

June 17, 2024

VIA EMAIL

The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Attention: Philip J. Rafuse

Dear Mr. Rafuse:

RE: LA24009 – 1349856 Canada Inc. v City of Charlottetown (the “Appeal”)

Please accept this correspondence as to the City of Charlottetown’s (the “City”) response to the correspondence from Ms. Walsh-Doucette dated May 15, 2024 requesting the City’s reply submissions on the preliminary issue of jurisdiction in the above-noted matter where in the Appellant, 1349856 Canada Inc. (the “Appellant”) appealed a letter written by the City’s Manager of Planning and Development dated April 18, 2024 (the “Letter”).

In summary, the Letter reads as follows:

- With respect to Lot 2014-6, identified as PID 1076718 (the “Property”), a Development Agreement was signed between the City and the predecessor owner on August 15, 2013 and an Addendum Agreement as signed on August 17, 2023 (the “Agreements”);
- The Agreements require 28 affordable housing units to be included in any development on the Property;
- The Design Review process will need to be followed for the portion of the building allocated to affordable housing (as per the Zoning & Development Bylaw); and
- If the affordable housing units are removed and/or the design of the building has changed, the approved Development Concept Plan must be amended to reflect any change.

Melanie McKenna | Associate

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The Commission has raised the preliminary issue of jurisdiction in this matter. The City submits that, for the reasons that follow, the Commission does not have jurisdiction to hear and decide this matter and as such, this matter should be dismissed.

Planning Act, RSPEI 1988, c P-1 (the “Planning Act”)

The Commission is a body of statute, pursuant to the *Island Regulatory and Appeals Commission Act (“IRAC Act”)*, RSPEI 1988, c I-11. This means that the Commission’s jurisdiction over matters is determined by statute and is outlined in several pieces of legislation. In this case, the *Planning Act* is applicable, specifically, section 28(1.1). Section 28(1.1) reads as follows:

Appeal from decisions of council

- (1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of a council of a municipality
 - (a) that is made in respect of an application by a person under a bylaw for
 - (i) a development permit,
 - (ii) an occupancy permit, in relation to a matter under this Act or the regulations
 - (iii) a preliminary approval of a subdivision, or
 - (iv) a final approval of a subdivision; or
 - (b) to adopt an amendment to a bylaw, including
 - (i) an amendment to a zoning map established in a bylaw, or
 - (ii) an amendment to the text of a bylaw.

The City submit that the Letter does not fit under any of the categories referenced in subsection (1.1) and therefore, is not appealable to the Commission. Section 28(1.1) is very clear with respect to what types of decisions by a municipality are appealable to the Commission. Respectfully, the Letter is an explanation of the City’s position as it relates to the Agreements, which were approved in 2013 and 2023, respectively. There is no authority included in the *Planning Act*, nor the *IRAC Act*, or any other applicable legislation that provides the Commission with the authority or discretion to hear and/or consider planning matters outside of the scope of section 28(1.1).

Appellant's Submissions

The Appellant filed submissions on jurisdiction dated [June] 5, 2024. In those submissions, the Appellant states the following:

The Commission has expressed concern with its jurisdiction in this matter and **the Appellant shares that concern**. The Appellant has indicated that it is content to proceed with judicial review, **so long as the Respondent agrees not to argue that there is an adequate alternative remedy available**. In the absence of such an agreement, the Appellant seeks a ruling from the Commission as to whether or not it has jurisdiction to deal with the appeal [...]

The City submits that the Appellant's statement suggests that the Appellant agrees with the position as set out herein, that the Commission does not have jurisdiction over this matter.

With respect to the Appellant's request that the City agree not to argue that there is an adequate alternative remedy available, the City is prepared to accept that the Letter is not appealable to the Commission pursuant to section 28(1.1) and is therefore not a remedy for the Appellant. As for any other arguments rendered in the judicial review matter, the City is not prepared to agree any further.

We trust the foregoing to be of assistance and look forward to a decision from the Commission in this matter.

Yours very truly,



Melanie McKenna
MM/MM

