Town and dismisses this ground of appeal.

v. Council's Reasons for approving the Development Permit.

40. Though the Appellants did not expressly raise this as an issue, the Commission has been consistent in past decisions that a municipal Council must provide reasons for its planning decisions. Reasons assist the public and developers to understand how and why a

decision was made, and also assist the Commission in fulfilling its appellate review responsibilities.⁸

41. Before the Development Permit was issued to the Developer, on July 24, 2023, it was the subject of discussion at both a regular Planning Board and regular Council meeting, and a special Planning Board and special Council meeting (see paragraphs 5 - 8 above).
42. At the June 22, 2023, regular Planning Board meeting, Mr. Kenebel presented his report on the proposed development. Dr. Johnston-Grinton was also present and presented her objections to Planning Board, as did a few other members of the public. After some discussion and questions by Planning Board members with respect to, for example, the sediment control plan, nature of the development in the area, traffic, and sidewalks, Planning Board voted unanimously to recommend to Council to approve the development, including the height variance.
43. Council met on July 10, 2023. The Developer, Dr. Johnston-Grinton and other members of the public presented to Council at this meeting. Mr. Kenebel was also there and answered questions. One Councillor raised questions with respect to traffic and fire safety, given the height of the proposed building. Mr. Kenebel responded to both questions. Ultimately, Council voted 7 to 1 in favour of approving the Development, thereby accepting Planning Board's recommendation.
44. As noted previously, it was after Council's approval that an error was found with respect to the PIDs for which the Development was approved. As a result, a special meeting of Planning Board was held on July 20, 2023, where Planning Board rescinded their initial recommendation and approved a second recommendation to Council to approve the Development, with the corrected PIDs. The unanimous approval was given after some more discussion between members about fire safety and the development's impact on nearby trees.
45. At a special meeting held on July 24, 2023, Council unanimously voted to accept Planning Board's recommendation a second time. At this meeting, both Appellants spoke in objection to the Development.
46. After reviewing the verbatim minutes of the Planning Board and Council meetings wherein this development was discussed, the Commission is satisfied that the minutes include reasons to justify to the public and the Developer why the decision was made to approve this Development, and to assist the Commission in fulfilling its appellate review responsibilities.

vi. Conclusion regarding procedural grounds of appeal.

47. In conclusion, on the whole, the Commission is satisfied that the Town discharged its duty of fairness in processing and considering the Developer's Application and request for a major height variance. Therefore, the Commission will show deference to Council's decision to approve the Development Permit.

⁸ Order LA20-04, *Jessie-Frost Wicks et al. v. City of Charlottetown*, at para 33.

C. Sound Planning Principles

48. Moving on to the second consideration under the Commission's accepted guideline, it is well-settled that the Commission must be satisfied that the final decision made by Council was made in accordance with the Town's Official Plan and Development Bylaw, and has merit based in sound planning principles.
49. The Appellants raised substantive issues with respect to the soundness of the Town's decision to approve the proposed Development and major height variance. Generally, they submit that the development itself, and Council's decision to approve it, is not in accordance with sound planning principles. In particular, they submit that Council failed to consider health and safety concerns in the form of fire safety when approving the Development and height variance.
50. The Appellants submit that pursuant to the Town's Official Plan and 2023 Bylaw, it is a responsibility of Council to ensure that the health and safety of persons living in the Town is considered in the context of planning decisions.⁹ Further to this, the Appellants argue that the major height variance approved by Council is inconsistent with the Official Plan and 2023 Bylaw because: (1) the fire rescue equipment of the Montague Volunteer Fire Brigade (the "MVFB") cannot reach the building's highest point; (2) the MVFB was not consulted by the Town in relation to the Development; and (3) therefore, the decision of Council to approve this Development failed to consider the health and safety of persons living in the Town.
51. The Appellants supported their position with evidence from Randy K. MacDonald, CEO/Founder of RKM FIRE Safety Consulting. Mr. MacDonald's experience in fire safety dates back decades. He was the Fire Chief for the City of Charlottetown from 2009 to 2022. Before that, he was the Deputy Fire Chief and a Fire Inspector for the City of Charlottetown. Mr. MacDonald has extensive training in the areas of fire management, fire investigation, fire suppression and fire prevention from various organizations, including the National Fire Protection Association. Mr. MacDonald has no expertise in the field of land use planning and the Commission did not accept him an expert, but permitted Mr. MacDonald to provide opinion evidence restricted matters of fire safety.
52. Mr. MacDonald prepared a written report and testified before the Commission at the hearing. Mr. MacDonald's report provides his opinion on whether the Development Permit approved by the Town complied with the municipal official plan and bylaws, and other applicable legislation and codes, including the National Building Code, National Fire Code, and Life Safety Code.
53. Mr. MacDonald's report concludes that, in accordance with the Life Safety Code 101.3.3.280, the proposed building be considered as a four-storey building. Mr. MacDonald also commented on "operational concerns", advising that consultation with the local fire department (in this case, the MVFB) during the planning process would ensure the fire department has sufficient equipment, training and water supply to combat a fire involving proposed developments. Mr. MacDonald testified that, in this case, he had concerns about the lack of consultation between the Town and MVFB before approval of the Development Permit. He testified that his understanding from reviewing the MVFB's website is that they do not have an aerial device sufficient to service a building of this height. Further, we note that the Appellants' provided an email exchange between Dr.

