



PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: March 29, 2022
Docket: LA21018
Type: Planning Act Appeal

INDEXED AS: Landfest Company Ltd. v. Town of Stratford

Order No: LA22-07

BETWEEN:

Landfest Company Ltd.

Appellant

AND:

Town of Stratford

Respondent

ORDER

Panel Members:

J. Scott MacKenzie, Q.C., Chair
Erin T. Mitchell, Commissioner

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Philip J. Rafuse,
Appeals Administrator
Prince Edward Island Regulatory &
Appeals Commission

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APPEARANCES & WITNESSES

1. For the Appellant, Landfest Company Ltd.

Counsel:

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Melissa Trowsdale, Carr, Stevenson & MacKay

Witnesses:

John Horrelt, Landfest Company Ltd.
Rob LeBlanc, Planner, Fathom Studio

2. For the Respondent, Town of Stratford

Counsel:

M. Lynn Murray, Q.C. – Key Murray Law
Iain McCarvill, Key Murray Law

Witnesses:

Blaine Yatabe, Planner, Town of Stratford
Kevin Reynolds, Director, Planning, Development and Heritage, Town of Stratford

1. INTRODUCTION

1. This appeal before the Commission arises from a decision by the municipal council in the Town of Stratford (the “Town”) to deny an application by Landfest Company Limited (the “Appellant”) to rezone parcel numbers 1061175, 1061167, and 329011 (collectively, the “Property”) from the low density residential zone (“R1”) to the planned residential development zone (“PURD”). The impugned decision is one that may be appealed to the Commission pursuant to s. 28(1.1)(b) of the *Planning Act*.¹

2. BACKGROUND

2. On July 14, 2021, the municipal council denied the application for rezoning submitted by the Appellant. The council was divided on the application. Three councillors voted against the application. Two councillors voted in favour. One councillor abstained.
3. Before the decision by council, the application submitted by the Appellant had previously been recommended for approval by the Town planner and the planning, development and heritage committee for the Town (the “Planning Committee”). However, neither one of these recommendations was binding on council.
4. On July 30, 2021, the Appellant filed a notice of appeal with the Commission.
5. On September 10, 2021, the Town filed its record with the Commission.
6. On October 22, 2021, the Appellant delivered pre-hearing submissions in writing to the Commission.
7. On November 10, 2021, the Town delivered pre-hearing submissions in writing to the Commission.
8. On November 16, 2021, the Commission published notice of the appeal hearing.
9. The appeal hearing was held on November 30-December 1, 2021.
10. On December 17, 2021, the Appellant delivered post-hearing submissions in writing to the Commission.
11. On January 10, 2021, the Town delivered post-hearing submissions in writing to the Commission.

3. EVIDENCE

Appellant

12. John Horrelt (“Horrelt”) testified on behalf of the Appellant. He outlined the development history of the Property. Horrelt testified that both the Town and residents were included in the development process and that the development for

¹ R.S.P.E.I. 1988, c. P-8.

the Property was based on needs and concerns identified by the community. For example, Horrelt said that the development plan generally places single-family homes against existing single-family homes and places townhouses against different uses, such as an institutional use, a greenspace, and a road. The objective, according to Horrelt, was to have a more diverse development while taking steps to protect the existing homes in the adjacent R1 zone. He did acknowledge, however, that the proposed development would look different from the dwellings in the adjacent zone.

13. Horrelt also noted that a traffic study was completed and confirmed that traffic from the development would be negligible. The development would have little impact on traffic, there would be no need to upgrade traffic signals, and any increase in traffic would result in minimal wait times. He further added that engineers had confirmed that the area surrounding the proposed development would be able to absorb the flow of surface water. The development was therefore not expected to result in any negative changes in terms of managing surface water.
14. Rob LeBlanc ("LeBlanc") was also called to testify on behalf of the Appellant. LeBlanc is a professional planner and was recognized by the Commission as an expert in land use planning. LeBlanc advised the Commission that he had previously provided planning services to the Town and was retained by the Appellant to review and revise the previous development plan for the Property. Some of the changes made to the development included the removal of duplexes and an apartment building. According to LeBlanc, the plan was changed based on the feedback received from the community.²
15. LeBlanc stated that, in his view, the Property is ideal for additional density because it is located where two collector roads come together, has access to a trail, and has a drainage pattern that tends to drain inward to manage surface water. He also noted that the plan backs like uses onto like uses and maintains the existing forest for the management of storm water. In his opinion, the current plan represents a better use of the Property than the existing zoning and is a "good step forward" for the Town.³
16. The report prepared by LeBlanc was also filed with the Commission.⁴ The testimony of LeBlanc was generally consistent with the contents of his report. He indicated that the bylaws and official plan in the Town are aimed at sustainability and, in his view, the proposed development "is consistent with the goals of the official plan."⁵ LeBlanc also stated that, in his opinion, the plan is "consistent with sound planning principles."⁶ Under cross-examination, LeBlanc acknowledged that the municipal council was required to apply the official plan as written, that some

² See generally Transcript (November 30, 2021) at pages 80-81.

