

BETWEEN:

CLARE FAGAN

APPELLANT

AND:

CITY OF SUMMERSIDE

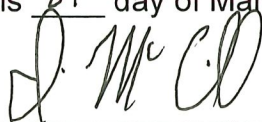
RESPONDENT

ACKNOWLEDGMENT OF EXPERT'S DUTY

I, Thayne Jenkins, of Summerside, Prince County, in the Province of Prince Edward Island, **MAKE OATH AND SAY:**

1. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the Commission may reasonably require, to determine a matter in issue.
2. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

SWORN TO before me at Summerside,
in the Province of Prince Edward Island,
this 24th day of March, 2022.



A Commissioner for Taking Affidavits
In the Supreme Court



THAYNE JENKINS

Thayne Jenkins

217 NOTRE DAME STREET
SUMMERSIDE, PRINCE EDWARD ISLAND
C1N 1R7

RESIDENCE (902) 439-4989
WORK (902) 432-1260
E-Mail: thaynejenkins62@gmail.com

OBJECTIVE

To facilitate the land-use development process in a progressive municipal planning department.

SUMMARY

A responsible and dedicated individual with over twenty-five years of work experience in municipal land-use planning.

- A team player providing customer service to our residents, development community, planning, heritage boards and council.
- Administration and interpretation of various municipal policies and bylaws concerning development applications, including official plan and rezoning amendments, subdivisions, variances, site plan reviews, heritage amendments and other permit applications.
- Research and policy development, including, the Summerside official plan, zoning bylaw, parks & green spaces plan and heritage documents.
- Computer software applications in municipal planning.
- Witness on behalf of the City concerning land use appeals at the Island Regulatory & Appeals Commission [IRAC].

CITY OF SUMMERSIDE MUNICIPAL PLANNING WORK

Planning Officer

OCTOBER 2013 - PRESENT

Responsible for facilitating land use review through the administration of an official plan, zoning, subdivision, parks & green space and heritage plan and bylaws.

- Provided customer service to the public and development community concerning development applications for variances, official plan and rezoning amendments, subdivisions, heritage designations and other permit applications.

Development Officer

OCTOBER 1996 - 2013

Responsible for facilitating land use development through the administration of an official plan, zoning, subdivision, and heritage plan and bylaws.

- Provided customer service to the public and development community concerning development applications for building permits, variances, official plan and rezoning amendments, subdivisions, heritage designations and other permit applications.
- City witness at IRAC land-use appeal hearings.
- Wrote public hearing notices, agendas, planning reports, recommendations, resolutions and presentations to planning/ heritage boards and council concerning development applications.
- Provided technical support for the development of a new City official plan and zoning bylaw; subdivision bylaw and heritage plan and bylaw.

EDUCATION

- Bachelor of Applied Arts, Major in Urban and Regional Planning
Ryerson University, Toronto, Ontario, June, 1991

PROFESSIONAL & VOLUNTEER

- Eligible for membership in the Atlantic and Canadian Institute of Planners.
- Member of Summerside Y-Service Club, 2004- present.
- Maritimes Region Director 2015-16
- Y's Men International - Area President Canada and Caribbean and International Council member 2011-13
- YMCA PEI Board President 2012-14

REFERENCES

References are available on request.

Fagan v. City of Summerside - IRAC Appeal #LA-21025

1. Introduction

The City of Summerside Planning Officer reviewed the file materials concerning **IRAC Appeal #LA-21025**. I was asked by Key Murray Law to provide a planning opinion on the following question:

Did the City follow proper process and procedure as required in the City Bylaws, in the Planning Act and in the law in general, including the principles of natural justice and fairness, in deciding to approve development permit 2021-9-0351?

2. Applicable documents reviewed

- a. PEI Planning Act;
- b. Summerside Zoning Bylaw;
- c. Summerside Subdivision & Site Development Bylaw;
- d. IRAC file record – Appeal #LA-21025.

3. Process and Procedure for a Major Development

Set out in **Section 9** of the **Subdivision & Site Development Bylaw**.

See Tab #22.

- Section 9.1 a. – definition of a Major development.
- Section 9.3 a. and b. - specify how an application is received and reviewed
- Section 9.4 - Preliminary Site Plan Approval
- Section 9.5 – Construction Approval Process
- Section 9.6 – Final Site Plan Approval

4. Major Development Process and Site Plans

A major development in land use planning may be referred to as “site plan” review. Site Plan review is a planning process that examines design and technical aspects of a proposed development. Site-specific matters ensures that a development proposal is well designed, fits in with the surrounding uses and minimizes any negative impacts on land-use. Site plan process cannot be used to regulate the standards or manner of construction of a building, which normally fall under a Building Permit and are addressed through a Building Bylaw and National Building Code and other applicable codes.