⁹ Official Plan, section 2.4; 2023 Bylaw, s. 1.2.1.a

Johnston-Grinton and the MVFB, dated October 3, 2023, which states that they “do not have a ladder truck”.

54. With respect to fire suppression, Mr. MacDonald comments that the Town has acknowledged the importance of fire suppression in section 9.3 of its Official Plan. He further concludes that the National Fire Protection Association and 2023 Bylaw have conflicting setback requirements; however, he states that determining how that conflict is to be resolved was outside the scope of his review.
55. In brief, the Town’s position in response is that Mr. Kenebel’s knowledge and experience as a professional land-use planner led him to a sound, well-informed recommendation to Council, and that Council’s decision was made in accordance with sound planning principles. With respect to the issue(s) of fire safety, the Town submits that these are matters appropriately dealt with at the building permit stage rather than the development permit stage.
56. Prior to the meetings of Planning Board and Council, Mr. Kenebel prepared a Development Report for their review. He testified before the Commission as to his conclusions in this report, which recommended approval of the development and height variance with conditions. Mr. Kenebel’s Development Report outlines the Official Plan policies around housing development, and comments that the need for additional higher-density housing in sustainable, serviced areas is a significant factor weighing in support of the Development. Mr. Kenebel testified that this is the right development in the right location, which is a key planning consideration. His report considered the waterfront context of the subject property, the design elements unique to the site itself, and the overall contribution of the development to the Town. For example, he concludes that the addition of commercial retail space is a welcomed feature of the development, supported by the Official Plan, that may bring economic benefits beyond the Town.
57. Mr. Kenebel’s Development Report also considered the relevant provisions of the 2023 Bylaw, including the requirements of the Mixed-Use Zone like setbacks, frontage and the need for a height variance for this particular design. The Development Report specifically addresses how the height variance meets the factors to be considered in a variance request at section 3.6.1 of the 2023 Bylaw. The Report also comments on parking and the requirement that the Development be centrally serviced. Ultimately, Mr. Kenebel concluded that the proposed Development “promotes efficient land use by utilizing existing infrastructure and services” and “maximizes the use of available land, reducing urban sprawl and preserving open space” as advocated within the Official Plan, and that the height variance meets the requirements of the 2023 Bylaw.
58. With respect to the issue of public safety raised by the Appellants, Mr. Kenebel testified that this is a consideration in the planning process, particularly in considering what he termed “the right use in the right area”. He gave the example of a playground near a public road. However, he testified that an official plan and bylaw consider public safety in the context of land use planning, and do not supersede a building permit assessment, which is where matters of fire safety are more appropriately considered.
59. The Town also provided evidence in the form of an email from the Provincial Fire Marshal to the Town’s Development Technician, dated October 15, 2021, advising that his office requires a completed “Code Compliance Certificate” and that compliance inspections either fall with the permit-issuing body or the Building Code section of the Land Division (of the Department of Housing, Land and Communities). The Town submits that in the

Town of Three Rivers, the Building Code section is responsible for the administration and enforcement of the *Building Codes Act*¹⁰ pursuant to an agreement between the Town and the Minister of Housing, Land and Communities per subsection 4(3) of the *Building Codes Act*. Therefore, the Town concludes that the issues raised by the Appellants relating to the fire safety of buildings in the Town are appropriately dealt with at the building permit stage.

60. On a review of the evidence and submissions of the parties, the Commission is satisfied that Council's decision to approve this proposed Development and major variance was based on the Official Plan, 2023 Bylaw, and sound planning principles.
61. First, Mr. Kenebel's Development Report is thorough and comprehensive. It addresses how the Development meets the objectives of the Official Plan and complies with the 2023 Bylaw, including the variance factors at section 3.6.1. Mr. Kenebel has experience and training as a land-use planner and is a member of the Royal Town Planning Institute. The Commission accepts his evidence as credible and knowledgeable about the issues testified to. Importantly, we note that Mr. Kenebel's evidence was the only evidence before the Commission on planning-related matters. The Commission has previously commented that where sound planning principles are at issue, it is incumbent upon an appellant to bring forward objective and reliable evidence from a planning professional or a person with experience in making planning-related decisions, and that more than the subjective concerns are required.¹¹
62. With respect to the specific issues of fire safety raised by the Appellants and testified to by Mr. MacDonald, the Commission understands the Appellants' position to be that the Town should not approve the development of a 4-storey building in Montague because the MVFB does not have an aerial device sufficient to service a building of this height. On this point, the Commission accepts the position of the Town and the evidence of Lee Kenebel that matters of building code and fire code compliance are addressed at the building permit stage, and that enforcing the *Building Codes Act* in the Town of Three Rivers is the jurisdiction of the Minister of Housing, Land and Communities.
63. Finally, the Commission notes that the question of fire safety was raised by Councillors and addressed by Mr. Kenebel at both the first Council meeting on July 10, 2023, and the second Planning Board meeting on July 20, 2023. This demonstrates to the Commission that Planning Board members and Council were alive to the issue and satisfied with Mr. Kenebel's assessment that the requirement for the building to be sprinklered falls under the requirements of the building permit approval.
64. To conclude, the Commission is satisfied that the decision made by the Town has merit based on sound planning principles in the field of land use planning and as enumerated in the Town's Official Plan and 2023 Bylaw.

