

November 17, 2021

VIA EMAIL

Island Regulatory & Appeals Commission  
5<sup>th</sup> 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

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This letter is in response to your correspondence requesting the City of Charlottetown's (the "City") Record and Reply to the Notices of Appeal filed by Goops and Laurena Wooldridge and Robin Boutilier and Brian Chandler (the "Appellants") with the Island Regulatory and Appeals Commission (the "Commission") on October 1, 2021. The Notice of Appeals have been consolidated by the Commission. The City's Record was provided on November 12, 2021. Please accept this correspondence as the City's Reply to the Notice of Appeal.

The Appellants have appealed a decision of Council dated September 13, 2021, approving an application by the Applicant Property Owner, Gordon Perry (the "Applicant"), for a site-specific exemption to permit a commercial use (automobile service center) to be operated on a residential property out of an accessory building at 247 Royalty Road (PID 404632) (the "Property") (the "Application"). The particulars of Council's approval are as follows:

- Amend "Appendix C – Approved Site Specific Exemptions" as per Section 3.11 Site-Specific Exemptions of the Zoning and Development Bylaw; and

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

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- Amend “Appendix A – Future Land Use Map of the Official Plan” from Low Density Residential to Commercial.

First and foremost, the City requests further and better particulars from the Appellants on their grounds of appeal and the City reserves their right to respond to those particulars within a reasonable time from when they are provided. In an effort to respond to the Appellants’ Notice of Appeals as is, the City submits the following.

#### **Scope/Standard of Review by the Commission**

The Commission has clearly stated in numerous decisions that it will defer to and not overturn discretionary decisions of Council on land use matters unless there is evidence that Council failed to follow the processes and procedures prescribed by their own bylaws, there was a breach of one or more of the rules of natural justice or a decision is contrary to good planning principles based upon expert opinion evidence. In particular, in *L&A MacEachern Holdings Ltd v City of Charlottetown* (Order LA08-04), the Commission held that in order to overturn a decision of Council, the Commission must be presented with significant expert testimony contrary to Council’s decision. There is no indication that any such evidence will be presented by the Appellants.

The Commission has also recognized in previous decisions that Council has the final word and is not obliged to adhere to the recommendation of the Planning Department and/or the Planning Board, provided Council articulates credible reasons on the record for not following the recommendation(s). in *Doiron v City of Charlottetown*, Order LA10-06, the Commission held the following:

[39] City Council is not bound by recommendations of their planning department. In fact I believe that they have a public duty to not blindly follow submitted recommendations and to judge the validity of those recommendations. The Council is free to decide in the alternative but they should expect no less of their decision making process than they expect of the basis upon which a staff recommendation is made. In rejecting a recommendation they should demonstrate sound planning

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reasons for doing so, and if they wish to have the decisions sustained on appeal then it should be clear in the City's decision making process that other factors were considered that support the final decision and give weight to the decision. As it is a planning matter, the final decision should be rooted in planning principles.

In this case, the Department and the Planning Board recommended against approval. However, reference is made in the minutes of Council's meeting on September 13, 2021 for the rationale for Council's Approval in the comments of some of the six (6) Councilors who voted in favour of approving the Application [Tab 22]. In particular, you can see the comments of Councilor Jankov on page four outlining the reasons for her changing her vote.

### Zoning & Development Bylaw

The Appellants' referred to sections 4.1.2, 4.12.1, 5.9.1 and 5.9.4 of the City's Zoning & Development Bylaw (the "Bylaw") and submit that a number of 'exemptions' to these provisions would be required.

The Applicant sought and received a site-specific exemption which is a process separate and apart from individual variances. This process is set out at section 3.11 of the Bylaw and pursuant to section 3.11.2.(b), the City is bound by the process at section 3.10. The City held a public meeting on the Application on August 24, 2021 [Tabs 16-17]. Notice of the public meeting which identified the subject lot and the application was provided to property owners with 100m [Tab 10], notice of same was published in the Guardian on August 14, 2021 and August 21, 2021 [Tab 12] and notice was posted on the subject lot on August 12, 2021 [Tab 11]. The site-specific exemption process set out in the Bylaw was adhered to. In addition, notice of Council's September 13, 2021 decision approving the site-specific exemption was posted on the City's web site and made available at the City's Planning Department as required by section 23.1 of the *Planning Act*.

The Appellants suggest to the Commission that it should overturn the City's decision on the basis that the Application requires multiple exemptions to the Bylaw. In response, the City

submits that the entire purpose behind section 3.11 of the Bylaw - setting out a variance and site-specific exemption process – is to allow individuals in unique circumstances the ability to request changes to the permissible uses and regulations for development on their property.

## Official Plan

The Appellants' suggest that approval of the Application is contrary to the City's Official Plan (the "OP"), in particular sections 4.3 (Creating Suburban Centres) and 4.5.1 (Supporting Home Occupations). The OP is an extensive document and support for the Application can also be found in it:

### 4.5 Supporting Home Occupation

[...]

As more people reach a stage in their lives where they need or want to move on to new career paths, many of them will pursue opportunities in the communities that offer outstanding quality of life attributes, which may include the ability to provide employment and income with their own homes.

[...]

1. Our objective is to support and creation and operation of home occupations in all residential zones on the condition that they are clearly secondary to the residential use of a property and do not create land-use conflicts.

The OP sets out the vision for the future of Charlottetown. As part of that, the OP acknowledges that the landscape in Charlottetown has changed and will continue to change on a large scale and a small scale, which includes with individual homeowners and business owners. In this case, the landscape of this particular neighbourhood has evolved since it was formed and Council found that its current landscape allowed for the use as requested by the Applicant in the Application.

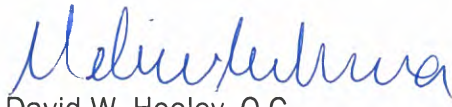
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Councilors are elected officials meaning that they vote and make decisions that they determine are in the best interests of the City's residents based on the all of the information that is before them. In planning related decisions in particular, Councilors review information packages from the Department, they attend Planning Board meetings, Council meetings and public meetings and hear from residents who either support applications or have concerns related to the application. As the Commission will see, at the Public Meeting [Tab 17], there were many residents who voiced their support for the Application and other residents who voiced their support in writing [attachments at Tab 18] for the Application. In the end, with all of the pro and con information available to them, the majority of Councilors chose to vote in favour of the Application.

Finally, approval of the Application is subject to a Development Agreement. A working draft of that Agreement is found at Tab 35 of the City's Record. Sections 2.1 to 2.16, in the City's view, address many of the concerns set out by some of the residents at the Public Meeting. In particular, the Applicant is only permitted to use the approved garage on the inside, during normal working hours with no more than two clients on his property at a time, and with limits to the size of vehicles that he can service. It further provides that if the Applicant wishes to amend his plans as approved by Council, he will need to obtain prior written approval from the City.

In closing, the City submits that Council's decision was made in accordance with the processes and procedures set out in the Bylaw, the principles outlined in the OP and was made in accordance with sound planning principles and the principles of natural justice.

Yours very truly,

  
for David W. Hooley, Q.C.

DWH/mm