

February 14, 2025



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VIA EMAIL (mwalshdoucette@irac.pe.ca)

The Island Regulatory & Appeals Commission
Attention: Michelle Walsh-Doucette, Commission Clerk
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Dear Ms. Walsh-Doucette:

Re: Appeal #LA24-021 – Jerry Woolfrey v. City of Charlottetown

As you are aware, the City of Charlottetown (the “City”) filed preliminary submissions (the “Reply”) on January 31, 2025 in response to the Notice of Appeal filed by Jerry Woolfrey in LA 24-021 (the “Appellant”) on December 20, 2024 (the “Appeal”). We write in response to your correspondence dated February 7, 2025, requesting that the City of Charlottetown (the “City”) prepare a supplement response following receipt of additional grounds of appeal which were submitted by the Appellant on January 3, 2025 (the “Revised Grounds”). This correspondence supplements the City’s Reply and addresses the Revised Grounds.

The Revised Grounds appear to contain seven grounds of appeal. The City has endeavored to summarize and provide preliminary comments to each of the said grounds of appeal below.

Grounds of Appeal

Ground 1: Rules of Natural Justice and Procedural Fairness

As detailed in the City’s Reply, notice of the Permit’s approval was posted on the City’s website on or about December 3, 2024 as part of a revised list dated November 29, 2024. The Appellant filed the Notice of Appeal within twenty-one days of said notice being provided. In addition to said Notice of Appeal and the grounds contained therein, the Appellant was further afforded the opportunity to submit the Revised Grounds of appeal approximately two weeks later. There has been no contravention of the rules of natural justice or procedural fairness, nor has the timing of the notice created a “fatal flaw” in the approval of the Permit (as defined in the “Reply”).

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As the Commission is aware, even if there were a technical error with respect to notice requirements, procedural errors of a technical nature that do not result in prejudice or harm to the Appellant will not be sufficient to fail the first prong of the two-part test to determine appeals¹:

1. *whether the municipal authority, in this case the City,² 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 the Permit; and,*
2. *whether the City's decision with respect to the Permit has merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.*

Hanmac Inc. v. City of Charlottetown, Order LA15-06 at para 32.

The Appellant has now filed two separate lists of appeal grounds, and the City does not intend to argue that the Commission is without jurisdiction to hear this Appeal for non-compliance with section 28(1.3) of the *Planning Act*, RSPEI 1988, c P-8. There has been no prejudice to the Appellant.

Ground 2: 'As of Right' Development

With respect to the Appellant's submission concerning "as of right development," the City relies on its submission as contained at page 2 of the Reply under the heading "Ground 2: 'As of Right' Development." In doing so, the City further submits that contrary to the Appellant's submission in the Revised Grounds, it was not missing information required to grant the Permit.

At this ground of appeal, the Appellant asserts the following:

Royalty Maples Cottages and Motel was sold to the Province of PEI and moved from the site one month earlier. Therefore, the application information being considered by planning staff under as-of-right doctrine no longer applied, because that information was invalid."

¹Queen County Condominium Corporation No. 40 v City of Charlottetown, Order LA18-02, at para 19.

² By way of delegated authority pursuant to section 20(2) of the *Planning Act*, RSPEI 1988, c P-8.

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It is the City's position that any sale of said cottages would not impact the application or approved permit which allows the Developer to complete foundation work at the property (PID 889873). The structures located at Royalty Maples Cottages and Motel were not on located on the parcel of land in question but rather, were located on a different property (PID 388199).

With respect to the Appellant's submission regarding "legal street access" for the Property (as defined in the Reply), the City relies on its submissions as contained at page 2 of the Reply under the heading "Ground 3: Street Access."

Ground 3: Land Use Buffer Requirement

In response to this ground of appeal, the City relies on its submission as contained on page three of the Reply under the heading "Ground 6: Compliance with Zoning & Development Bylaw."

