

August 10, 2022

VIA EMAIL

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

Dear Mr. Rafuse:

Re: Katherine Morris v City of Charlottetown – Appeal LA 22-010
Hidden Valley Subdivision Preliminary Approval

This letter is in response to your correspondence requesting the City of Charlottetown's (the "City") Record and Reply to the Notice of Appeal filed by Katherine Morris (the "Appellant") filed with the Island Regulatory and Appeals Commission (the "Commission") on May 16, 2022 (the "Appeal"). The City's Record was provided on August 5, 2022. Please accept this correspondence as the City's Reply to the Notice of Appeal.

The Appellant has appealed a decision of the City's Planning & Heritage Department (the "Department") dated April 26, 2022, which was a preliminary approval of a subdivision, owned by New Age Investment Group Inc. (the "Developer"). The subdivision is located at 339 Malpeque Road (PIDs 1047562 and 669630) (the "Property") and the Developer intends to subdivide the property into 100 lots and identifies the subdivision as Hidden Valley Subdivision (the "Proposed Subdivision").

Without the benefit of full particulars from the Appellant, we have summarized and responded to the Appellant's main concerns as follows.

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

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*20009937/00342/972446/v1

1. Lack of Traffic Study

The Appellants claims that a traffic study should have been required in this matter. Respectfully, the City submits that the City's Zoning & Development Bylaw (the "ZD Bylaw") does not mandate traffic studies for subdivisions. Section 48.3.10 of the ZD Bylaw provides as follows:

- 48.3.10 An Applicant shall be required:
- a. to pay the cost of preparing a traffic study, where required, in accordance with the terms of reference and standards established by the Development Officer from time to time;

The decision to require a developer to provide a traffic study along with their application is a decision left to the discretion of the Development Officer assigned to a review of the application. The Development Officer, in cases of subdivision applications in particular, will consult with the Department of Public Works before determining whether or not a traffic study should be provided by the developer. In this case, the assigned Development Officer, Ms. Laurel Palmer-Thompson, consulted with Mr. Scott Adams, Manager of the Public Works Department via email [Tab 28, pg. 303]. On April 6, 2022, after having reviewed the engineering drawings for the proposed subdivision, Mr. Adams issued a Memorandum to the Department outlining the requirements from the Public Works Department [Tab 8]. Mr. Adams did not require a traffic study to be provided by the Developer and he will be in a position to elaborate on his reasons for not requiring one as a witness at the hearing of this matter.

However, in light of the request for reconsideration and the Appeal, both filed on May 16, 2022, the Developer, independent of the City, obtained a traffic study from Harbourside Transportation Consultants on June 14, 2022 [Tab 20]. Michael MacDonald, the author of the traffic study, concluded the traffic study with a number of conclusions and recommendations, starting at page 14 [pg. 230]. On page 15 [pg. 215], the following conclusions are noted:

"The internal roadways are expected to have sufficient capacity to accommodate additional traffic generated by the proposed development as the daily volumes along these roadways is expected to be at the lower threshold of volumes along a local roadway."

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“[...] However, based on existing operations, the increased traffic volumes are not expected to be sufficient that motorists will notice any major deterioration in level of service.”

“The expected future traffic is not expected to create a traffic safety problem.”

These conclusions, along with the others found on page 14 and 15 of the traffic study, are supportive of the Proposed Subdivision in that there are not any traffic and/or safety concerns resulting from the increased density and any concerns that do exist can be mitigated by traffic calming measures. Some of those traffic calming measures were outlined by Mr. Adams as requirements in his memorandum [Tab 8] – see number 25, 26, 28 and 29 for example.

The Appellants further take issue with the fact that the entrance and exits to the Proposed Subdivision are directly into their neighbouring subdivision, Highfield Heights, and this increases the concerns related to noise, pollution, traffic accidents, walking and child safety. First, as alluded to by the Appellant in her Appeal, the Developer sought to have access onto Route 2 (Malpeque Road), which is a provincial two-lane roadway, and was denied access by the Provincial Department of Transportation and Infrastructure so entering and exiting through Highfield Heights was the only option for the Proposed Subdivision. Second, the traffic study prepared by Harbourside Transportation Consultants was aware of this proposal for entrance and exits when they prepared the traffic study meaning that their conclusions accurately reflect the traffic situation for the Proposed Subdivision and the neighbouring subdivision. And finally, as outlined by Mr. Alex Forbes, in his response to the Appellant’s and other neighbours concerns [Tab 16, pg. 204], when the Highfield Heights subdivision was developed in the 1980’s, the developer, and the City, contemplated future road connectors to Highfield Heights. This is an important planning principle when it comes to subdivisions as interconnectivity between subdivisions is an important feature to assume smooth traffic flow and harmony between different subdivisions.

Please also find enclosed email correspondence between Alex Forbes, and Alan Aitken with the Department of Transportation and Infrastructure regarding the access points for the Proposed Subdivision and how that may involve Malpeque Road in the future. The City reiterates that it does not control access points to and from Malpeque Road as it is a provincially owned roadway but is agreeable to working with the Province on this matter, as alluded to in the correspondence. We inadvertently failed to include this email in the City’s Record.