³ Transcript (November 30, 2021) at page 83.

⁴ Exhibit A-3, Expert Report of Rob LeBlanc.

⁵ Transcript (November 30, 2021) at page 91.

⁶ Transcript (November 30, 2021) at page 92.

of the variances sought by the Appellant were more “challenging”⁷ than others, and that there was no such thing as “as-of-right” rezoning.⁸

17. When asked about the existing dwellings in the adjacent R1 zone, LeBlanc explained that the relationship with those dwellings was addressed in the development plan in a number of ways, including maintaining the forest, providing for a buffer zone, and following step development. Generally speaking, higher density units were directed toward an existing institutional use and the collector roads. LeBlanc noted that he does not share the view that maintaining the R1 zoning has merit based on sound planning principles. He noted that rezoning is a regular practice⁹ and that “maintaining community character” is not a matter of “maintaining the status quo.”¹⁰ LeBlanc explained that continuing low density uses and sprawl was not consistent with sound planning.
18. Before leaving the evidence of LeBlanc, the Commission notes that the Town, in its submissions, expressed concern that LeBlanc was acting in the nature of an advocate for the development rather than as an expert for the benefit for the Commission.¹¹ The Town therefore asks that the opinions expressed by LeBlanc be afforded little weight by the Commission. The Town does not, however, challenge the expertise of LeBlanc in the field of land use planning.¹² The issue for the Commission is therefore one of weight.
19. When the evidence of LeBlanc is reviewed as a whole, and considered together with his appearance at the hearing, the Commission is satisfied that the evidence given by LeBlanc was relevant, reliable, and capable of being relied upon by the Commission. LeBlanc presented his evidence in a professional manner and, not unlike the other planning professionals who testified on behalf of the Town, the Commission is not satisfied that he strayed outside of his field of expertise and experience to become an advocate. The evidence of LeBlanc is therefore accepted by the Commission and will be considered together with the whole record in this matter.

Town

20. Blaine Yatabe (“Yatabe”) is a professional planner employed by the Town. He was called by the Town to testify about the rezoning being proposed for the Property as well as his report prepared for the Planning Committee.¹³ The Commission notes that this report was completed after the deadline fixed for submissions from the public in relation to the application. Yatabe recommended that the rezoning be approved. He also confirmed that, in order to arrive at a recommendation, he considers the official plan and bylaws for the Town. As a professional planner,

⁷ Transcript (November 30, 2021) at page 147.

⁸ Transcript (November 30, 2021) at page 147.

⁹ Transcript (November 30, 2021) at page 126.

¹⁰ Transcript (November 30, 2021) at page 132.

¹¹ Town of Stratford, Closing Submissions at paras. 23 and 30.

¹² Town of Stratford, Closing Submissions at para. 30.

¹³ Town Planner’s Report at pages 1-9 [Record at pages 262-270].

Yatabe was clear in his evidence that he would not recommend approval of the development if it did not comply with the official plan and bylaws.¹⁴

21. Like LeBlanc, Yatabe presented his evidence in a professional and expert manner.
22. Kevin Reynolds (“Reynolds”) is the director of planning, development and heritage for the Town. He was called to testify by the Town. Reynolds stated that the Department of Transportation and Infrastructure did not have any traffic concerns in relation to the proposed development.¹⁵ Reynolds also explained that there is an opportunity for public consultation when a rezoning application is being considered. In this case, he confirmed that there was a deadline of June 30, 2021 for the public to submit comments; however, the municipal council also allowed a member of the public to deliver a presentation “in relation to the proposed rezoning request” at its meeting on July 14, 2021.¹⁶ The Commission notes that the Appellant was not extended an opportunity to respond to that presentation before the decision was made by council.
23. Reynolds stated that he too supported rezoning the Property and that changing the zoning from R1 to PURD was also supported by the Planning Committee.¹⁷ He also acknowledged that the municipal council had previously approved another rezoning from R1 to PURD. Reynolds was careful to acknowledge that council is not obligated to agree with the recommendation provided by his department and may consider a wider array of circumstances than planning staff.¹⁸
24. Reynolds was also questioned specifically about the presentation made to the municipal council on the night of its decision. He pointed to an email dated July 12, 2021 where he advised the Appellant that there was an opportunity for presentations from the floor at the beginning of every meeting of council.¹⁹ He also confirmed that the meeting of council was livestreamed on the internet and therefore accessible to the Appellant.
25. The evidence of Reynolds was straightforward and helpful to the Commission.

