

RECEIVED

JAN 04 2021

The Island Regulatory
and Appeals CommissionDrop Box
3:43 pm
MLA

Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)

TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irac.pe.ca

NOTE:

Appeal process is a public process.

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the **Planning Act** or the Municipal Council of Charlottetown (name of City, Town or Community) on the 14 day of December, 2020, wherein the Minister/Community Council made a decision to resolve that the Bylaw to amend the City of Charlottetown Zoning & Development Bylaw (PH-ZD.2-034) as it pertains to Mount Edward Road (PID 390534, 390559 & 390542) be approved and adopted in order to facilitate a mixed used development (the Development) (attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the **Planning Act**, the grounds for this appeal are as follows: (use separate page(s) if necessary)

See separate page attached.

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the **Planning Act**, I/we seek the following relief: (use separate page(s) if necessary)

To review and quash the approval of the council of 14 December 2020 resolving that the Bylaw to amend the City of Charlottetown Zoning & Development Bylaw (PH-ZD.2-034) as it pertains to Mount Edward Road (PID 390534, 390559 & 390542) be approved and adopted in order to facilitate a mixed used development (the Development).

Name(s) of
Appellant(s): Don Read
Please Print

Signature(s) of
Appellant(s):



Mailing Address: 61 Ash Drive

City/Town: Charlottetown

Province: PEI

Postal Code: C1A 6X4

Email Address: donread54@gmail.com

Telephone: 902-892-5563

Dated this 4 day of January, 2020.
day month year

IMPORTANT

Under Section 28.(6) of the **Planning Act**, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

Service of the Notice of Appeal is the responsibility of the Appellant

Information on this Form is collected pursuant to the **Planning Act** and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at info@irac.pe.ca.

GROUND OFS OF APPEAL

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the

Planning Act, the grounds for this appeal are as follows:

1 **FAILURE TO CONSULT ON THE CITY'S TRAFFIC MASTER PLAN WHICH IS RELATED TO, AND IS RELIES ON A LAND TRANSFER FROM THE DEVELOPMENT**

The development was approved subject to 5 conditions. Condition 1 (as attached to the Resolution of 9 November 2020) requires that the City's Traffic Master Plan (**the TMP**) confirms that the development does not conflict with the proposed site plan.

The draft TMP was not made available to the public at the public consultation meeting on 26 August 2020. Furthermore, despite repeated requests, the Council has refused to provide access to the TMP to the local residents impacted by both the Sherwood Crossing Development and the TMP.

Additionally, it is not clear from the transcripts of the Meeting of the Council on 9 November 2020 and 14 December 2020 to what extent (if at all) the Council members have had regard to the TMP in making its determination to approve the development. In fact at the Meeting of the Council on 14 December 2020, Councillor Duffy, Chair of Planning & Heritage, stated:-

*"The second one [the TMP] is the master traffic plan and that is commissioned by the City of Charlottetown and it is for the area that I described earlier; the larger area in Sherwood. It has nothing to do with the sanctioned or permission or approval of Sherwood Crossing; it is **totally separate**. It is just a working document for this Council and future Council to do the right thing when it comes to development and the concern with traffic. **Somehow, word got out that the approvals for either anything in the future be it a connector road, Sherwood Crossing would be subjected or would have to pass the mustard with this master traffic plan which is the furthest from the truth.**" (Emphasis added)*

The statement made by Councillor Duffy on 14 December is in complete contradiction with the condition attached to the Resolution of 9 November 2020.

It is clear that the Council considered compliance of the proposed development with the TMP to be of such importance that it deemed it necessary to impose a condition on the approval requiring confirmation that the development would not conflict with the TMP. In those circumstances, it is clear that the Sherwood Crossing development and the TMP are not "totally separate", and as such the public should have been afforded the opportunity to review and consult on the TMP prior to a determination being made in respect of the development.

2 **FAILURE OF THE TRAFFIC IMPACT ASSESSMENT TO ADEQUATELY ASSESS TRAFFIC GROWTH RATES**

In relation to the predicted future traffic growth and the direct traffic impact of the development, the Council relied on the traffic impact assessment prepared by the Developer in making its determination. This assessment assumes a 1% traffic growth rate. It is claimed that a 1% growth rate is typical for urban municipalities in the Maritimes. However, this value is not representative of the actual growth rate on PEI in recent years. The growth rate for 2019/2020 was 1.5% and for 2018/2019 was 2.5%. It would be more appropriate to use data which represents the specific growth rate on PEI, rather than an artificially deflated value for the purposes of the study which underestimates that traffic impact in the area. The assumed 1% traffic growth rate is not appropriate for this study.