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In light of the foregoing, the City submits that the City's decision cannot be overturned on the basis of failure to require a traffic study.

2. Failure to abide by Sound Planning Principles

The City submits that the decision to preliminarily approve the Proposed Subdivision was a decision made by the City in accordance with sound planning principles. As the Commission is well aware, in order to prove that a decision was not made in accordance with sound planning principles, the Appellant is required to show more than mere anecdotal evidence of their opinion and disagreement and must provide expert evidence to overturn the decisions made by Council on recommendations from expert planners based on objective and reliable evidence. The Commission has held that public opinion alone is insufficient to overturn these decision [see: *Queens County Condominium Corporation No. 40 v. City of Charlottetown*, Order LA18-02].

In this case, as we are dealing with a preliminary approval of the Proposed Subdivision, which is an as-of-right build that does not require Planning Board or Council approval, there is no report prepared by the Development Officer or the Department. The Development Officer, a registered professional land use planner, reviews the preliminary engineering drawings and proposed subdivision plan in connection with the requirements of the ZD Bylaw, in particular section 48 of the ZD Bylaw which governs subdivisions, as well as with input from other City Departments, including the Public Works Department and the Water and Sewer Utility, and sound planning principles. In this case, the Development Officer did so and concluded that the Proposed Subdivision could be preliminarily approved, subject to a number of conditions outlined in the letter of preliminary approval [Tab 5]. Preliminary approval was granted to the Developer in accordance with sound planning principles.

3. Failure to abide by Charlottetown's Official Plan

The City submits that the decision to preliminarily approve the Proposed Subdivision was a decision made in accordance with the City's Official Plan (the "OP"). The OP is an evolving document that was always intended to respond to a growing City and changing needs within the City. This results in the OP having a number of different interests to account for, which requires the Development Officer to balance those varying interests when processing applications. The following are a number of sections within the OP that support the Proposed Subdivision:

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3.1.1 Our objective is to contain urban sprawl by introducing strategy for new development, and to ensure that there is concurrency between proposals for new development and the provision of underground municipal services.

3.1.2 Our objective is to promote compact urban form and infill development, as well as the efficient use of infrastructure and public service facilities.


3.2.1 Our objective is to preserve the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surroundings

4.1.1 Our objective is to work with those interested in the economic well-being of Charlottetown so as to force the City's own economic vision and strategy.

4.3.1 Our objective is to support the measured mixed-use growth of the major commercial suburban centre and the establishment of the suburban neighbourhood centre as shown on the Future Land-Use Map, without diminishing the key commercial and institutional role played by the downtown and without unduly taxing the abilities of municipal infrastructure or impeding the existing transportation network.

The OP clearly, in the City's view, is supportive of the Proposed Subdivision and as a result, the City submits that the City's decision cannot be overturned on this basis.

Yours very truly,



David W. Hooley, Q.C. & Melanie McKenna

DWH/MM

Encl.

cc. Alex Forbes, Manager of Planning & Heritage
Scott Adams, Manager of Public Works
Katherine Morris, Appellant
Dave Canvin, Counsel for the Developer

Walsh-Doucette, Michelle (Charlottetown)

From: McKenna, Melanie (Charlottetown)
Sent: August 10, 2022 2:25 PM
To: McKenna, Melanie (Charlottetown)
Subject: FW: Access to Malpeque Road

Melanie McKenna
she/her
Associate | Cox & Palmer
P 902 629 3929
E mmckenna@coxandpalmer.com
F 902 566 2639
Dominion Building, 97 Queen Street Suite 600, Charlottetown, PE C1A 4A9

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From: Alan Aitken <AAAITKEN@gov.pe.ca>
Sent: July 28, 2022 12:25 PM
To: Forbes, Alex <aforges@charlottetown.ca>; Adams, Scott <sadams@charlottetown.ca>
Cc: Stephen Yeo <SJYEO@gov.pe.ca>; Bob Creed <bobcreed@gov.pe.ca>
Subject: RE: Note

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Alex.

In response to your email of July 19th regarding access to Hidden Valley from Route 2 the Department provides the following comment:

The Department is willing to work with the Developer and the City on determining an appropriate location for a controlled intersection, most likely a roundabout, on Route 2 to provide access to future phases of the Hidden Valley subdivision recently approved by the City. The location of a future controlled intersection would most likely be in the area of Country View Drive or slightly westward thus providing opportunity for additional development of undeveloped lands on the northeast side of Route 2. The Department will collaborate with the City on this matter and will monitor the growth of traffic in the area, and as needs are identified to accommodate the Hidden Valley Subdivision and other developments in the area the Department will respond accordingly.

