

14 November 2023

VIA EMAIL

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

Our File: 15042-268dk

Dear Mr. Rafuse:

RE: Appeal LA#23023 – Randy Pitre v. City of Summerside

We write further to your letter dated 6 October 2023, in which you requested the City of Summerside (the “**City**”) to file a Record and Reply to the Notice of Appeal filed by Randy Pitre (the “**Appellant**”) on 6 October 2023 (the “**Appeal**”). Please accept this correspondence as the City’s Reply to the Notice of Appeal.

NATURE OF THE APPEAL

The Appeal relates to two rezoning decisions and a preliminary subdivision approval. The Developer applied to rezone a portion of PIDs 73536 and 72421 (the “**Subject Property**”) to High Density Residential (R4) zone to permit development of apartments and row housing. The Developer also applied for subdivision approval over a portion of PID 72421.

GROUND'S OF APPEAL

The Appellant’s grounds of appeal relate primarily to an alleged procedural error. The Appellant states that

“The City of Summerside **is in Contravention** of the **One Year time rule to re-apply** of accepting a Application by Strategic Holdings Inc and His legal counsel Andrew Campbell.”

[Emphasis in Original].

APPEAL LA 23013

The Appellant notes, correctly, that the Developer had previously applied to rezone the Subject Property to High Density Residential (R4) in Spring of 2023. Council voted to deny the rezoning on or about 15 May 2023. The Developer filed an appeal to the Commission on 5 June 2023, in Appeal LA 23013, alleging grounds of appeal related to process, procedural fairness, and a failure to apply sound planning principles.

In response to the Notice of Appeal dated 5 June 2023, the City reviewed the process it followed in reviewing and denying the application. The City determined that it had rejected the application contrary to the recommendation of its planning staff without providing sound planning reasons for its decision.

Having recognized its error, the City rescinded its prior decision and invited the Developer to re-submit an application.

ZONING BYLAW

The Appellant's grounds of appeal appear to raise section 5.8(c) of the City's *Zoning Bylaw* SS-15, which provides:

- c. Should a development application be denied, a similar application shall not be considered within 12 months of the initial application being denied, except when the Development Officer considers it justified because of valid new evidence or a change in conditions, or as the result of an appeal or review procedure allowed under this Bylaw.

Thus, in the usual course of events, when the City denies an application, it shall not consider a similar application within 12 months of the denial, except in certain circumstances. The City concedes that the application presently under appeal is a "similar application" to the one it denied on 15 May 2023, which was the subject of Appeal LA 23013.

RESPONSE TO APPEAL

- **The Rezoning Decisions**

The City submits that there are at least two reasons why the Commission should dismiss the present Appeal.

First, the City rescinded its prior resolutions dated 15 May 2023, by resolutions dated 17 July 2023.¹ Section 126 of the *Municipal Government Act* confirms the authority of a municipality to

¹ Record prepared by the City of Summerside at TABs 9K and 9L.

rescind a resolution. The effect of rescinding a resolution is to void or nullify it.² Thus, the 15 May 2023 denial decision was nullified. Therefore, section 5.8(c) of the *Zoning Bylaw* does not apply in the present appeal and does not operate as a bar to considering the application presently under appeal.

Further and in the alternative, the City submits that the present case falls within the exceptions provided by section 5.8(c) of the *Zoning Bylaw*: the Developer filed an appeal of the 15 May 2023 denial. As a result of the appeal, the City reviewed the matter and concluded that it had failed in its procedural fairness obligations to the Developer. Rather than force all parties to the time and expense of an appeal which was likely to succeed, the City recognized its error, rescinded its decision, and Appeal LA 23013 was withdrawn.

Second, the City identified the concerns Council had with the initial application and invited the Developer to re-submit its Application. In the matter presently under appeal, the City followed the proper process and rendered a decision which accords with sound planning principles. The City submits that the decision made in the present appeal is the correct one – which accords with the recommendation of its planning staff.

Section 5.8(c) is not meant to be punitive. It is an administrative prohibition against unsuccessful Developers re-submitting the same application after a denial. It provides certain exceptions, such as new evidence, a change in conditions, or as the result of an appeal or review process. The City submits that the present application falls under these recognized exceptions. This interpretation is consistent with a remedial “fair, large, and liberal” interpretation of enactments required by subsection 11(2) of the *Interpretation Act*, RSPEI 1988, c I-8.1.

The City submits that no one was prejudiced by this process. The public were provided with the same procedural rights on the second application as they were on the first. The Developer, whose procedural fairness rights were denied under the original application was provided full procedural rights on the second. The City submits that the result of the present process is similar to a situation in which the Commission had allowed Appeal LA23013 on the basis of a breach of the duty of procedural fairness and sent the matter back to the City for reconsideration.

- **The Preliminary Subdivision**

The City respectfully notes that the Appellant does not appear to have raised grounds of appeal which specifically relate to the preliminary subdivision approval. The City therefore requests that grounds of appeal specific to this decision be provided in accordance with subsection 28(5) of the *Planning Act*.

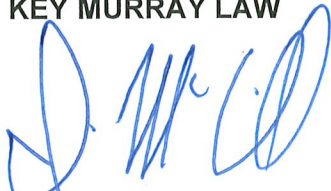
CONCLUSION

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

After a hearing of this matter, the City will respectfully request that the Appeal be dismissed.

² *Black's Law Dictionary* (9th ed) sub verbo “rescind”.

Yours very truly,
KEY MURRAY LAW



Iain M. McCarvill, JD, LL.M

cc. Randy Pitre, Appellant
Gordon MacFarlane – CAO, City of Summerside
Andrew Campbell, K.C., Counsel for the Developer
Derek D. Key, K.C.