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

**Date Issued:** **June 8, 2026**
**Docket:** **LA24021**
**Type:** **Planning Act Appeal**

INDEXED AS: Jerry Woolfrey v. City of Charlottetown,
2026 PEIRAC 33(CanLII)

Order No: LA26-08

**BETWEEN:**

Jerry Woolfrey

**Appellant**

**AND:**

City of Charlottetown

**Respondent**

Royalty Maples Properties Inc.

**Developer**

# REASONS FOR DECISION

Panel Members:

Pamela J. Williams, K.C. Chair
Gordon MacFarlane, Commissioner
Murray MacPherson, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

# Contents

# Appearances & Witnesses

**1. For the Appellant:**

Jerry Woolfrey, self-represented

**Witnesses:**

James Coons, LPP, MCIP, Senior Planner and Associate with FBM Ltd.

Mike Murphy, a resident of Katie Dr, Charlottetown

**2. For the Respondent, City of Charlottetown:**

**Counsel:**

Melanie McKenna, Cox & Palmer

**Witnesses:**

Stephanie MacDonald, Planner I, City of Charlottetown

David Gundrum, RPP, MCIP, Manager of Planning & Heritage, City of Charlottetown

Shane Jones, P. Eng., Building Inspector, City of Charlottetown

**3. For the Developer, Royalty Maples Properties Inc.**

**Counsel:**

Maggie Grimmer, Carr, Stevenson & MacKay

**Witness:**

Chris Daley, Director and President, Royalty Maple Properties Inc.

# 1. INTRODUCTION

1. This is an appeal of the decision of the City of Charlottetown to issue a Building & Development Permit to Royalty Maple Properties Inc. (the "Developer") to construct "foundation only for cottages" at 18 Trainor Street, in Charlottetown, PE.

2. The Appellant, Jerry Woolfrey, has asked the Commission to overturn the issuance of the permit on the basis of both procedural errors committed by the City of Charlottetown and the failure of the City to consider sound planning principles.

# 2. BACKGROUND

3. On June 7, 2024, the Developer applied to the City of Charlottetown (the "City" or the "Respondent") for a Building & Development Permit in respect of 18 Trainor Drive, Charlottetown (the "Subject Property"). The Subject Property is zoned Highway Commercial (C-2) and abuts a residential subdivision in Charlottetown called Southview Estates.

4. The detailed project description on the Building & Development Permit Application said:

> Move existing cottage business form neighboring property PID 388199 to 889873
> (18 Trainor Street Charlottetown)
>
> Current zoning on 388199 is C2 and 889873 is zoned C2
>
> 11 Cottages and 6 Unit Motel building

5. The permit application was accompanied by a site plan, foundation plan, and other plan drawings. It is not disputed that this permit application was the first of multiple needed for the Developer to carry out construction of cottages and a motel building on the Subject Property. The project as a whole will be referred to as the "Development" throughout these reasons.

6. The Subject Property had historically been used for a single-family dwelling of the previous owner, though that use was non-compliant with the permitted uses in the C-2 zone. The evidence the Commission heard at the hearing is that the Subject Property is unique in that the C-2 zoned Subject Property directly abuts, and is accessed through, a low-density residential neighbourhood.

7. On November 19, 2024, the City approved the Building & Development Permit #304-BLD-24 for "foundation only for cottages" (the "Foundation Permit"). The Foundation Permit was a hybrid building permit and development permit, approved by both a Development Officer and Building Inspector.

8. The City posted public notice of the approval of the Foundation Permit on or about December 3, 2024.

9. On December 20, 2024, the Appellant filed a Notice of Appeal with the Commission appealing the City's approval of the Foundation Permit. The issue of the apparent filing

beyond the statutory time limit in the *Planning Act* will be discussed in more detail later in these reasons.

10. The Appellant amended his grounds for appeal on January 3, 2026. The City provided its Appeal Record on January 31, 2025. The City responded to the Notice of Appeal and amended grounds of appeal by February 14, 2025. Following a call between Commission staff and all parties in late spring 2025, the parties opted to participate in mediation, facilitated by Commission staff. The mediation proceeded on July 30, 2025. Discussions between the parties following mediation were not successful, and on October 3, 2025, the Commission set the matter down to be heard on December 2, 2025.

11. On December 1, 2025, the City requested an adjournment due to unforeseen and extraordinary events. In the circumstances, the Commission agreed to the adjournment and the matter was rescheduled for January 28 and 29, 2026.

