

November 22, 2021

VIA EMAIL

Island Regulatory & Appeals Commission
5th Floor, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Attention: Philip J. Rafuse

Dear Mr. Rafuse:

**Re: Dockets LA21022 & LA21023 – Goops and Laurena Wooldridge and Robin Boutilier and Brian Chandler v City of Charlottetown
Notice of Appeals – October 1, 2021**

This letter is in response to your correspondence dated November 18, 2021, requesting the City of Charlottetown's (the "City") written submissions on the issue of whether the Island Regulatory and Appeals Commission (the "Commission") has jurisdiction to hear the Notice of Appeals filed by the Appellants, Goops and Laurena Wooldridge and Robin Boutilier and Brian Chandler (the "Appellants") appealing the September 13, 2021 decision of Council approving a site-specific exemption, and related bylaw amendments, for the applicant property owner, Gordon Perry (the "Applicant"), (the "Appeals") in light of sections 28(1.3) and (1.4) of the *Planning Act*, RSPEI 1988, c P-8 (the "Act").

In light of the peculiar circumstances, and in an effort to proceed in accordance with the rules of natural justice, the City does not object to the appeal proceeding before the Commission. The Commission has previously decided that appeals filed outside the twenty-one day statutory requirement will not be entertained. In this case, ostensibly, the appeal was filed too "early". It is evident from Ms. Boutilier's submission that the intended appellants did not fully understand the legal nuances as to when the appeal period began to run under the provisions of the *Planning Act*. In these unusual circumstances, the City does not take issue with this particular appeal proceeding on its merits. In this instance, the mischief intended to be proscribed by the 21 day cut off for appeals is not engaged.

David W. Hooley, Q.C. | Senior Counsel

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In addition, the Commission has authority to hear matters regarding land-use planning pursuant to the Commission's statutory authority prescribed by the Act. The Act sets out the applicable process and procedures for the Commission to hear those matters. Sections 28(1.3) and (1.4) are applicable and read as follows:

- (1.3) A notice of appeal must be filed with the Commission within 21 days after the date of the decision being appealed.
- (1.4) For greater certainty, where a person is dissatisfied by the decision of a council of a municipality to adopt an amendment to a bylaw, the 21-day period for filing a notice of appeal under this section commences on the date that the council gave final reading to the amendment to the bylaw.

Section 28(1.4) was enacted to address previous confusion where appeals were being filed after the resolution and/or each reading of the bylaw.

Council also operates in accordance with its authority prescribed by the *Municipal Government Act*, RSPEI 1988 c M-12.1 and its bylaws. In particular, the City is bound by the processes set out in the *City Procedural Bylaw*. Relevant to this matter is section 43 of the Bylaw:

- 43.6 Council may, in accordance with subsection 125(3) of the Act, amend a proposed bylaw after its first reading. If it is amended, the amendment will be read word by word at the meeting even if copies of the bylaw with the proposed amendment are made available to the public.

In this matter, the Appellant's appealed a decision of Council pertaining to a site-specific exemption request by the Applicant. When Council approves a site-specific exemption, like a rezoning, it is implemented by way of an amendment to the Zoning & Development Bylaw. In this matter, the amendment was as follows: Amend "Appendix C – Approved Site Specific Exemptions" as per Section 3.11 Site-Specific Exemptions of the Zoning & Development Bylaw and Official Plan. As a result, for purposes of the *Procedural Bylaw*, the City submits that Council did in fact approve an amendment to the *Zoning & Development Bylaw* on September 13, 2021 which was not further amended at 2nd reading.

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In light of all the foregoing, it is the City's view that the interests of justice are best served with an interpretation of the peculiar facts and applicable legislation such that the Commission does have jurisdiction to hear this appeal.

Yours very truly,

David W. Hooley, Q.C.
DWH/mm

Alex Forbes
Goops & Laurena Wooldridge
Robin Boutilier & Brian Chandler
Gordon Perry

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