

April 26, 2024

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: Derek French v City of Charlottetown – Appeal #LA24007
Notice of Appeal – March 12, 2024**

This letter is in response to Ms. Walsh-Doucette’s correspondence requesting the City of Charlottetown’s (the “City”) Record and Reply to the Notice of the Appeal filed by Derek French (the “Appellant”) with the Island Regulatory and Appeals Commission (the “Commission”) on March 26, 2024 (the “Appeal”). Please accept this correspondence as the City’s Reply to the Notice of Appeal. A copy of the City’s Record accompanies this correspondence.

The Appellant has appealed a decision of the City dated March 12, 2024 whereby the City denied the Appellant’s Rezoning and Amendments Application and passed the following resolution (the “Application”):

That Council deny the request to amend Appendix “A” of the Official Plan Future Land Use Map of the City of Charlottetown from Medium Density Residential to High Density Residential and that Council deny the request to amend Appendix “G” – Zoning Map of the Charlottetown Zoning and Development Bylaw from the Medium Density Mixed Use Residential Zone (MUR) to the Apartment Residential Zone (R-4B) for the subject property located at Lot 160, Fairdale Drive (PID #192153) (the “Property”)

The City requests that the Appellant provide grounds of appeal for which the City can provide a fulsome response. The correspondence attached to the Notice of Appeal, in the City’s view, does not articulate any grounds of appeal (i.e. issues with the City’s decision to deny the Application) for which the City can meaningfully reply. Nonetheless, the City submits the following as a preliminary comments to this Appeal.

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Zoning & Development Bylaw

The City submits that there were no errors made by the City with respect to the requirements and process prescribed in the City's Zoning & Development Bylaw (the "Bylaw"). The Application is governed by section 3.10 of the Bylaw. The following steps were taken by the City in compliance with the prescribed process:

- The City accepted a complete Rezoning & Amendments Application – 3.10.2 – **Tab 1**
- The City conducted a public meeting to receive the views and opinions of the public and the applicant – 3.10.3 – **Tabs 10-13**
- The City provided proper notice of the public meeting by circulating a letter to owners within 100m of the subject property, published notice of the meeting in not less than two issues of the Guardian and posted a copy of the notice on the subject property – 3.10.4 – **Tabs 7-9**

There is no evidence to suggest that the City did not adhere to the processes and requirements set out in the Bylaw.

Official Plan

The Report prepared by the Planning & Heritage Department (the "Department") is found at **Tab 14** of the City's Record. As always, the Report describes the Application, discusses the Official Plan and any requirements from the Bylaw, public feedback, conducts an analysis and finishes with a conclusion based on the positives, neutrals and shortcomings of the Application. The Department recommended approval to Planning Board, primarily based on the demand for housing and the area already having municipal services. Planning Board agreed and recommended approval to Council (**Tab 15**). Council sided with the shortcomings of the Application and denied the Application (**Tab 16**).

The Official Plan is a constantly evolving document that was drafted in a way to reflect different circumstances and adapt to the needs of a rapidly growing city. While we don't dispute that the Application found support in the Official Plan, the City does additionally submit that there is also support found in the Official Plan for denying the Application. In particular, there were concerns with adding such a large number of apartment dwellings given that the neighbourhood is not 'mature' in the sense that adequacy of services have not kept up with development. While the proposed development is close to existing services, there were concerns regarding the ability to accommodate such an influx of people including schools, transit and road access.

Sound Planning Principles

As the Commission is aware, sound planning principles form part of the foundation of the decisions that come from the Department. While Council did not follow the Department's recommendation, Council did articulate their reasons why and the City submits that those reasons are rooted in sound planning principles.

In *Dennis v City of Charlottetown*, Order LA23-05, the Commission held the following:

45. First, in this case, Planning Board made a recommendation to Council which was contrary to the recommendation of City Planning Staff. On this point, the Commission has been clear: where that happens, there is an added obligation on Council to demonstrate sound planning reasons for not following the advice of its professional planning staff. Council's decision-making process should clearly demonstrate what factors were considered that support the final decision.

[...]

50. At this risk of being redundant, the Commission reiterates that Council must provide thorough, cogent, and thoughtful reasons when evaluating planning applications from the City's residents. Procedural fairness requires, and the Commission expects, that every municipal council provide sufficient reasons based on sound planning principles to justify its decision. More is expected when an application has been the subject of a public meeting, when written submissions for and against the application have been received from the public, and when Council has received adverse recommendation from their professional staff. Those recommendations are not binding and may be overcome; however, there must be sufficient information presented to the Commission to demonstrate a careful evaluation by Council and that the final decision was motivated by planning-related consideration.

In our view, Council successfully undertook the exercise required by the Commission of providing sufficient reasons for rendering a decision contrary to the Department's recommendations, reasons which were based in sound planning principles. The Regular Meeting of Council minutes are found at **Tab 16** of the Record and while we don't intend to outline each comment made by every Councillor, we do want to highlight the main points, which demonstrate that Council's decision was rooted in representation of their constituents as well as sound planning principles:

- The original plan for the Property was seniors housing and Council was hesitant to allow that change given that there is a need for seniors housing and seniors housing is what was approved by the public during the creation of the East Royalty Master Plan;
- Lack of upgraded infrastructure, including, but not limited to, streetlights, sidewalks and crosswalks;
- Sediment from MacWilliams Road, which requires an upgrade, running through the stormwater drainage system;
- Lack of adequate services in the immediate area; and
- Premature development given the that the area is not fully developed in terms of services and infrastructure

The Department, the Planning Board and Council each have differing roles in the planning process prescribed by legislation and bylaws. Councillors, as elected representatives of their constituents also have an obligation to consider the perspectives and input from their constituents. In fact, case law has recognized the obligation that elected municipal councillors have and that they should be accorded a certain latitude/deference due to the unique nature of their job (see: *Nanaimo (City) v Rascal Trucking Ltd*, 2000 SCC 13). The City submits that in this case, Council discharged that obligation and guided their decision in the direction set out by the Commission in Order LA23-05 and several previous decisions issued by the Commission.

Summary

As no grounds of appeal were provided by the Appellant, the City reserves the right to provide a further response in the future.

We trust the foregoing to be of assistance and look forward to moving this matter forward.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Melanie McKenna".

David W. Hooley, K.C. & Melanie McKenna
DWH/MM