¹⁴ Transcript (November 30, 2021) at page 196.

¹⁵ This was supported by email correspondence from the Department of Transportation and Infrastructure. See Email from Brett Wallace to Kevin Reynolds (June 30, 2021) [Tab 18] [Record at pages 255-256].

¹⁶ Transcript (December 1, 2021) at pages 32-33. See also, the Minutes of Planning Committee for July 5, 2021 state “Director of Planning, Kevin Reynolds, clarified that all comments that were received [after] the deadline **will not be included in the Planning Board** [Tab 21] [Record at p. 275] (emphasis added).

¹⁷ Transcript (December 1, 2021) at page 53.

¹⁸ Transcript (December 1, 2021) at page 53.

¹⁹ Transcript (December 1, 2021) at page 46.

4. SUBMISSIONS

Appellant

26. The Appellant submits that the decision made by the municipal council ought to be quashed by the Commission for two reasons:
- a) First, the Appellant submits that council failed to follow the proper procedure and standards of procedural fairness. In support of this submission, the Appellant advances two arguments. First, the Appellant argues that council did not follow the proper procedure for submissions from the public and denied the Appellant an opportunity to respond to the presentation made to council on the night of its decision.²⁰ Second, the Appellant argues that council failed to provide sufficient reasons for its decision.²¹ By not providing sufficient reasons, the council did not satisfy its duty of procedural fairness.
 - b) Second, the Appellant submits that, when the decision of council is examined as whole, it was not based on sound planning principles.²² According to the Appellant, the minutes from the meeting of council demonstrate that its decision was not grounded in planning principles.
27. For these reasons, the Appellant asks that the appeal be allowed and the Property be rezoned from R1 to PURD.

Town

28. The Town asks that the appeal be denied and the decision of council be upheld. For its part, the Town answers the errors asserted by the Appellant with the following submissions:
- a) First, there was no procedural error or denial of procedural fairness on the part of council. The Town argues its procedural bylaw provides that “delegations wishing to speak before Council” will be permitted to do so at the time designated on the meeting agenda. The presentation made to council on the night of its decision was, according to the Town, not from a “delegation” but from a “delegate” who represented a group.²³ Legal counsel for the Town identifies that group as residents who live near the Property.²⁴ Even if this was a procedural error, the Town argues that it was not “sufficiently serious” to quash the decision of council and did not result in any “substantial unfairness” to the Appellant.²⁵ The Town also argues that council provided sufficient reasons to meet its duty of procedural fairness. As the Town rightly points out, this is a challenge to the procedure

²⁰ Appellant, Post-Hearing Submissions at para. 62.

²¹ Appellant, Post-Hearing Submissions at para. 74.

²² Appellant, Post-Hearing Submissions at paras. 77-78.

²³ Town of Stratford, Closing Submissions at para. 54.

²⁴ Town of Stratford, Closing Submissions at para. 54.

²⁵ Town of Stratford, Closing Submissions at paras. 49 and 62 [emphasis added].

and, in its view, the reasons from council were adequate. The Town notes that the standard for reasons in this context is not perfection.

- b) Second, the decision made by council had merit based on sound planning principles. According to legal counsel for the Town, council decided to maintain the status quo and that decision has merit upon review of the record as whole, including the zoning history, the official plan, and certain evidence from the Town planner. In the words of legal counsel, the councillors who voted to maintain the status quo identified these issues “at least implicitly.”²⁶ By voting to maintain the status quo, in the words of counsel for the Town, “[c]ouncil can be seen to be preserving the character of the existing neighbourhood.”²⁷ Even if not a decision which promotes the highest and best use of the Property, it was nevertheless a decision that accords with sound planning principles.

- 29. For these reasons, the Town asks the Commission to defer to council and dismiss the appeal.