3 **FAILURE TO ASSESS CUMULATIVE TRAFFIC IMPACTS**

The Traffic Impact Assessment prepared by the Developer does not consider cumulative impacts. It assesses the impacts of the development only. Given the number of new developments in the area, the fact that many of roads/junctions are already at capacity, and the identified need for Traffic Master Plan for the local area, the traffic assessment should have also considered the potential cumulative effects of other plans, projects, or programmes in past, present or reasonably foreseeable future that may be individually insignificant, but collectively have a significant impact on the local area.

4 **FAILURE TO CARRY OUT SATISFACTORY AND APPROPRIATE PUBLIC CONSULTATION IN ACCORDANCE WITH THE COUNCIL CODE OF CONDUCT**

The Council's Code of Conduct Bylaw #2018-15 sets out the principles and provisions which govern the Council in undertaking its duties. Part 2, section 8.8, provides:-

"Members of Council have a duty to be as open as possible about their decisions and actions. This means communicating appropriate information openly to the public about decision making processes and issues being considered, encouraging appropriate public participation, communicating clearly and providing appropriate means for recourse and feedback."

The concerns of the residents in relation to the impacts of the development on the local area, in particular traffic impacts and who is paying for the new road infrastructure, have been raised in numerous emails and telephone calls to the Mayor and the Councillors.

In addition, the specific concerns of the residents were raised by Councillor Tweel at both Meetings of the Council on 9 November and 14 December. Specifically, on 14 December, Councillor Tweel moved for the second reading to be deferred to allow for a public meeting to take place to address the local residents' concerns in relation to the TMP, the potential new through road to Ash Drive, development contributions, and the costs of new road infrastructure.

Councillor Tweel highlighted the real concerns in the local community and the need to afford the opportunity for those residents to consult on the development, and the impacts on traffic and the need for clarification on the development. Councillor Tweel noted and acknowledged that this wasn't an unreasonable request. Furthermore, Councillor Tweel highlighted that at the public consultation he did not recall that the Council made it clear that the taxpayers were going to be paying for the infrastructure. He refers to the public meeting as being "truly incomplete because not all the cards were put on the table".

Clearly, there is ambiguity and confusion with regards to the information and communication from the Council to the public in respect of the development, and the Council has failed in its duty to communicate appropriate information openly to the public. The Council hasn't encouraged appropriate participation. Firstly, by not making the TMP available to local residents for consultation, and secondly, by failing to engage and address concerns raised directly with the Mayor and Councillors.

FILE #	PID#	PERMIT #	APPLICATION DATE	APPROVAL DATE	DECISION	PROPERTY LOCATION	WORK DESCRIPTION	NAME	DEADLINE TO MAKE AN APPEAL
20-047	390559 390542	052-REZ-20	11-Feb-20	14-Dec-20	Second Reading done, pending Ministerial Approval	Towers Road/Mount Edward Road	Commercial (C-2) Zone to the Single-Detached Residential Large (R-11) Zone for a portion of the property at 505 Malpeque Road (PID #145406). Amend Appendix "G" of the Zoning and Development Bylaw from the Highway Commercial (C-2) Zone to the Open Space (OS) Zone for a portion of the property at 505 Malpeque Road (PID #145406). Amend Appendix "G" of the Zoning and Development Bylaw from Open Space (OS) to Single-Detached Residential Large (R-11) for a portion of the properties along Pabie Lane (PID #s 1117167 and PID# 676213), in order to construct a single-detached dwelling.	APM Commercial	4-Jan-21
							Request to Amend Appendix "B" of the Zoning & Development Bylaw (Comprehensive Development Area (CDA) Parcels and Permitted Uses) for the properties located at Mount Edward Road (PID #s390534, 390559 and 390542). Amend Appendix "A" of the Official Plan Map from Low Density Res. density to Concept Planning Area for the property at Mount Edward Road (PID #390542) and a portion of PID #390559, and Amend Appendix "G" of the Zoning & Development Bylaw from Low Density Residential(R-2S) to Comprehensive Development Area (CDA) for the property at Mount Edward Road (PID #390542) and a portion of PID #390559 in order to facilitate a mixed-use development, subject to the conditions as attached. That the City's Traffic Master Plan confirm that the development does not conflict with the proposed site plan, Signing of a Development Agreement, Signing of a Roads and Services Agreement for the portion of public road to connect this development to Spencer Drive ; That the future road as shown on the comprehensive development plan be donated to the City at no cost, prior to the issuance of any Building & Development permits. Subject to the revised site plan submitted by the applicant dated September 10, 2020 (Attachment B)		