

August 2, 2024

Island Regulatory and Appeals Commission
Attention: Ms. Jessica Gillis, General Counsel
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Dear Ms. Gillis,

Re: Appeal LA#23026 – Randy Pitre v. City of Summerside

We write on behalf of Strategic Holdings Inc. (the “Developer”) regarding three appeals filed by Mr. Randy Pitre (the “Appellant”) to the Island Regulatory and Appeals Commission (the “Commission”) in relation to the development of a 59-unit apartment building (the “Development”) located at 674 and 678 Water Street, Summerside, PE, being PID No. 72421 and 73536 (the “Subject Properties”).

Preliminary Matter – Accusations of the Appellant

In correspondence to Ms. Jessica Gillis, General Counsel for the Commission (hereinafter “Commission Counsel”) dated July 15th, 2024, the Appellant continues to make frivolous and vexatious accusations against the Developer, the Developer’s interactions with the City of Summerside, legal counsel and members of public office. These accusations include assertions of unlawful activity, and collusion. The Appellant’s assertions of unlawful activity and collusion do not strengthen or support their appeals but continue to be made for the sole purpose of further defaming the Developer’s name and reputation.

In a further Notice of Appeal to the Commission on July 8th, 2024, the Appellant made further allegations of wrongdoing by the Developer, irrelevant to the appeals before the Commission. For the sole purpose of preventing further defamation by the Appellant, the Developer shall briefly comment on the appeal filed with the Commission by the Appellant on July 8th, 2024. Mr. Kember, a shareholder of the Developer, was also a shareholder in 102455 P.E.I. Inc., a “shelf” corporation that had no commercial activity, assets, or debts, and was accordingly dissolved by its Shareholders. This accusation is a moot point, lacking any form of relevance to the appeals before the Commission as 102455 P.E.I. Inc. was never a party to the proceedings. The Developer hereby requests that further submissions or allegations of the Appellant relate specifically to parties directly involved in matters before the Commission.

J. Andrew D. Campbell, K.C. | Partner

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The Appeals

Mr. Pitre is appealing three decisions of the City of Summerside municipal council ("Council"), namely:

1. Rezoning of the Development from Low Density Residential (R1) to High Density Residential (R4) (the "Rezoning");
2. Preliminary Subdivision Approval (the "Preliminary Subdivision Approval"); and
3. Site Plan Approval for a new 59-unit apartment building (the "Development Permit").

For ease of reference, the appeals filed by Mr. Pitre will be referred to collectively as the "Appeals", and individually referred to as their previously defined terms. The grounds relied on, and relief sought by the Appellant include:

1. Concern regarding the Developer's corporate registration;
2. Allegations of inappropriate or unethical actions, including "misfeasance" and "malfeasance" by members of public office and legal counsel; and
3. Requests for an interlocutory order preventing the City of Summerside from accepting future applications from the Developer, or other corporations of the Developer.

The Appellant's grounds for the Appeals do not relate to the bylaws of the City of Summerside, the *Planning Act*, R.S.P.E.I. 1988, c. P-8 (the "*Planning Act*") or sound planning principles. Therefore, the Developer respectfully requests that the Appeals be dismissed.

Rezoning

The Appellant raises issue regarding the Rezoning decision of Council to permit amendment to the zoning bylaw of the Subject Properties on September 18th, 2023. The Appellant relies on section 8.5(c) of the *Zoning Bylaw SS-15*, which states:

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.¹

¹ City of Summerside *Zoning Bylaw SS-15* at s. 5.8(c).

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The Developer received notice from the City of Summerside's development officer that their proposed zoning amendment of the Subject Properties from Low Density Residential (R1) to High Density Residential (R4) was denied on May 15th, 2024. In accordance with section 28.(1.1) of the *Planning Act*, the Developer appealed the May 15th, 2024 decision of Council to the Commission, being Commission File No. LA23013. It is the Developer's understanding, that upon review, legal counsel for the City of Summerside determined that Council did not adhere to their obligations of procedural fairness, as Council's decision was contrary to the recommendation of planning staff, and reasons were not provided for such decision.

Section 5.8(c) of the *Zoning Bylaw SS-15* provides that a development officer can consider a similar application resulting from an appeal. The Developer submits that had the Developer continued the appeal of the May 15th, 2023 decision, the Commission would have required Council to reconsider their decision. Accordingly, Council invited a new zoning bylaw amendment application for consideration, and the Developer's appeal of the May 15th, 2023 decision was withdrawn. The Developer applied to the City of Summerside for a bylaw zoning amendment on August 2nd, 2023, to rezone the Subject Properties from Low Density Residential (R1) to High Density Residential (R4). It is the Developer's understanding and belief that letters were mailed to all property owners that lived within 60 metres of the Subject Properties and notice to the public was offered in the August 9th, 2023, edition of *The Guardian*, advising of the public meeting on August 21st, 2023.