5. ISSUES

- 30. This appeal raises two main questions for the Commission. The first question is whether the municipal council made a procedural error or otherwise failed to satisfy its obligation of procedural fairness. The second question is whether the decision by the municipal council was one based on sound planning principles. The submissions made by the parties helpfully focused on these two questions and assisted the Commission in answering them.

6. DISPOSITION

- 31. For the reasons that follow, the appeal is allowed and the decision made by the municipal council is quashed. The Commission orders that the Property be rezoned subject to the conditions recommended by the Town planner and the Planning Committee.²⁸

7. ANALYSIS

- 32. While the Commission has the authority to substitute its decision for one made by a municipal council, the Commission does not lightly interfere with these types of decisions. The parties agree that the guideline developed by the Commission when exercising its appellate authority under the *Planning Act* is applicable in this case. That guideline involves two main considerations:

²⁶ Town of Stratford, Closing Submissions at para. 95 [emphasis added].

²⁷ Town of Stratford, Closing Submissions at para. 95 [emphasis added].

²⁸ The conditions recommended relate to the subsequent development of the Property and are found in the Town Planner’s Report at pages 8-9 [Record at pages 269-270]. See also Minutes of Meeting of Planning, Development and Heritage Committee at §.8(a) [Record at page 274].

- a) whether the municipal council followed the proper procedure as required by its bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness; and
 - b) whether the decision made by the municipal council was based on sound planning principles in the field of land use planning.²⁹
33. When a municipal council fails to do these things as the primary decision-maker, whether by failing to follow its process, or not discharging its duty of fairness, or making a decision that is not grounded in sound planning principles, the Commission is not required to show deference to the decision made by council.³⁰ And, as confirmed by the Prince Edward Island Court of Appeal, “if it so decided,” the Commission can substitute its decision for the one being appealed.³¹

Procedure – Presentation and procedural fairness

34. A public body like a municipality is bound by its own processes and owes a general duty of procedural fairness when it makes an administrative decision affecting rights, privileges, or interests. A decision to approve or deny an application for rezoning is one of those decisions.³² When a bylaw or the conduct of a municipality creates a legitimate expectation that certain procedures will be followed, fairness will generally require consistency. After all, the expectation is one created by the municipality itself.
35. In this case, the Appellant argues that the municipal council did not follow the proper procedure for submissions from the public and denied the Appellant procedural fairness when it permitted a presentation to be made to council on the night of its decision without giving the Appellant any opportunity to respond. The Town, for its part, argues that the presentation made to council was permitted pursuant to s. 16.1(b) of its Council Procedural Bylaw, Bylaw #47 (“General Procedural Bylaw”). While the Town acknowledges that the presentation was not from a “delegation,” it nevertheless argues that the presenter was a “delegate” who represented a group.³³ Legal counsel for the Town identifies that group as residents who live near the Property.

²⁹ LA17-02, *APM Construction Services Inc. v. Community of Brackley* (May 26, 2017) at para. 21.

³⁰ *Charlottetown (City) v. Island Regulatory and Appeals Commission*, 2013 PECA 10 at para. 40 [Charlottetown].

³¹ *Doiron v. Island Regulatory and Appeals Commission*, 2011 PECA 9 at para. 20 [Doiron]. See also Order LA16-05, *Marshall MacPherson Ltd. v. Town of Stratford* (October 28, 2016) at para. 67.

³² See generally *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at paras. 3 and 12.

³³ Town of Stratford, Closing Submissions at para. 54.

36. The General Procedural Bylaw was enacted pursuant to the *Municipal Government Act*.³⁴ Section 16.1 provides for presentations, delegations, and petitions at meetings of council:

16.1. The following will be permitted at meetings of Council at the time so designated on the agenda, in accordance with the provisions of this bylaw:

(a) presentations to recognize an individual or group on behalf of Council or for a group or individual to present to Council some award or similar honour;

(b) delegations wishing to speak before Council; and

(c) presentations of petitions.

16.2. The time allotted for each presentation or delegation shall be determined by the Mayor, having regard for the remaining agenda items.