7. CONCLUSION

65. The appeal is dismissed. The Commission is satisfied that the Town's decision to approve the Development and major height variance was procedurally fair and was made in accordance with the Official Plan and 2023 Bylaw, and was based on sound planning principles.

¹⁰ RSPEI 1988, B-5.1.

¹¹ QCC No. 40, at para 41.

66. The Commission thanks the Appellants, the Town and the Developer for their submissions in this matter.

IT IS ORDERED THAT

67. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, April 29, 2024.

BY THE COMMISSION:

(sgd. J. Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair

(sgd. M. Douglas Clow)

M. Douglas Clow, Vice-Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, 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.

NOTE: In accordance with IRAC'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.

Tab 10.



PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: May 2, 2023
Docket: LA22-013
Type: Planning Appeal

INDEXED AS: New Homes Plus Inc. v. City of Charlottetown, 2023 PEIRAC 3 (CanLII)

Order No: LA23-03

BETWEEN:

New Homes Plus Inc.

Appellant

AND:

City of Charlottetown

Respondent

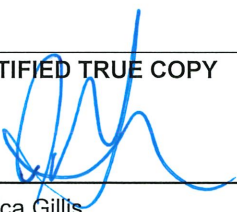
ORDER

Panel Members:

J. Scott MacKenzie, K.C. Chair

Erin T. Mitchell, Commissioner

CERTIFIED TRUE COPY



Jessica Gillis
General Counsel
Prince Edward Island Regulatory
and Appeals Commission

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Appearances

For the Appellant, New Homes Plus Inc.

Counsel:

Iain McCarvill, Key Murray Law

For the Respondent, City of Charlottetown

Counsel:

David W. Hooley, K.C. and Maggie Hughes,
Cox & Palmer

1. INTRODUCTION

1. This is an appeal of the decision of the City of Charlottetown (the “City”), dated July 11, 2022, to reject a rezoning request by New Homes Plus Inc. (the “Appellant”) to amend Appendix G – Zoning Map of the Zoning & Development Bylaw from Single-Detached Residential, Small (R-1S) to Single-Detached Residential, Narrow (R-1N) to permit the subdivision of 46 lots for single-detached dwellings on the remaining portion of land in Sandalwood subdivision, an extension of Mutch Crescent (PID#773051) (the “Property”).
2. The Appellant sought to rezone the parcel in order to subdivide the property into 46 narrow frontage lots to construct single-detached dwellings. The decision to reject the rezoning request, in effect, restricts the Appellant to subdividing the parcel into 29 lots, as is currently permitted in the Single-Detached Residential, Small (R-1S) zone.

2. BACKGROUND

3. On April 27, 2022, the Appellant submitted a Rezoning & Amendments Application, seeking to rezone the Property from R1-S to R1-N (the “Application”).¹ The proposed use of the Property was to remain as single-family residential.
4. On June 6, 2022, the Planning and Heritage Board (“Planning Board”) considered the Application and voted to recommend to Council that the request proceed to public consultation.² Council passed a resolution on June 13, 2022, to approve that the request proceed to public consultation.³
5. On June 14, 2022, the City sent notice of a public meeting, scheduled for June 28, 2022, to approximately 60 surrounding property owners located within 100 meters of the Property.⁴ General notice of the public meeting also appeared in The Guardian newspaper on June 18, 2022.⁵
6. On June 28, 2022, the City held a public meeting to seek public input on the Application.⁶ The meeting was well-attended by members of Council, with only Councillor Greg Rivard being absent. Some members of the Planning Board were also present. The public meeting included a presentation of the Application by City planner, Laurel Palmer Thompson, and the Appellant, Warren Doiron for New Homes Plus. Several members of the public attended the meeting and asked questions and made comments regarding the Application. The City also received approximately 14 written submissions from the public, the majority of which objected to the Application.⁷

¹ Record filed by the City of Charlottetown, Tab 2. [Record]

² Record, Tab 5

³ Record, Tab 8.

⁴ Record, Tabs 9 and 10.

⁵ Record, Tab 11.

⁶ Record, Tabs 13 to 17.

⁷ Record, Tab 18.