More specially, in regard to major developments, Section 1.3 of the Subdivision and Site Development Bylaw provides the following purposes:

The purposes of this Bylaw are to:

- a. Promote patterns of streets, lots and services in the City which are economically efficient and sustainable, and which contribute to community liveability.*
- b. Promote smart growth for making effective use of land and infrastructure over the short and long terms, including applying the principle of “orderly and following” development.*
- c. Ensure adequate infrastructure standards to protect public health and safety, environmental quality, and City obligations for infrastructure transferred to its ownership.*
- d. Allocate street and servicing costs.*
- e. Enable City acquisition of necessary street ROW’s and easements, and the legal subdivision and transfer of land.*
- f. Ensure that major developments meet municipal standards as defined in Section 3.6.*

5. Delegation of Council authority

At the site plan review level of the planning process, Council discretion is not normally required. The exception to this is when Council may contribute money to cost-sharing of infrastructure. Matters such as future land-use and zoning have been determined as represented on the zoning map. Development standards are set out for each zone in the bylaw text.

Reviewing and approving a site plan application is a **technical review** with information and considerations specific to the proposed development site, including such matters as building design (ie. height/footprint/floor area/yard setbacks, parking, fencing, etc). The information required is often prepared by professionals such as architects, and engineers.

In light of the highly technical nature of the site plan, review and approval is delegated to professional municipal staff. Delegating approval to staff can save time that will assist both the municipality and the applicant.

6. Major Development review

Section 3.6 of the Subdivision & Site Development Bylaw contains the criteria for reviewing development applications under the bylaw. See Tab #22.

Section 3.6 Review of Development Applications

Council, Planning Board, and the Development Officer shall consider the following general criteria when reviewing development applications under this Bylaw, as applicable:

- 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.*

As Planning Officer, I would recommend a detailed checklist such as the template below, can help assess if a major development satisfies the criteria. If it does not pass a standard, then the deficiency can be red flagged. For example, if a setback doesn’t meet the zone standard, the applicant can either revise/adjust the site plan to meet the minimum standard or apply for a variance. A variance will trigger another planning process and may in some cases may require notification to adjacent property owners and Planning Board review and Council approval.

With respect to **Appeal #LA-21025**, I did not find any evidence in the file documents where zone standards were not met.

Sample template with checklist.

Civic Address and PID# SAMPLE TEMPLATE	R4 Zone Development Standards (Proposed development details would be noted for each item in the boxes below or if it is not applicable)	Zone Standard requirements YES -- passes standard NO -- does not pass
1. lot frontage		Yes or No
2. lot depth		
3. lot area		
4. building footprint		
5. building floor area		
6. lot coverage [building footprint]		
7. floor area ratio FAR		
8. yard setbacks [front, rear, side & flankage yards]		
9. building height		
10. parking standards		
11. official plan FLUP and zoning map designations		

12.	traffic access design		
13.	water & sewer servicing storm water drainage plan		Engineering comments
14.	electrical services		Engineering comments
15.	other matters as applicable: (fencing/environmental buffer zone/etc)		

7. Principles of Natural Justice and Procedural Fairness

As previously noted, at the site plan review level of the planning process, the technical and detailed aspects of a proposed development are delegated to professional staff. Public involvement in the process at the technical site plan process is much narrower, as compared to an official plan or rezoning amendment(s). Public (and Council) involvement at this point, would only occur if a building design related variance was required. For example, a building setback from a property line(s).

The re-zoning process was vetted through a public process in 2020 as per the Zoning Bylaw and Planning Act requirements. **See Tabs #27, #28.** Opportunity for public input and objections would have occurred at the Council public re-zoning process in 2020. After re-zoning, as-of-right land uses would have flowed through to this specific property and area and objections to land-uses cannot be entertained later at the major development process stage.

8. Conclusions

- a. It is my conclusion, the processes under the Subdivision and Site Development Bylaw, Zoning Bylaw and Planning Act have been followed and additionally are in keeping with best planning practices.
- b. The proposed development satisfies sound planning principles.
- c. Section 23.1 Planning Act - Notification of decision of Council. This was done and meets requirements of the Planning Act, as copies of notices are included in the appeal package.
- d. It is my understanding the development is currently under construction. Infrastructure (water and sewer mains) have not been completed. See Tab #22. Section 9: Final Site Plan approval cannot be granted until the terms and conditions of the Water & Sewer Mains Construction Agreement have been satisfied. Building Occupancy Permits cannot be issued until final Site Plan approval is granted.

Respectfully submitted,

Thayne Jenkins, City of Summerside Planning Officer