January 14, 2022

VIA EMAIL: pjrafuse@irac.pe.ca

Island Regulatory and Appeals Commission
National Bank Tower
5th Floor, 501
134 Kent ST.
Charlottetown, PE C1A 8R8

Attention: Philip J. Rafuse, Appeals Administrator

Dear Mr. Rafuse:

Re: Written submission response addressing the jurisdictional issues raised by the City of Summerside's Counsel on November 18, 2021. **Docket No. LA21025 – Clare Fagan et al. v. City of Summerside**

Please accept this letter as a Notice of Appeal warranted under subsection 28(1.1) of the Planning Act, RSPEI 1998, c P-8 regarding a development permit 2021-10-0374 and the jurisdiction of the committee to hear such an appeal.

Mr. Derek Key's letter on behalf of his client the City of Summerside, pertaining to the Commission's ability to consider the issue of 'notice' raised by the appellants stated that, as a result of the as-of-right development, the appellants were not required to receive specific notice. While notably subsection 28(1.1) may not reference building permits in particular, there rests the issue in that, as per the Building Codes Act, RSPEI 1988, c B-5.1, section 10.5, "[t]he owner or a person acting on behalf of the owner shall post a permit or a copy of the permit in a prominent place on the property or premises in respect of which the permit was issued." Further, even though a development may be an as-of-right development, in Order LA18-02 – Docket LA17012 the case of Queens County Condominium No. 40 v. City of Charlottetown (November 15, 2017), "as-of-right developments are still subject to the Bylaw, the Official Plan, and sound planning principles" (para 36). As such, the appellants state that the developer has failed to post the permanent in a prominent place where adequate notice would have been given. Any building constructed, erected, placed, or renovated within the development should have been completed only after the prominent display of such a permit. In addition, the appellants are skeptical that as-of-right development and building permits issued may not comply with the Bylaw, the Official Plan, and sound planning principles.

Finally, the appellants respectfully reject the notion that, as per Mr. Derek Key's words, there is "no genuine issue to be tried." While such an issue may not seem particularly genuine to Mr. Key on behalf of the City of Summerside, or the Commission, it is very relevant and genuine to the appellants. If it is not in the realm of possibility for the Commission to provide a remedy for what the appellants consider to be a relevant and genuine issue that negatively impacts their enjoyment and use of their property due to the lack of proper notice of development, then it is the duty of the Commission under due process to assist the appellants in settling the matter as per established rules and principles and by treating the appellants fairly. The assertion that there is "no genuine issue to be tried" violates due process.

The following information and the author of the following paragraphs is written by one of the other interested parties of the appeal, despite the appellant has been internally selected to represent a group of homeowners who have been adversely impacted by the captioned case in an excessive way.

Response to the jurisdiction issue:

As explicitly enumerated on the official website of the Government of the Prince Edward Island[1], the function of the Island Regulatory and Appeals Commission ("**IRAC**") reads as follows:

> "*What is the function of the commission?*
> *The function of the Commission are:*

[1] https://www.princeedwardisland.ca/en/information/executive-council-office/island-regulatory-and-appeals-commission

*(b) **to hear and decide matters relating to land use**, to decide upon the disposition of application respecting the acquisitions of land by non-residents and corporations where so required by any Act;"(emphasis added)*

Also, pursuant to Section 6 of the Island Regulatory and Appeals Commission Act[2] (as amended) (the "**Act**"):

"*6. Powers*
(1) The Commission has
*(a) **all the jurisdiction and powers conferred or vested in it by this Act or any other enactment, and all other implied or incidental powers necessary to perform its functions**;"*

From an unexhaustive reference of all these related law and regulations, it is more than clear that IRAC has full and adequate jurisdiction, either explicated conferred by any applicable law or any implied or incidental powers pursuant to the **Act**, over the issue. On the contrary, if **IRAC** were not having jurisdiction, there would not be any agency or governmental office in the entire Prince Edward Island having jurisdiction on this issue. The lack of jurisdiction would definitely create a legal vacuum, which would encourage misuse of land at large.

With regard to the procedural fairness issue, despite the eloquent statement from the opposite party, one fundamental rule that has been applied thousands of years in human history is that when a decision is going to **affect a group of individuals**, **a fair say should be guaranteed** to avoid intentional ignorance or tyranny. As admitted by the opposite party that the appellant, who has been impacted by the decision of land use, has never been fairly given a chance to raise objection. To the best of her knowledge, the appellant whether there was a due process of public consultation and to what extent the public consultation has been conducted is a mystery.

Even though there were some so-called public consultations, the result from the group of people being affected the least would not represent any public opinion. If there is a flaw in the process of public consultation, then the issues raised in this case perhaps require a review to optimize the process so that these situations will not occur repeatedly in the future.

In summary: We are completely perplexed that this local government continues to allow such disregard for newcomers to the island and to this country, who came here in good faith and have invested jointly well over one million dollars into the local economy, with no regard to provide any notice whatsoever that 2 four plexes are being built in our backyards. Very shocking to have a bulldozer show up in your backyard and have no idea or any warning what is happening. It is incomprehensible.

In addition, would it perhaps seem reasonable in all fairness on a non bias opinion for all parties involved, in order for a fair decision to be made, pictures cannot do justice at times. It would be a suggestion, prior to any decision being made, take a drive down Putters Street in Summerside, look at the homes on the street and the spacious areas between each and every home with the exception of 2 crammed in 4 plexes being built at 182 and 184 Putters Street. Does this type of highly condensed housing fit in this area? When driving around Summerside we do not seem to see such density in housing built in such a small land area.

As per the letter to the developer dated October 28, 2021, from Price Edward Island Regulatory & Appeals Commission it states, "Any construction or expenses, with regard to this proposal, incurred by the developer/owner after this date will be at their peril." The property at 182 Putters Street has continued to be constructed, has it been assumed this appeal, without the joint appellants knowledge been denied?

Respectfully submitted on behalf of the following Appellants:
Clare Fagan – 192 Putters Street representing the following additional Appellants
Neville Brisson – 188 Putters Street
Xiaoyu (Sarah) Huang – 186 Putters Street
Xiaomeng (Richard) Xu – 186 Putters Street

[2] https://www.princeedwardisland.ca/sites/default/files/legislation/i-11-island_regulatory_and_appeals_commission_act.pdf