Contrary to the submissions of the Appellant, the Developer attended the public meeting on August 21st, 2023, and made a presentation to Council and answered questions posed by members. The Appellant was in attendance and was invited to raise his concerns with Council, and Mayor Daniel Kutcher specifically advised the Appellant as to why this matter was again before Council. At the public meeting of August 21st, 2023, the first reading of the proposed zoning bylaw amendment was approved.² The City of Summerside's planning staff compiled a report regarding the proposed bylaw amendment and presented it to the planning board at public meeting on September 5th, 2023. At the September 5th, 2023, meeting the City of Summerside's planning staff recommended approval, as did the planning board.³

² City of Summerside, Monthly Council Meeting Minutes, August 21, 2023 at pg. 2-7.

³ City of Summerside Planning Board, Special Council, Committee of the Whole Meeting Minutes, September 5th, 2023 at pg. 2-8.

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At public meeting on September 18th, 2023, the second reading of the proposed zoning bylaw amendment was approved and adopted, and the Developer was notified of the decision on September 21st, 2023.⁴ It is the Developer's understanding that notice to the public was provided in accordance with section 23.1 of the *Planning Act*. It is the submission of the Developer that Council adhered to the requirements of section 5.10 of the City of Summerside's *Zoning Bylaw SS-15*, the *Planning Act* and provided sufficient public notice and participation through the zoning bylaw amendment process.

Preliminary Subdivision Approval

The preliminary subdivision approval process is set out in section 8.5 of the City of Summerside's *Subdivision and Site Development Bylaw SS-19*. The Developer made application to the City of Summerside to subdivide the Subject Properties, construct a street, install municipals services, and to consolidate parcels for the Development. The Developer hired Locus Surveys Ltd. to complete a survey plan, illustrating the Developer's intentions. The planning board reviewed a report completed by the City of Summerside's development officer including the site plan, bylaws and recommendation for approval at their September 14th, 2023 meeting. The planning board voted 3-0 to approve the preliminary subdivision.⁵ At the monthly Council meeting on September 18th, 2023, Council voted to approve the Developer's application, passing a resolution regarding the deferment of subdivision responsibilities as per section 8.8 of the *Subdivision and Site Development Bylaw SS-19*.⁶

The Developer was notified on September 21st, 2023 by the City of Summerside's development officer of the decision to grant Preliminary Subdivision Approval, on the conditions that the Developer enter into a construction agreement and development agreement with the City of Summerside. The City of Summerside published the required notice of the Preliminary Subdivision Approval in accordance with section 23.1 of the *Planning Act*. The Developer entered into the construction and development agreements on October 5th, 2023. The Developer followed the required process to obtain the Preliminary Subdivision Approval, and all requirements set out in the *Subdivision and Site Development Bylaw SS-19* and the *Planning Act*.

The City of Summerside advised all parties to the Appeal in correspondence on April 16th, 2024, of a technical procedural error with the City of Summerside's administration of the Preliminary Subdivision Approval on September 18th, 2023. Resolution COS 23-124 did not specifically state preliminary

⁴ City of Summerside Monthly Council Meeting Minutes, September 18th, 2023 at pg. 3-7.

⁵ City of Summerside Planning Board Meeting Minutes, September 14th, 2023 at pg. 1-5.

⁶ City of Summerside, Monthly Council Meeting Minutes, September 18th, 2023 at pg. 7.

subdivision approval, and technically, Council should have voted on a second resolution at the meeting, making specific reference to section 8.5 of the *Subdivision and Site Development Bylaw SS-19*. Resolution COS 23-124 granted the Developer the right to defer subdivision responsibilities, including connecting the new street to the east boundary of the Subject Properties until the Subject Properties are further developed. It is the submission of the Developer, that in caution, Council passed the resolution approving Preliminary Subdivision Approval, as originally intended, at the April 15th, 2024 Council meeting.⁷

The Developer supports the submission of the Respondent that it was the intention of Council to grant the Developer Preliminary Subdivision Approval at the September 18th, 2023 meeting. This is an issue of technical nature, having no impact on the procedural fairness offered to any party of this Appeal, or the public. The notice published by the City of Summerside in accordance with section 23.1 of the *Planning Act* includes reference to preliminary approval for the Development. As submitted by the Respondent, the matters before the planning board at the September 14th, 2023 meeting, and Council at the September 18th, 2023 meeting were an application for Preliminary Subdivision Approval, as evident by the Record submitted by the Respondent. The letter received by the Developer specifically confirms Preliminary Subdivision Approval. The Developer respectfully requests that the Commission dismiss the appeal relating to the Preliminary Subdivision Approval.