In doing so, the City reiterates that the Permit is for foundation work only. Despite this, the City did consider the site plan provided with the Application to confirm there is sufficient space along the lot lines bounding R-1L zoned abutting properties to satisfy the buffer requirement for future development. Again, future work beyond the scope of the Permit will be required to comply with applicable land-use buffer requirements which may include installing a vegetative buffer or fencing along part of the Property's perimeter.

The City further states that contrary to the Appellant's argument at paragraph 10, land-use buffer requirements do not apply to prohibit street access. Specifically, the applicable buffer zone requirement does not preclude access onto Trainor Street. The 4-meter buffer represents the distance between the boundaries of the Property and the nearest main structures.

Further, the fact that the Property is zoned differently from other properties with access onto Trainor Street does not change this. Trainor Steet is a public right-of-way owned, managed and maintained by the City of Charlottetown. Neither Trainor Street, nor any other street in Charlottetown, is zoned. The current street access onto Trainor Street is a legal street access.

With respect to the Appellant's argument as contained at paragraph 13 of the Revised Grounds, the City relies on its submission as contained on page four of the Reply under the heading "Ground 8: Previously Denied Application (2020)." That is, each application is evaluated independently on sound planning principles, the Official Plan, and Zoning and Development Bylaw. Council's decision to deny a previous application, even for the same property, is not binding or determinative of future applications.

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Ground 4: Historical Zoning Designation of PID 889873

In response to this ground of appeal, the City relies on its submission as contained on page three of the Reply under the heading “Ground 4: Current Zoning.” Specifically, the Property has been zoned C-2 Zone since 1999. Further, with respect to the presentation of the new Official Plan hosted by the City in May of 2024, said presentation focused only on proposed land-use designation for the new Official Plan and did not involve any discussion regarding zoning.

Ground 5: Annexation of Incompatible Zones

In response to this ground of appeal, the City relies on its submission as contained on page three of the Reply under the heading “Ground 9: Safety and Viability of Low-Density Neighborhoods.”

Specifically, the Property currently has a legal street access and the proposed development would not result in the annexing of land as argued in the Revised Grounds. There is no violation of section 6.6 of the City’s Zoning and Development Bylaw. The proposed use is permitted in the C-2 zone and there is no evidence of a threat to public safety. The Department of Public Works has considered these matters and has not identified any issues.

Ground 6: Historical Street Access Issues

In response to this ground of appeal, the City relies on its submission as contained on page five of the Reply under the heading “Grounds 10 and 11: Developer’s Alternative Options / Safety Concerns of Residents and Financial Implications.

Specifically, the Appellant’s arguments contained at ground 6 of the Revised Grounds does not appear to disclose an appealable issue with respect to the issuance of a development permit. If further clarity is provided on this ground, and how it relates to the issuance of the Permit, the City will respond in further detail.

Ground 7: A Path Forward

The Appellant submits that the Developer (as defined in the Reply) as two options: (1) to rezone the Property R-1L; or, (2) create an egress onto the Malpeque Road, as opposed to Trainor Street. He further submits that the latter option was previously recommended when the Developer (as defined in the Reply) applied to develop the Property in 2019.

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The City notes that the Property has been zoned C-2 since 1999. There is no basis upon which to require its rezoning. With respect to street access, the City provided a copy of the Permit and grading plan to the Department of Public Works on September 26, 2024 for review and consideration. On October 2, 2024, the City's Planning Department received confirmation from the Department of Public Works that there were no issues identified with street access.

Further, the Property owner's 2019 application differed from the current Application and is not relevant to this application. The previously proposed development was much greater in scope and scale with respect to land-use intensity than the currently proposed development.

Summary

The above comments are provided in general reply to the grounds of appeal listed in the Revised Grounds. The City reserves the right to provide a further written response upon receipt of the Appellant's submissions.

We trust the foregoing to be of assistance and look forward to moving this matter forward.

Yours very truly,

A handwritten signature in cursive script that reads "Maggie Hughes".

Maggie Hughes
Meaghan Hughes

Cc: Philip Rafuse, IRAC
Jessica Gillis, IRAC
David Gundrum, City of Charlottetown
Chris Daley, Royalty Maples
Jerry Woolfrey, Appellant