37. The Town relies on s. 16.1(b) of the General Procedural Bylaw to justify the presentation made in this case. The Commission is not satisfied, however, that the provision applies. The Town admits that the presenter was not a delegation. The text of s. 16.1(b) of the General Procedural Bylaw permits only delegations to speak before council. While legal counsel on behalf of the Town advances a creative argument that the presenter was a delegate representing a group and that group was residents who live near the Property, the record before the Commission does not support this finding. Neither the presentation nor the minutes of the meeting record that the speaker was chosen by, or a representative of, a delegation or group. In fact, the minutes recorded that the speaker was relying on “media reporting” in order to convey the views of “adjacent property owners.”³⁵
38. In summary, the Commission is not satisfied that the presentation made to council on the night of its decision was permitted under s. 16.1(b) of the General Procedural Bylaw. The presentation was of a different character and was aimed directly at the application for rezoning made by the Appellant. Reynolds himself confirmed to the Commission that the presentation was “in relation to the proposed rezoning request.”³⁶ Allowing the presentation to be made was a procedural error on the part of the municipal council.
39. In addition to the procedural defect arising from the General Procedural Bylaw, the Commission is also satisfied that the Town failed to adhere to the procedure prescribed in, and implemented under, its Zoning and Development Bylaw, Bylaw #45 (“Zoning Bylaw”). On the specific subject of public consultation when an application for rezoning is made, ss. 3.2.3, 3.2.4, and 3.2.5 of the Zoning Bylaw specifically prescribe the procedure, including a public meeting to solicit input from the public and written notice to nearby property owners. This procedure was

³⁴ R.S.P.E.I. 1988, c. M-12.1.

³⁵ Regular Monthly Council Minutes (July 14, 2021) at page 2 [Record at page 311].

³⁶ Transcript (December 1, 2021) at pages 32-33.

followed by the Town. However, when publishing its notices, the Town also included a deadline for receiving submissions from the public about the particular application made by the Appellant.³⁷ The deadline for public submissions was communicated to be June 30, 2021.³⁸

40. Reynolds confirmed to the Commission that comments received after this deadline are not considered by the municipal council.³⁹ The conduct of the Town in publishing this deadline gave rise to a legitimate expectation on the part of the Appellant that this procedure would be followed. It was not. The municipal council received and relied upon a presentation from a member of the public at its meeting on July 14, 2021 and after its published deadline for submissions from the public. This constituted an additional procedural error on the part of municipal council.
41. To the extent that the Town may suggest that this departure from its deadline for public submissions was authorized by the General Procedural Bylaw, it is well-settled that specific rules prevail over general ones.⁴⁰ The Commission is also not satisfied that the General Procedural Bylaw permitted the presentation in question for the reasons above.
42. Before leaving this ground of appeal, the Commission wishes to address the argument advanced by the Town that any error was not “sufficiently serious” to quash the decision of council and did not result in any “substantial unfairness” to the Appellant.⁴¹ For example, the Town points to the email from Reynolds on July 12, 2021 where he advised the Appellant that there was an opportunity for presentations from the floor at the beginning of every meeting of council.⁴² The Commission is not satisfied, however, that the errors made by the Town in this case were inconsequential, trivial, or merely technical in nature.
43. The errors identified by the Commission formed part of the decision made by the municipal council. For example, the minutes of the meeting on July 14, 2021 recorded that the Deputy Mayor, who voted against rezoning the Property, made express reference to the presentation.⁴³ The Appellant was also extended no similar opportunity to address council on the night of its decision. The deadline for

³⁷ See Town of Stratford, Notification Letter to Residents [Tab 10] [Record at page 125]; Town of Stratford, Guardian Ad #1 [Tab 11] [Record at page 128]; and Town of Stratford, Guardian Ad #1 [Tab 12] [Record at page 129]. This deadline was also recorded in the minutes of the meeting of the municipal council on July 14, 2021. See Regular Monthly Council Minutes (July 14, 2021) at page 10 [Record at page 319].

³⁸ Town of Stratford, Guardian Ad #1 [Tab 11] [Record at page 128]; and Town of Stratford, Guardian Ad #1 [Tab 12] [Record at page 129]. See also Regular Monthly Council Minutes (July 14, 2021) at page 10 [Record at page 319].

³⁹ Transcript (December 1, 2021) at pages 33-34.

⁴⁰ See *Akpe v. IRAC and Grey*, 2018 PECA 5 at paras. 9-10. See also Order LA22-06, *MacArthur v. City of Charlottetown & Pan American Properties Inc.* (March 2, 2022) at para. 16(c).

⁴¹ Town of Stratford, Closing Submissions at paras. 49 and 62 [emphasis added].

⁴² Email from Kevin Reynolds to Andrew MacCormack (July 12, 2021) [Tab 67] [Record at page 525].