Hope this helps:
Alan A. Aitken
Traffic Operations Engineer
aaaitken@gov.pe.ca
902-368-5006

From: Forbes, Alex <aforbes@charlottetown.ca>
Sent: Tuesday, July 19, 2022 10:01 AM
To: Scott Adams <sadams@charlottetown.ca>; Alan Aitken <AAAITKEN@gov.pe.ca>
Subject: RE: Note

Alan: Can you review my response to the Mayor and Zak Bell on this issue and confirm that the statement below is accurate. Alex

Your Worship: I likely could have been more articulate in this response. The Province has indicated that they do not wish to create an access from Hidden Valley (as proposed for this phase of subdivision) directly to the Malpeque Road. Notwithstanding, the Province suggests that they have a long term strategy for dealing with the ideal location for a direct access to Malpeque Road which will be reviewed and form a component of future phases of this subdivision approval. Once the developer finishes subdividing the entire property, the long term intent is that access will be made to Malpeque Road which will allow Highfield and Hidden Valleys subdivisions to obtain direct access to the Mapleque Road through the internal local road network. Alex

From: Mayor of Charlottetown (Philip Brown) <mayor@charlottetown.ca>
Sent: July 17, 2022 10:44 PM
To: Forbes, Alex <aforbes@charlottetown.ca>
Cc: zhbellmla@assembly.pe.ca; Deputy Mayor Jason Coady <DeputyMayorJasonCoady@charlottetown.ca>
Subject: FW: Note

Alex:

Could you please provide some clarification on the following email?

Thank you and stay safe!



Philip Brown
Office of the Mayor
Home: 902-892-8662
Mobile: 902-393-2601
Office: 902-629-4101
Email: mayor@charlottetown.ca



From: Zachary Bell <zhbellmla@assembly.pe.ca>
Sent: Monday, July 4, 2022 11:39 AM
To: Mayor of Charlottetown (Philip Brown) <mayor@charlottetown.ca>
Subject: Note

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Hi Phillip,

I hope you had a great Canada Day Weekend ... and you are ready for Natal Day!

Here is the email I was referring to: (the specific part I was curious about was bolded below – taken from original response).

With regard to the request for a traffic study, the Zoning By-law only requires this as a condition of subdivision approval if deemed necessary. In this case, the proposed subdivision was reviewed by the Manager of Public Works who determined that the proposed subdivision met all City requirements relating to traffic and road design. **The City was also in communication with the Provincial traffic engineers who indicated that they will not allow direct access to Route 2 from the proposed subdivision unless a signalized intersection is provided to their satisfaction.** I should also note that there were a number of future road connectors planned from your subdivision (Highfield Heights) in the mid 1980's to extend into the adjacent parcel of land now referred to as Hidden Valley Subdivision. As a result, the proposed developer of Hidden Valley can design his subdivision and meet City requirements without providing direct access to Route 2.

Mr. and Ms. Roach:

Thank you for your recent email outlining your concerns about the Hidden Valley Subdivision. In your email you request reconsideration of the decision regarding the design for the ingress and egress of traffic for the newly approved "Hidden Valley" subdivision along side Malpeque Road/ Route 2. Please be advised that you can seek to have this decision formally reconsidered by the Planning Board and Council after the preliminary plan of subdivision is signed off by the municipality. This subdivision has not received preliminary subdivision approval to date, but I anticipate that this approval is likely to occur sometime later this week. Please monitor the City's Website for development approvals issued by the Planning Department at the following link: https://www.charlottetown.ca/resident_services/permits_applications/building_permit_approvals. Please note that you have 21 days from the date of preliminary approval within which to seek a reconsideration by the City and/or appeal the development officer's decision to the Island Regulatory & Appeals Commission..

If you wish to seek a formal reconsideration of the anticipated approval of the Hidden Valley S//D, I refer you to the provisions of section 3.15 of the City's Zoning & Development Bylaw and in particular sub-sections 3.15.3 available on line at

<https://www.charlottetown.ca/common/pages/DisplayFile.aspx?itemId=14140205> or see attached.

Just a few brief responses on some of your questions:

With regard to the zoning on the property, I would note that this property has been zoned as such since amalgamation. Therefore, the current Council would not have been involved in any rezoning applications related to this property.

With regard to the request for a traffic study, the Zoning By-law only requires this as a condition of subdivision approval if deemed necessary. In this case, the proposed subdivision was reviewed by the Manager of Public Works who determined that the proposed subdivision met all City requirements relating to traffic and road design. The City was also in communication with the Provincial traffic engineers who indicated that they will not allow direct access to Route 2 from the proposed subdivision unless a signalized intersection is provided to their satisfaction. I should also note that there were a number of future road connectors planned from

your subdivision (Highfield Heights) in the mid 1980's to extend into the adjacent parcel of land now referred to as Hidden Valley Subdivision. As a result, the proposed developer of Hidden Valley can design his subdivision and meet City requirements without providing direct access to Route 2.

With regard to the existing condition of streets in your subdivision, I would note that these considerations are reviewed on an annual basis with all other subdivisions in the City to determine which priority areas need to be addressed in any given year.

With regard to the property on the corner of the Lower Malpeque Road and Highfield Street, this property would have been reviewed at the time by the Public Works Department to determine whether the access permitted was acceptable.

I hope this email responds to some of your questions and inquiries. Alex

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