7. On July 4, 2022, the Planning Board met to consider the Application. Ultimately, the Planning Board voted 5-3 to recommend to Council that the Application be rejected.⁸ This meeting will be discussed in more detail in the Analysis section of this Order.
8. At the regular meeting of Council on July 11, 2022, Council voted 7-1 to reject the Application.⁹ This meeting will, similarly, be discussed in more detail in the analysis that follows.
9. The Appellant filed a Notice of Appeal on July 27, 2022, appealing the City's rejection of the Application.
10. The Appeal was heard by the Commission on December 15, 2022.

3. ISSUES

11. The appeal raises two main questions for the Commission. First, the Commission must determine whether the City followed its procedure and discharged its duty of procedural fairness. Second, the Commission must consider whether the decision made by the City was one based on sound planning principles.

4. DISPOSITION

12. For the reasons that follow, the appeal is allowed. The decision made by Council is quashed. The Commission orders that the Property be rezoned Single-Detached Residential, Narrow (R1-N).

5. POSITIONS OF THE PARTIES

13. The Appellant raised three procedural issues with the City's decision:
 - i. That the City failed to provide written notice of its decision to the Appellant as required by the Bylaw;
 - ii. That written comments from the public were received and accepted by the City after the deadline set out in the public notice; and
 - iii. That the City failed to provide any or adequate reasons for its decision to reject the Application.
14. The Appellant also believes that the City's decision is not based on sound planning principles.
15. The City takes the position that all proper processes and procedures were followed and that no error was committed in rejecting the Application. The City argued that both the failure to provide written notice of the decision to the Appellant and the acceptance of public comments after the deadline are technical errors and that neither were prejudicial to the Appellant or affected the outcome of the Application.

⁸ Record, Tab 20.

⁹ Record, Tab 21.

16. Further, the City says that on a review of the record as a whole, the reasons for Council's decision are clear and that the evidence demonstrates the decision has merit based on sound planning principles.

6. OVERVIEW OF EVIDENCE

Appellant's Evidence

17. The Appellant provided two witnesses: Warren Doiron, the owner of New Homes Plus Inc., and Rob LeBlanc, Director of Planning at Fathom Studio.
18. In his testimony, Mr. Doiron provided some background information about the Sandalwood Subdivision and how it was developed over time. He described how it started with smaller single-family homes and eventually grew to include larger single-family homes. The subdivision has about 150 houses today. He testified that the majority of the houses in Sandalwood are a similar size to the ones he is proposing with the Application, the only difference being that they would be built on narrower lots.
19. Rob LeBlanc is a professional planner and was accepted by the Commission as an expert in land use planning. Mr. LeBlanc was retained by the Appellant to provide a professional expert opinion on the outcome of the requested zoning amendment Application.¹⁰ His report concludes that the rezoning request is fair, warranted and in keeping with the intent of the Official Plan and the procedures set out in the Bylaw. For example, Mr. LeBlanc opined that the Application is consistent with the objectives and policies to contain urban sprawl at section 3.1 of the Official Plan, and to allow moderately higher densities in new development that is harmonious with its surroundings at sections 3.2.1 and 3.2.2 of the Official Plan. He also opined that the requested zoning amendment is consistent with good planning practice because it would promote housing variety and affordability. It would also reduce municipal maintenance costs while adding tax benefits and promoting the use of transit and active transportation.
20. Mr. LeBlanc's testimony was generally consistent with his report. He testified that this proposal makes more efficient use of the land while remaining as low-density residential, which is consistent with the Official Plan, its Future Land Use Map and the surrounding neighborhood. He testified that this proposal unequivocally has merit based on the Official Plan.
21. Mr. LeBlanc opined that present zoning is not a guarantee of future zoning, and that this is set out directly in the Official Plan at section 1.5.3. He testified that nothing in the Official Plan speaks to the percentage of completion of a neighborhood being a relevant consideration for a rezoning request.
22. Mr. LeBlanc's assessment and opinion were in accordance with the assessment and recommendation of the City's own professional planning staff.
23. The Commission is satisfied Mr. LeBlanc's evidence was relevant, reliable, and credible.

¹⁰ Expert Opinion Report of Rob LeBlanc, filed with the Commission on November 24, 2022. [LeBlanc Report]

