

August 6, 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: Don Read v. City of Charlottetown – Appeal #LA21001
Notice of Appeal – January 4, 2021**

This letter is in your response to your correspondence dated July 21, 2021, extending the right of reply to the Appellant, Mr. Don Read's (the "Appellant"), written submissions submitted to the Island Regulatory and Appeals Commission (the "Commission") on July 30, 2021.

As you are aware, the hearing in this matter took place on May 30, 2021. At the hearing, a copy of the Development DA between the City and the Developer, Pan American Properties Inc. (the "Developer") (the "DA") was requested. Following the hearing, on or about June 7, 2021, the Appellant requested a copy of the DA from the City. On or about June 21, 2021, the City sent correspondence to the Commission, with a copy to the Appellant and the Developer, which included a copy of the DA and additional comments arising from the provisions of the DA.

Collectively, the City's June 21st and June 30th submissions and the additional submissions herein are by way of response to Mr. Read's correspondence of July 30, 2021.

Rather than specifically address each of Mr. Read's submissions and for the sake of brevity, the following is the City's response to each enumerated 'issue' outlined by the Appellant in his July 30th submissions.

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1. Incorrect evidence of Ms. Palmer Thompson

In response to paragraphs 2 to 14 of the Appellant's July 30th submissions, the City reiterates and relies on their correspondence of June 21, 2021 and further reply of June 30, 2021.

It is clear that the DA did not specifically address "Condition 1" from Council's Resolution of November 9, 2020 [Tab 32]. Ms. Palmer Thompson's oral evidence at the hearing was based upon a mistaken recollection when she stated that Condition 1 was expressly encapsulated in the DA. Her evidence in this regard has since been promptly corrected.

Condition 1 reads as follows:

"That the City's Traffic Master Plan confirm that the development does not conflict with the proposed site plan"

The sole purpose of Condition 1 was to address the potential need for a north-south road connector through the middle of the Sherwood Crossing Development connecting Towers Road to the proposed Spencer Drive extension. This was confirmed in evidence by all three (3) of the City's witnesses, namely, Alex Forbes, Manager of the Planning and Heritage Department, Scott Adams, Manager of the Public Works Department and Laurel Palmer Thompson, Planner II and the assigned Development Officer.

The possibility for the need of a north-south road connector was identified by City Staff early in the approval process for the Development. In order to continue processing the application without the benefit of the completed Traffic Master Plan, the City's consultant, CBCL was specifically asked to address whether or not a north-south road connector through the middle of the Development was necessary. The report from CBCL, dated September 11, 2020, responded to this question by addressing existing traffic conditions, 2025 'No-Build' conditions and 2025 'Total' conditions (the "CBCL Report"). The CBCL Report confirmed that a north-south road connector through the middle of the development was not necessary for traffic flow at acceptable levels of service (LOS) - no doubt because the new north-south connector along the eastern extremity of the Charlottetown Mall parking lot/western extremity of the Development would readily serve the existing and projected traffic flow. This north-south connector is now under construction.

Reference is made to the sequence of Council's deliberations regarding Condition 1. A review of the record reveals as follows:

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- Tab 26 - October 1st meeting at which the CBCL Report first came up and a decision regarding Condition 1 was deferred because the CBCL Report had only just been received that day.
- Tab 28 - October 29th public and closed meetings (part of meeting closed due to need at that time to purchase 2 properties to accommodate Spencer Drive west-east corridor to Mount Edward Road) - The CBCL Report was again before Council and a decision again deferred. Mark MacDonald was in attendance to answer any questions.
- Tab 30 - November 9th meeting The Resolution (including the soon to be superfluous Condition 1) and 1st bylaw reading. Had Council not been satisfied by now that based upon the CBCL Report there was no conflict with the TMP - i.e. a north-south corridor through the middle of the Development was not required - the Resolution and first reading would simply not have carried.
- Tab 32 - December 14th meeting - 2nd reading of the bylaw

Clearly Council was not rushing to judgement on whether or not Condition 1 had been satisfied. A final decision did not come until November 9th / December 14th following initial receipt of the September 11th CBCL Report on October 1st.