⁴³ Regular Monthly Council Minutes (July 14, 2021) at page 11 [Record at page 320].

submissions from the public had passed.⁴⁴ As for the email sent by Reynolds on July 12, 2021, it did contain a trivial error in the nature of a misspelling by referencing “preparations” when Reynolds intended to convey the possibility of “presentations.”⁴⁵ This error alone was not fatal. However, the email, without more, is insufficient evidence to meet the clear and unequivocal standard that is required in order to find a waiver of the duty of procedural fairness owed by the municipal council.

44. In summary, this ground of appeal is accepted by the Commission.

Procedure – Sufficiency of reasons

45. The second procedural defect advanced by the Appellant related to the adequacy or sufficiency of the reasons provided by the municipal council. At the very outset, it is important to emphasize that this challenge is one of procedure and not one going to the merits or substance of the decision made by council on July 14, 2021. The Town, for its part, acknowledges that the reasons of council in this case are “not perfect”⁴⁶ but nevertheless permit the Appellant to know why the application for rezoning was denied. The Commission must therefore undertake a functional and contextual review of the reasons provided by council in order to determine whether they are so deficient as to amount to a denial of procedural fairness.
46. Reasons are sufficient when they explain why a municipal council arrived at its decision.⁴⁷ When reviewing for adequacy or sufficiency, the Commission must consider the reasons given as a whole in the context of the application before council and with an appreciation for the type of decision made. In this case, the municipal council was considering an application for rezoning. The zoning of a property is the first step in the development continuum and involves the consideration of policies in the official plan and factors prescribed by bylaw. This is the context within which the decision was made by council on July 14, 2021.
47. Upon review of the minutes from the regular monthly meeting of council on July 14, 2021 as a whole, the Commission is satisfied that the minutes explain why a majority of council voted against the application to rezone the Property. Whether those reasons are grounded in sound planning principles is a separate and different question. In this case, the minutes of council are sufficient in the

⁴⁴ The deadline for comments from the public was communicated to be June 30, 2021. See Town of Stratford, Notification Letter to Residents [Tab 10] [Record at page 125]. According to the public advertisements, “Final comments, in writing, will be received until Wednesday, June 30th, 2021 at 12:00 noon” [emphasis added]. See also Town of Stratford, Guardian Ad #1 [Tab 11] [Record at page 128]; and Town of Stratford, Guardian Ad #1 [Tab 12] [Record at page 129].

⁴⁵ Email from Kevin Reynolds to Andrew MacCormack (July 12, 2021) [Tab 67] [Record at page 525].

⁴⁶ Town of Stratford, Closing Submissions at para. 72.

⁴⁷ Order LA17-08, *Pine Cone Developments Inc. v. City of Charlottetown* (November 15, 2017) at para. 56. See generally *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48 at para. 12.

procedural sense. The Appellant knows why rezoning was denied. This ground of appeal is therefore not accepted by the Commission.

Sound planning principles

48. It is well-settled that a municipal council it is not required to follow the recommendations of its planning staff or its planning committee.⁴⁸ In other words, the Town in this case was not bound to follow the advice of its professional planner, Yatabe, or the recommendation delivered by the Planning Committee. However, the Commission has long been very clear in its case law that, in rejecting a recommendation, a municipal council must demonstrate sound planning reasons for doing so. The reasons given by council must clearly demonstrate what factors were considered in making the final decision. Those factors must be based on sound planning principles:

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 reasons for doing so, and if they wish to have the decision 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.**⁴⁹

49. In summary, the Commission must be satisfied that the final decision made by the municipal council in this case was animated by sound planning principles.⁵⁰
50. As the Commission has held previously, a council is expected to rely upon objective and reliable evidence. While public consultation is an important element of the planning process, subjective concerns from neighbours cannot be construed as a veto over the sound development of properties that are owned by others:

[W]hen it comes to developments, assertions or speculations from neighbours are not sufficient to overcome objective and reliable evidence. **While consultation with - and input from - the public is an important element of the planning process,**

⁴⁸ See e.g. Order LA10-06, *Doiron v. City of Charlottetown* (July 14, 2010) at para. 42 [Order LA10-06].

⁴⁹ Order LA10-06, *ibid.* at para. 39 [emphasis added].