City's Evidence

24. Prior to the hearing, the City filed its record with the Commission. The record totaled one-hundred and sixty-nine (169) pages and included all Planning Board and Council meeting packages and agendas, as well as verbatim minutes of those meetings where this Application was discussed, including all public comments. The record also contained the Application itself, Planning Staff reports about the Application, written submissions from the public, and all correspondence between the parties in relation to the Application.
25. At the hearing, the City called two witnesses, being Alex Forbes and Laurel Palmer Thompson.
26. Alex Forbes is the Manager of Planning and Heritage for the City of Charlottetown. He was accepted by the Commission as an expert in land use planning. He testified regarding the general purpose of an official plan and its policies and how it is intended to guide future development. Mr. Forbes spoke to the report prepared by Planning Staff regarding this Application, and the table included in the report that sets out the Application's positives, neutral attributes and shortcomings. He testified that Staff try to outline in the planning report the issues that are significant in an application and that the decision-makers need to be aware of so that Council is well-informed.
27. On cross-examination, Mr. Forbes agreed that this development would not result in a significant increase in density; however, in his opinion, Council retains the discretion to decide that the status quo has equal merit to an application before it.
28. Laurel Palmer Thompson is employed as a planner with the City. She was accepted by the Commission as an expert in land use planning. Ms. Palmer Thompson was involved in the application process from the beginning and was the author of the Planning Staff report that recommended approval for the zoning request.¹¹
29. The Planning Report prepared by Ms. Thompson and approved by Mr. Forbes is comprehensive and, as this Commission has come to expect from the professional planners at the City, a thorough review of the Application. She provided a complete analysis of the Property and surrounding lands including a brief history of the land development in the area over the past 20 years. She reviewed the present zoning, the current economic climate and the need for housing options. Her Report contains a review of a number of the objectives set out in the Official Plan (sections 3.1, 3.2 and 3.3) and the statement, *"If Charlottetown is going to continue to grow as a healthy community, affordable housing for all segments of society must generally be available throughout the City."*¹²
30. The Planning Report speaks to the present housing crisis and the difficulty to acquire land in established neighbourhoods at reasonable prices and that this proposal would allow for 17 more narrow frontage lots for single-family homes. Ms. Palmer-Thompson addressed the concerns raised by the public. She set out the pros and cons of the rezoning application and provides the opinion that the rezoning R-1N (Narrow Single Detached Residential Zone) will allow for 17 new single-family homes and that this is

¹¹ Report of Planning Staff, Record, Tab 17.

¹² Report of Planning Staff, Record, Tab 17, pg. 82.

compatible with the existing R-1S Zone. The Report encourages Planning Board to recommend approval of the Application.

31. On cross-examination, Ms. Palmer Thompson agreed that the R-1N zone makes more efficient use of infrastructure and is compatible with the neighborhood as R1 zoning and that the Application has merit based on sound planning principles. However, she clarified that the existing zoning is also compatible and has merit based in sound planning. She commented that it is not a question of “best”, as both are compatible and both are supportable.
32. Both Mr. Forbes and Ms. Palmer Thompson testified that as professional planners, their role is to advise Council, while Council is responsible to make the final decision.

7. ANALYSIS

Authority and Guideline

33. The Commission has the authority to substitute its decision for one made by a municipal council; however, the Commission does not lightly interfere with these types of decisions¹³. The Commission ought not to interfere with a decision merely because it disagrees with the end result¹⁴.
34. The parties agree that the guideline developed by the Commission for exercising its appellate authority under the *Planning Act* is applicable in this case. The guideline involves two main considerations:
 - Whether the municipal council followed the proper procedure as required by its bylaw, the Planning Act and the law in general, including the duty of procedural fairness; and
 - Whether the decision made by the municipal council has merit based on sound planning principles in the field of land use planning and as enumerated in the Official Plan and Bylaw.¹⁵
35. The Commission will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the *Planning Act*, the applicable official plan and bylaw, and sound planning principles.¹⁶ The Commission will typically be deferential toward planning decisions by Council that are properly made.

Procedural Issues

36. With respect to the procedural issues raised by the Appellant, the Commission accepts the position of the City that the failure to provide written notice of its decision to the Appellant, and the acceptance of public comments after the deadline, are technical

¹³ Order LA22-07, *Landfest Company Ltd. v. Town of Stratford* at para 32. [Landfest]

¹⁴ Order LA10-06, *Warren Doiron v. City of Charlottetown*, at para 15. [Doiron 2010]

¹⁵ See, for example, *Landfest* at para 32; and LA17-02, *APM Construction Services Inc. v Community of Brackley* at para 21.

¹⁶ Order LA18-02, *Queen County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41. [QCC 40]

errors and did not prejudice the Appellant or substantively impact the City's assessment of the Application.¹⁷

37. First, while the Commission agrees that section 3.10.6 of the Bylaw does require the City to provide written notice of its decision to an applicant, the Appellant nevertheless received actual notice of the decision and did file an appeal with the Commission within the prescribed limitation period in the *Planning Act*. On cross-examination, Mr. Doiron testified that he spoke with Laurel Palmer Thompson some time after the meeting and learned the Application had been rejected. Ms. Palmer Thompson also testified that she spoke with Mr. Doiron after the meeting and communicated the City's decision that the Application was rejected. Despite this finding on these particular facts, the Commission encourages the City to follow section 3.10.6 of the Bylaw and provide written notice to applicants in a timely manner, even where verbal notice may have been given, in order to ensure procedural fairness and to safeguard applicants' appeal rights.
38. Second, while the Record demonstrates that the City did accept at least one letter from a resident after the deadline set out in the public notice, the comments in the letter were substantively similar to other issues and objections already raised by other residents. As such, the acceptance of this letter after the deadline did not unfairly prejudice the Appellant. Further, the deadline set by the City in the public notice is not prescribed by the Bylaw. The Commission accepts the submission of the City, supported through testimony of Laurel Palmer Thompson, that this deadline is an administrative one set by the City.
39. Finally, the third procedural defect advanced by the Appellant related to the adequacy of the reasons provided by Council. The Appellant argued that Council's reasons were deficient because a majority of Councillors who voted against the Application provided no reasons at all, and because the Councillors who did speak at both the Planning Board and Council meetings failed to demonstrate clear reasons for their decision.
40. The City has urged the Commission to review the record as a whole and consider that in rejecting the Application, Council was following the recommendation of Planning Board from its July 4, 2022, meeting. The City invoked prior comments of the Commission to say that when Council follows Planning Board's recommendation, it may fairly be said that in so doing, Council is adopting the reasoning and analysis used by Planning Board.¹⁸
41. However, in this case Planning Board made a recommendation to Council which was contrary to the recommendation of City Planning Staff. Where that happens, there is an added obligation on Council to demonstrate sound planning reasons for not following the advice of its professional planning staff.¹⁹ Council's decision-making process should clearly demonstrate what factors were considered that support the final decision.²⁰ Council did not do so.