The Development Permit

The Developer and the City of Summerside followed proper process in relation to the Development Permit. Pursuant to the *Subdivision and Site Development Bylaw SS-19*, the Development is a major development due to the total floor area. Section 9 of the *Subdivision and Site Development Bylaw SS-19* creates the process for obtaining a site plan approval for developments of this scale. As noted by the Respondent in their submissions, in which the Developer agrees, the review of the development permit is the final portion of the planning process. This portion of the planning process offers less public participation, but rather relies on the knowledge, skills and experience of professionals with technical specialties, rather than the planning board or Council. Procedural fairness is not absent but is given less priority when compared to earlier stages in the planning process. Section 23.1 of the *Planning Act* still applies, and the City of Summerside provided such notice, offering the Appellant and other members of the public opportunity to appeal this decision.

⁷ City of Summerside Planning Board, Monthly Council Meeting Minutes, April 15th, 2024 at pg. 10-12.

As submitted by the Respondent, there is overlap between the Preliminary Subdivision Approval, and the Development Permit approval, as both consider the land use impacts of the Development. At the September 14th, 2023 planning board meeting relating to the Preliminary Subdivision Approval, the development officer offered comment on the Development against the criteria included in section 3.6 of the *Subdivision and Site Development Bylaw SS-19*, namely:

- a. Conformity with this Bylaw;*
- b. Conformity with the Official Plan;*
- c. Conformity with the Zoning Bylaw;*
- d. The “orderly and following” nature of the development;*
- e. Physical suitability of the site for the proposed development, including avoidance of natural hazards, undue water run-off, or environmental damage.*
- f. Compatibility of the proposed development with present and future surrounding patterns of streets, lots, and services, including conformity with any City concept plans.*
- g. Adequacy of the applicant’s proposals for traffic circulation, parking, pedestrian access, water supply, sewage disposal, and storm drainage, including the adequacy of City streets and services to handle increased loads.*
- h. Suitability of parkland provisions.*
- i. Impact on City finances and budgets.*
- j. Proof of conformity with any applicable Provincial legislation and regulations.*
- k. Other matters as considered relevant.⁸*

It is the Developer’s understanding that the site plan prepared by Locus Surveys Ltd. on behalf of the Developer was reviewed by municipal engineers, electrical utility and a third-party engineer. There was stringent review of the site plan to ensure compliance with all applicable bylaws, and sound planning principles. The City of Summerside advised the Developer of the requirement for revised survey plans, which were submitted by the Developer as requested. The Development was held to and evaluated against the requirements of the City of Summerside’s *Zoning Bylaw SS-15* and the *Subdivision and*

⁸ City of Summerside *Subdivision and Site Development Bylaw SS-19*, at s. 3.6; City of Summerside Planning Board Meeting Minutes, September 14th, 2023 at pg. 2-4.

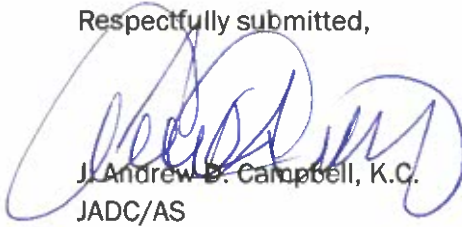
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Site Development Bylaw SS-19. The Developer submits that the Developer followed proper process in obtaining a Development Permit and complied with all requests of the City of Summerside at the development stage.

Relief Sought

The Developer followed all requirements and recommendations put forth by the City of Summerside, Council, Planning Board, planning staff, and engineers. The Developer participated in public discussion regarding the proposed Development and adhered to the requirements of all applicable bylaws and the *Planning Act*. The decisions of Council, being the subject of the Appeals, were made in consideration of sound planning principles, and suitability of the Subject Properties for this Development, a 59-unit apartment building providing much needed housing to the Developer's community. The Developer hereby respectfully requests that the Appeals be denied, and the Commission uphold the City of Summerside's decision to approve the Rezoning, Preliminary Subdivision Approval and Development Permit for the Subject Properties.

Respectfully submitted,



J. Andrew B. Campbell, K.C.
JADC/AS

cc. Randy Pitre, Appellant
Iain McCarvill, Counsel for Respondent, City of Summerside