⁵⁰ See generally Order LA20-04, *Jessie Frost-Wicks et. al. v. City of Charlottetown* (October 7, 2020) at para. 36.

it cannot be construed as a veto on the development of properties owned by others.⁵¹

51. When the minutes of the regular meeting of council on July 14, 2021 are read as a whole and considered in the context of the record, the Commission is not satisfied that the decision to deny this application to rezone the Property was based on sound planning principles. By way of examples, the Commission notes the following considerations relied upon by councillors who voted against rezoning the Property. Each one of these examples points to irrelevant considerations other than sound planning principles:
- a) The Deputy Mayor noted that the presentation from the floor was excellent and very educational.⁵² For the reasons stated above, this presentation after the deadline for submissions from the public was a procedural error and ought not to have been considered when making a decision in relation to the application by the Appellant.
 - b) The Deputy Mayor incorrectly stated (and was subsequently corrected) that applications to change the zoning of the Property had been “voted down 7 of the 8 times.”⁵³ In addition to being incorrect, this statement runs counter to the basic principle that each application must be determined on its own merits. Absent a bylaw provision to the contrary, a prior unsuccessful application is not a bar to a future application.
 - c) The Deputy Mayor relied on various concerns expressed by residents that did not relate to land use planning, including the emotional health of residents and the number of times residents have had to write letters and attend meetings about the Property.⁵⁴ Land use planning includes consultations with the public.⁵⁵ While an important element of the planning process in Prince Edward Island generally and in the Town specifically,⁵⁶ neighbours hold no veto over the development of property that is owned by others. The Zoning Bylaw expressly contemplates that a landowner can make an application to rezone land in the Town. In order to be relevant, the comments and submissions from the public must be tied to legitimate land use planning considerations.
 - d) A councillor reviewed the number of emails received from residents and others who were for or against the development and stated that

⁵¹ Order LA18-02, *Queens County Condominium Corporation No. 40 v. City of Charlottetown* (July 11, 2018) at para. 42 [emphasis added].

⁵² Regular Monthly Council Minutes (July 14, 2021) at page 11 [Record at page 320].

⁵³ Regular Monthly Council Minutes (July 14, 2021) at page 11 [Record at page 320].

⁵⁴ Regular Monthly Council Minutes (July 14, 2021) at page 12 [Record at page 321].

⁵⁵ See *Planning Act*, *supra* note 1, s. 2(f).

⁵⁶ Town of Stratford, Zoning Bylaw, s. 3.2.2 (f).

“her weight is with the residents.”⁵⁷ She noted that residents were concerned, invested in their own properties, and paid taxes for more than 40 years. In the end, she stated that “she supports her residents.”⁵⁸ None of these concerns touched on the merits (or lack thereof) of the application before council for decision.

- e) A councillor cited “the safety issues this rezoning may bring”⁵⁹ when a traffic study had already been completed and, according to Reynolds, the Department of Transportation and Infrastructure did not have any traffic concerns in relation to the proposed development.⁶⁰ She also relied on a suggestion that the development would result in “substantial congestion” and make a portion of the trail system “dangerous at all hours.” In short, none of these subjective concerns were grounded in objective evidence. In fact, they were inconsistent with the evidence that was in the record.
- f) A councillor admitted that “he based his decision on the concerns of the area residents” and relied on “the will of people.”⁶¹ While he noted that he weighed the pros and cons, the councillor did not express them in the record. Even legal counsel for the Town acknowledged in their post-hearing submissions that these reasons “taken in isolation would not be sufficient to meet [the] burden of procedural fairness.”⁶²

- 52. The Commission recognizes that the municipal council for the Town is a busy decision-maker. The Commission also does not expect each councillor to cite each and every factor listed in s. 3.2.2. of the Zoning Bylaw when considering an application for rezoning. However, those factors are helpful to guide the discussions of council in this context. By highlighting these prescribed factors and the policies expressed in the official plan, instead of the considerations highlighted above, the municipal council would have been in a better position to demonstrate that its decision was truly one animated by planning-related considerations.
- 53. The Commission has regularly held that a municipal council must demonstrate sound planning reasons for departing from a recommendation by its planning staff or its planning committee. In this case, the municipal council was presented with a favourable recommendation from the Town planner, Yatabe, as well as the Planning Committee. Both recommendations were anchored in sound planning principles, including the official plan for the Town. The municipal council also had

⁵⁷ Regular Monthly Council Minutes (July 14, 2021) at page 13 [Record at page 322].

⁵⁸ Regular Monthly Council Minutes (July 14, 2021) at page 14 [Record at page 323].