¹⁷ See, for example, QCC 40, at para 19.

¹⁸ Order LA12-02, *Atlantis Health Spa v. City of Charlottetown*, at para 23. [*Atlantis Health Spa*]

¹⁹ *Landfest*, at para 48; see also Order LA20-04, *Jessie-Frost Wicks et al. v. City of Charlottetown*, at para 35.

²⁰ *Landfest*, at para 48.

42. As the Commission has previously stated, “Reasons are sufficient when they explain why a municipal council arrived at its decision.”²¹ When reviewing for adequacy or sufficiency, the Commission must consider the reasons given as a whole in the context of the application before council and with an appreciation for the type of decision made”.²²
43. Upon review of the minutes as a whole, the Commission does not agree with the conclusions reached by Council. However, the Commission is satisfied that the minutes do set out the reasons why Council voted against the Application. Whether those reasons are grounded in sound planning principles is a separate and different question. In this case, the minutes of Council are sufficient in the procedural sense. The Appellant knows why the Application was denied. This ground of appeal, based on procedural error, is therefore not accepted by the Commission.

Sound Planning Principles

44. Moving on to the second consideration under the Commission’s accepted guideline, it is well-settled that the Commission must be satisfied that the final decision made by Council was animated by sound planning principles.
45. In the Commission’s review, the minutes from the July 4, 2022, Planning Board meeting do not reflect planning-based reasons for departing from Planning Staff’s professional recommendation. Planning Board had the Planning Report before it and Ms. Palmer Thompson gave a summary of the report at the meeting. The Minutes show that the members were not alive to the issue before them and were sidetracked on the benefit of having sidewalks. Ms. Palmer Thompson advised that sidewalks were not a factor in the application before them. While there was some discussion dealing with the requested change to allow 17 more lots, only two members actually spoke to their rationale, and neither grounded their rationale in the Official Plan or sound planning-related concerns. It is of particular concern to the Commission that it was the Chair and Councillors in attendance at Planning Board who did not appear to understand their role and obligations in assessing the rezoning application. It was the lay members of Planning Board who followed the advice of the City’s Planning Professionals and voted to recommend approval.²³
46. The Minutes of Council of July 11, 2022 show that the Councillors were unduly focused on the concerns of a small number of members of the public who live in the subdivision bordering the Property. Councillor Mike Duffy tried, to no avail, to get the Councillors to focus on the question before them. He spoke of his concern of receiving a rejection from Planning Board in light of a recommendation to approve by the professional planning staff for the City, who he described as very good, well educated and well trained who “know their work inside and out”. He questioned others reliance on letters from only 14 objectors, after public notification, when the area “is a fairly big subdivision”. He noted that some of their objections, such as speeding in the area is a police issue, not a planning issue and that the City Engineer determined that 17 new single-family homes would not compromise traffic volumes on the street. In dealing

²¹ Order LA17-08, *Pine Cone Developments Inc. v. City of Charlottetown* (November 15, 2017) at para. 56. See generally *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at para. 12.

²² Order LA22-07, *Landfest Company Ltd. v. Town of Stratford* at para. 46.

²³ Verbatim Minutes re Mutch Crescent Extension, July 4, 2022, Planning and Heritage Board, Record, Tab 20.

with comments of others suggesting that predictability and zoning should not change, Councillor Duffy also noted that some change should be expected. “There is always revamping and that’s why we have variances – minor and major.”²⁴