From the City's perspective, Condition 1 became superfluous - it had been satisfied by Council's *de facto* acceptance of the CBCL Report on November 9th. In a perfect world, could/perhaps should Condition 1 have been removed from Council's November 9, 2020 Resolution after they had reviewed / accepted the CBCL Report, - probably. Due to the fact that Condition 1 had been already satisfied by the time the DA was signed by the Developer and then later by the City, it was not included in the DA because the City had empirical evidence (i.e. the CBCL Report) indicating an (additional) north-south corridor through the middle of the Development was unnecessary.

The Appellants suggestion that Condition 1 has not been satisfied and that there is no evidence to confirm this is, with respect, untrue. The evidence of the City, from three (3) qualified and un-contradicted expert witnesses, explains the reasoning behind the initial inclusion of Condition 1 in the Resolution at an earlier stage in the process and how from the City's perspective it was later satisfied is clear and un-contradicted.

Furthermore, as was heard in evidence by both Ms. Palmer Thompson and the Developer, Tim Banks, if in the unlikely event further north-south road connector through the middle of the Development is ever needed at a later date, the Development was advertently designed by

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Mr. Banks to accommodate that need. It could be negotiated, or, if need be, even expropriated.

In the City's view, cases before the Commission are best decided on the merits - with a complete understanding of all the facts before the Commission. There is no basis, in the City's view, to exclude Ms. Palmer Thompson's evidence (as Mr. Read contends) simply because one detail in her evidence needed upon check to be corrected. Should the Commission wish to hear direct evidence from Ms. Palmer Thompson or Mr. Forbes, Mr. Adams or even Mr. Mark MacDonald, as representative of CBCL, to further explain the fact a north-south corridor was not required through the Development, then if deemed necessary by the Commission, the City will most certainly oblige with further oral evidence.

2. The Issuance of the DA

The Appellant, at paragraphs 15-17 of his submissions, takes issue with the fact that the DA is dated April 15, 2021, the date it was signed by the Developer, and not June 15, 2021, the date the DA was signed by the City. Respectfully, the City submits that the albeit two (2) month delay in adding the City's signatures to the DA is not material to the merits and outcome of this appeal.

3. Additional Documents Produced by the Respondent

In response to the Appellant's submissions found at paragraphs 17-21, the City reiterates and relies on their submissions in response to paragraphs 2-14 as outlined above.

Based on all of the evidence before the Commission, written and oral, - which includes the two email threads and CBCL Report that were discovered after the hearing took place and immediately disclosed to all parties - the City's position is that on a common sense reading of the facts Condition 1 was plainly satisfied as a result of the findings of the September 11th CBCL Report and did not need to be included in the DA since Condition 1 was superfluous as it had been satisfied by virtue of the findings of the CBCL Report.

4. The Appellant's Grounds of Appeal

The City reiterates and relies on their written submissions submitted on the Appeal, oral submissions on the Motion to dismiss the Appeal and oral submissions on the Appeal in response to the Appellant's submissions found at paragraphs 22 to 25.

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In closing, two further points arise:

1. Mr. Read's overarching concern in this appeal is plainly the proposed Spencer Drive west to east extension along the north boundary of the Development to Mount Edward Road where it would meet Ash Drive where he lives. This is plain from his submissions at the public meeting on the TMP and also in this hearing process. Yet, - Mr. Read continues to proffer the alleged need for an additional north-south corridor *through the middle of the Development* - which CBCL opined is not needed. No doubt - this is due to the very nearby north-south corridor now already under construction along the eastern extremity of the Charlottetown Mall parking lot. If ever the straw man analogy applied it's here.
2. Substantively, all of Mr. Read's concerns relate to the City's TMP in so far as it includes an extension of Spencer Drive to Mount Edward Road at Ash Drive - a set of decisions the City contends are not subject to appeal to IRAC under section 28(1.1) of the *Planning Act*.

The City submits that its Motion re jurisdiction ought to be allowed and the appeal ought to be dismissed. The Appellant's concerns are not with the Development *per se* but rather with the TMP and the contemplated Spencer Drive extension.

Alternately, the City submits that if the Commission finds it has jurisdiction, then the appeal ought to be dismissed on the merits. The Appellant has not adduced any cogent evidence that supports a finding that the City failed to follow its prescribed procedures nor that the Development is not consistent with good planning principles. In particular, there is no expert evidence before the Commission either that the City failed to follow its bylaws or that the approved Development fails to adhere to good planning principles.

Yours very truly,

David W. Hooley, Q.C.

DWH/mm

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