⁵⁹ Regular Monthly Council Minutes (July 14, 2021) at page 13 [Record at page 322].

⁶⁰ Email from Brett Wallace to Kevin Reynolds (June 30, 2021) [Tab 18] [Record at pages 255-256]. No challenge was made to the Traffic Impact Study obtained by the Appellant. See Traffic Impact Study [Tab 7] [Record at pages 21-116].

⁶¹ Regular Monthly Council Minutes (July 14, 2021) at page 18 [Record at page 327].

⁶² Town of Stratford, Closing Submissions at para. 81.

the benefit of Reynolds, who was present at the meeting⁶³ and also supported the recommendation to rezone the Property. Instead of drawing upon these resources in order to identify and express objections grounded in sound planning principles, the council relied upon irrelevant considerations and concerns that were already addressed by the objective evidence in the record. The Commission is therefore not satisfied that the decision made by the municipal council was based on sound planning principles.

54. Counsel for the Town has argued that, in denying the application to rezone the Property, the municipal council voted to maintain the status quo. Counsel also took a step further and submitted that, by doing so, the council was “at least implicitly”⁶⁴ preserving the character of the existing neighbourhood – a policy recognized in the official plan. As stated in the post-hearing submissions for the Town, “[i]n voting to maintain the current R1 zoning, Council can be seen to be preserving the character of the existing neighbourhood.”⁶⁵ While this was a commendable effort by legal counsel to find an implicit justification for the decision of the municipal council (based on the record as it was delivered to counsel), the Commission is not persuaded by this submission for two main reasons:

- a) First, council was voting for or against the application made by the Appellant to rezone the Property. The legal issue before council for determination was not, as counsel has argued, whether to maintain the status quo. The merits of the application submitted by the Appellant had to be determined on its own based on sound planning principles.
- b) Second, the minutes of council constitute the reasons for its decision. If the decision is animated by sound planning principles, council is expected to justify that decision on the record. The Commission expects that justification to be explicit and not implicit from the minutes. As the Commission has previously held, a municipal council, when rejecting a recommendation from its planning professionals, “should demonstrate sound planning reasons for doing so ... if they wish to have the decision sustained on appeal.”⁶⁶

55. In summary, this ground of appeal is accepted by the Commission.

56. The Commission is satisfied that the municipal council in this case made procedural errors as well as a substantive error when it based its decision on considerations other than sound planning principles. Having received, considered and weighed the expert planning evidence given by LeBlanc, Yatabe⁶⁷ and Reynolds, the Commission is in an evidentiary position to decide the merits of this application. After reviewing s. 3.2.2. of the Zoning Bylaw and the policies found in

⁶³ Regular Monthly Council Minutes (July 14, 2021) at page 1 [Record at page 310].

⁶⁴ Town of Stratford, Closing Submissions at para. 95 [emphasis added].

⁶⁵ Town of Stratford, Closing Submissions at para. 95 [emphasis added].

⁶⁶ Order LA10-06, *supra* note 48 at para. 39 [emphasis added].

⁶⁷ See especially Town Planner’s Report at pages 1-9 [Record at pages 262-270].

the official plan for the Town, the Commission finds that rezoning the Property in accordance with the conditions recommended⁶⁸ to council on July 14, 2021 is consistent with sound planning principles.

8. CONCLUSION

57. For the reasons above, the appeal is allowed. The Commission orders that the Property be rezoned subject to the conditions recommended by the Town planner⁶⁹ and the Planning Committee for the Town.⁷⁰

58. The Commission thanks the Appellant and the Town for their submissions.

9. ORDER

IT IS ORDERED THAT

1. The Property be rezoned subject to the conditions recommended by the Town planner⁷¹ and the Planning Committee for the Town

DATED at Charlottetown, Prince Edward Island, March 29, 2022.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) Erin T. Mitchell

Erin T. Mitchell, Commissioner

⁶⁸ The conditions recommended relate to the subsequent development of the Property. See Town Planner's Report at pages 8-9 [Record at pages 269-270]; and Minutes of Meeting of Planning, Development and Heritage Committee at §8(a) [Record at page 274].

⁶⁹ Town Planner's Report at pages 8-9 [Record at pages 269-270].

⁷⁰ Minutes of Meeting of Planning, Development and Heritage Committee at §8(a) [Record at page 274].

⁷¹ Town Planner's Report at pages 8-9 [Record at pages 269-270].

NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the ***Act*** provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.