47. The other Councillors who spoke at the meeting focused on the objection letters from the public complaining about the increase in the number of permissible lots. They did not discuss the Planning Staff Report or its findings. It must be noted that the minutes reflect that four of the seven councillors who voted to reject the Application did not speak to the motion whatsoever.
48. As recently stated by the Commission in Order LA20-04, the thread in prior Commission decisions is strong and plain to see: procedural fairness requires, and the Commission expects, that every municipal council provide sufficient reasons, based on sound planning principles, to justify its decision so that it can be sustained on appeal. More is expected when an application has been the subject of a public meeting, when written submissions for and against the application have been received from members of the public, and when Council has received recommendations from their professional staff to approve the application. Those recommendations are not binding and may be overcome; however, in saying that, the Commission's guidance is very clear: when rejecting a recommendation from Planning Staff, there is an added obligation on Council to clearly and methodically set out its own thought process and analysis.²⁵ Council should clearly demonstrate what factors were considered that support the final decision, and demonstrate sound planning reasons for doing so.²⁶
49. To reiterate, the Appellant sought to rezone approximately 7.02 acres of land that will extend Mutch Crescent in the existing Sandalwood subdivision.²⁷ This will be the final phase of development in the subdivision, which began in the early 2000s. The land is currently zoned R1-S, as is the balance of the existing subdivision. The current zoning permits the Appellant to subdivide the property into 29 lots for single detached dwellings. The Appellant wants to rezone the property to R1-N in order to subdivide the property into 46 narrower frontage lots to construct single-detached dwellings.
50. The Appellant proffered expert opinion evidence from Mr. LeBlanc to support the position that the proposed rezoning is consistent with the policies and objectives of the Official Plan, that the R1-N zoning would be harmonious with the surrounding land uses, and that the main reason for Councillors’ rejection of the Application because the subdivision is nearly 75% developed is not a relevant planning consideration. In other words, the proposed rezoning has merit based on sound planning principles.
51. The City, for its part, contends that Council’s decision to reject the Application is grounded in sound planning. The City submitted that Council, in following the recommendation of Planning Board, did not fail to base its decision on sound planning, but rather based its decision on planning principles that are different than those underlying the recommendation of Planning Staff. The City submitted that Council’s decision is largely grounded in the concepts of reliability and predictability as articulated at section 3.2.1 of the Official Plan, as well as those Official Plan policies that encourage the preservation of neighbourhoods and public safety. The City also

²⁴ Verbatim Minutes re Mutch Crescent, July 11, 2022, Council Meeting, Record, Tab 21.

²⁵ *Atlantis Health Spa*, at para 23.

²⁶ *Landfest*, at para 48; see also, *Jessie-Frost Wicks*, at paras 35-36.

²⁷ Report of Planning Staff, Record, Tab 17.

submitted that the existing zoning of R1-S has merit, complies with Official Plan and Bylaw, and that the status quo was a reasonable alternative to the Application.

52. In this case, the recommendation from Planning Staff clearly demonstrates a thorough consideration of the applicable policies of the Official Plan as it relates to the proposed rezoning. Both Mr. Forbes and Ms. Palmer Thompson are experienced professional planners, and the Commission finds their evidence to be credible and balanced. Some highlights of Planning Staff's report include the advice that narrower lots allow for additional density which allows for more affordable housing products within this sought-after neighborhood and which would provide a benefit to the area.²⁸ The report also concludes that this proposal would make more efficient use of the land and underground services.
53. The evidence supports that Planning Staff were alive to the policies in the Official Plan requiring developments to not adversely impact existing low-density residential neighbourhoods. Nevertheless, Planning Staff recommended this Application be approved on the basis that it makes more efficient use of the land and that accommodating an additional 17 single detached dwellings is compatible zoning with the existing R1-S zone.²⁹ The conclusion in the Report finds legitimacy in the content of the Official Plan and reflects sound planning principles.
54. The expert opinion evidence from Mr. LeBlanc is consistent with the conclusions and recommendations from Planning Staff.
55. In contrast, of the three Councillors who spoke to the motion to reject the Application at the July 11, 2022, Council meeting, each gave reasons almost exclusively grounded in the expectation of nearby residents of "predictability" in relation to the existing R1-S zoning of the subject property because the subdivision is nearly 75% complete, without any reference to the objectives or policies of the Official Plan or other sound planning principles.³⁰ The minutes of the July 4, 2022, Planning Board meeting reflect a similar dearth of reasoning rooted in planning principles.³¹
56. The Commission is not persuaded that the "expectation" of nearby residents that the final phase of the subdivision would have 29 single-family homes instead of 46 single-family homes is a relevant planning consideration. Present zoning is not a guarantee of future zoning. Both the Official Plan and Bylaw expressly contemplate and allow for the process of rezoning, and neither speak to the percentage completion of nearby neighbourhoods as a consideration in that process. Further, neither the report of Planning Staff, the evidence of the City's professional planners, nor the expert evidence provided by Mr. LeBlanc, supports the conclusion that a subdivision being 75% complete is a relevant planning consideration for a rezoning request like this one.
57. At the hearing, the City relied on the majority reasons of the Commission in Order LA10-06, *Warren Doiron v. City of Charlottetown* as support for Council adhering to the "plan" earmarked for the neighbourhood, and argued that there is merit in that consistent approach.³² However, that decision can be distinguished on the basis that

²⁸ Report of Planning Staff, Record, Tab 17.

²⁹ Report of Planning Staff, Record, Tab 17, pg. 88.

³⁰ Verbatim Minutes re Mutch Crescent, July 11, 2022, Council Meeting, Record, Tab 21.

³¹ Verbatim Minutes re Mutch Crescent Extension, July 4, 2022, Planning and Heritage Board, Record, Tab 20.

³² *Doiron 2010*, at para 31.

- the application at issue in that case requested an amendment to the Official Plan and Future Land-Use Map (FLUM) from Low Density Residential to Medium Density Residential. In this case, the subject property will remain Low Density Residential. The Appellant is still seeking to build single-family homes, they will just be on narrower lots.
58. Section 1.4 of the Official Plan states that the FLUM is a concept plan providing a general interpretation of various future land-use activities within the City. Council's reliance on the expectations of residents as to the future use of the subject property as a reason to deny this Application may be more convincing if this foundational document were being amended. Certainty and predictability are more compelling arguments where land use will be significantly changed.
59. Finally, the City made submissions that the existing R1-S zoning of the subject property has merit in sound planning. However, the Commission has been clear on this point in the past: Council was voting for or against the Application made by the Appellant to rezone the property. The issue before Council for determination was not, as the City has argued, whether to maintain the status quo. The merits of the Application submitted by the Appellant had to be determined on its own based on sound planning principles.³³
60. The Commission has regularly emphasized to municipalities the need for objective decision-making and not exercises in subjectivity. Reliance has been placed on the assessments, opinions, and reports of trained professionals as opposed to the hue and cry of neighbours or politicians.³⁴
61. In this case, it appears that Council was swayed by the subjective complaints of nearby residents that “enough is enough” and that building 17 additional lots in this subdivision would violate the expectations they had about future development when they purchased their homes.³⁵ The record does not demonstrate that Council's decision to reject the Application to rezone this property from R1-S to R1-N was based on sound planning rationale. Rather, the comments of one Councillor confirm their singular concern:³⁶
- “We are not arguing traffic. Not arguing the safety piece even though they absolutely have those valid concerns. The point is predictability. It's the fact that they invested in something knowing what was going to be behind them and that is the reason why I am opposed to it.”
62. In summary, the Commission is satisfied that Council made a substantive error when it based its decision on considerations other than sound planning principles.
63. Having received, considered and weighed the expert planning evidence given by Mr. Forbes, Ms. Palmer Thompson and Mr. LeBlanc, the Commission has sufficient evidence before it to decide the merits of this Application. In concert with reviewing and considering the policies of the Official Plan that apply to this rezoning request, the Commission finds that rezoning the Property to permit 17 additional single-family

³³ *Landfest*, at para 54(a).

³⁴ Order LA 17-08, *Pine Cone Developments Inc. v. City of Charlottetown*, at para 47.

³⁵ Verbatim Minutes re Mutch Crescent, July 11, 2022, Council Meeting, Record, Tab 21.

³⁶ Verbatim Minutes re Mutch Crescent, July 11, 2022, Council Meeting, Record, Tab 21, at pg 126.

homes in this neighbourhood is consistent with the policies of the Official Plan and has merit based on sound planning principles.

Remedy

64. The City made submissions that the Supreme Court of Canada in *Vavilov*³⁷ directs that where reasons are defective, the Commission is not to substitute its own reasons. The City invited the Commission to send the matter back to Council should the Commission find its reasons lacking in this case.
65. The Commission does not agree. It is well-known and accepted that appeals under the *Planning Act* take the form of a hearing *de novo* before the Commission. The Commission may hear new evidence in addition to the record before the original municipal decision-maker. Whether by failing to follow its process, or not discharging its duty of fairness, or making a decision that is not grounded in sound planning principles, the Commission is not required to show deference to the decision made by a municipal council. The Commission does have the power to substitute its decision for that of a municipality.³⁸
66. In the context of this case, the decision of Council is not one that deserves the Commission showing deference and remitting the matter back to City. The Planning Board and Council had the benefit of the advice of its own planning professionals. The underlying decision from the Council was made where it had an opportunity to review and consider advice from its planning professionals about the Application, Official Plan, Bylaws, and sound planning principles. The Commission has received the advice of a second expert in planning that supported the City's professional planners' recommendation to approve the rezoning. There would be no benefit to sending this matter back to Council. Therefore, this is a case where it is appropriate for the Commission to exercise its discretion and substitute its own decision for that made by Council.

8. CONCLUSION

67. For the reasons above, the appeal is allowed and the decision of the Council is quashed. The Commission orders that the Property be rezoned Single-Detached Residential, Narrow (R1-N).
68. The Commission thanks the Appellant and the City for their submissions in this matter.

³⁷*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 96.

³⁸*Charlottetown (City) v. Prince Edward Island (Island Regulatory and Appeals Commission)* 2013 PECA 10.

IT IS ORDERED THAT

The appeal is hereby allowed. The decision of Council is quashed. The Commission orders that the Property be rezoned Single-Detached Residential, Narrow (R1-N).

DATED at Charlottetown, Prince Edward Island, May 2, 2023.

BY THE COMMISSION:

(sgd. J Scott MacKenzie)

J. Scott MacKenzie, K.C., Chair

(sgd. Erin T. Mitchell)

Erin T. Mitchell, 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.

NOTE: In accordance with IRAC'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.