12. The Commission heard the appeal at a public hearing on January 28 and 29, 2026.

# 3. ISSUES

13. The Appellant has raised several grounds of appeal, though in keeping with the Commission's well-established two-part guideline, an appeal pursuant to the *Planning Act* raises two main questions for the Commission:

    a) The first question is procedural and asks the Commission to determine whether the City followed the proper procedure as required by its Zoning and Development Bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness, in issuing the Foundation Permit; and

    b) Second, the Commission must consider whether the decision made by the City to approve the Foundation Permit was made in accordance with the City's Official Plan and Zoning & Development Bylaw, and was based on sound planning principles.

14. The specific grounds of appeal raised under each part will be addressed in detail under the Analysis section of these reasons.

# 4. DISPOSITION

15. The appeal is dismissed. The Commission is satisfied that the City discharged its duty of fairness in processing and reviewing the permit application and approving the Foundation Permit. The Commission is also satisfied that the decision to approve the Foundation Permit was made in accordance with the Bylaw and sound planning principles.

# 5. EVIDENCE

16. The Appellant submitted expert opinion evidence from James Coons ("Coons"), LPP, MCIP, a Senior Planner with FBM Architecture Ltd. Coons prepared a report titled

"Memorandum on the Application of Sound Planning Principles in Development Permit #304-BLD-24" and testified to the findings in his report at the hearing.

17. The Appellant also called as a witness Mike Murphy ("Murphy"). Murphy is a resident of Katie Drive in Charlottetown, nearby the Subject Property, who provided fact evidence about his inquiries with the City about this Development and permitting process, as well as his personal observations and experiences regarding traffic and safety issues at the intersection of Katie Drive and Trainor Street. The Appellant also submitted a written statement of Stephanie Noonan outlining her personal experience and observations about traffic and safety concerns in the neighbourhood as a result of the Development.

18. The Appellant also submitted thorough written submissions to the Commission and a copy of a petition signed by approximately 200 residents of Southview Estates.

19. The City's documentary evidence consisted of the City's Appeal Record, totalling over 250 pages, and including (but not limited to): the Developer's permit application, building and site plans, email correspondence from various employees of the City of Charlottetown with respect to the permit application.

20. At the hearing, the City called three witnesses, being: David Gundrum, RPP, MCIP, the Manager of Planning & Heritage at the City of Charlottetown ("Gundrum"); Stephanie MacDonald, Planner I, with the City ("MacDonald"); and Shane Jones, P. Eng, Building Inspector, with the City of Charlottetown ("Jones").

21. The Developer testified at the hearing with respect to the timeline and specifics relating to the development process for the Subject Property.

# 6. ANALYSIS

## A. Authority and Guideline

22. It is well-established that the Commission considers a two-part guideline when exercising its appellate authority under the *Planning Act* applies in this case. As included above, the guideline involves two main considerations: [1]

    i. Whether the planning authority followed the proper procedure as required by its bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness; and

    ii. Whether the decision made by the planning authority has merit based on sound planning principles in the field of land use planning and as enumerated in its official plan and bylaw.

23. In any *Planning* Act appeal, after conducting this two-step analysis, the Commission determines whether to exercise its discretion to substitute its own decision for the decision made by the initial planning authority. The Commission has long held that it

[1] See, for example: Order LA23-03, *New Homes Plus v. City of Charlottetown*, at para 34; Order LA22-07, *Landfest Company Ltd. v. Town of Stratford,* at para 32 [*Landfest*]; and Order LA17-02, *APM Construction Services Inc. v. Community of Brackley,* at para 21.

does not lightly interfere with decisions made by a planning authority.[2] The Commission usually shows deference to planning decisions that are properly made, and will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the applicable official plan and bylaw, and sound planning principles.[3]

## B. Preliminary Issues

24. Before moving on to the analysis of the procedure and sound planning principles, there are a few preliminary issues to address.

Commission's jurisdiction over the appeal

25. The Foundation Permit was a hybrid Building & Development permit and was subject to conditions pursuant to both the City's Zoning and Development Bylaw ("Bylaw") and the *Building Codes Act*. The Commission is satisfied, in this case, that the portion of the Foundation Permit that was issued pursuant to the Bylaw is considered a "development permit" as defined in subsection 1(e.1) of the *Planning Act* such that it was properly appealable to the Commission pursuant to clause 28(1.1)(a)(i) of the *Planning Act*. This point was not contested by the parties.

Statutory limitation period

26. The Foundation Permit was approved and issued by the City on November 19, 2024. The City of Charlottetown did not post public notice of the Foundation Permit until on or about December 3, 2024. The Notice of Appeal was filed on December 20, 2024. Both the City and the Developer confirmed at the hearing that neither intended to argue that the Notice of Appeal was filed beyond the statutory limitation period prescribed in the *Planning Act*.

27. The Commission accepted jurisdiction over the appeal on the basis that the City failed to give notice of the decision within seven (7) days as prescribed by section 23.1 of the *Planning Act*.

28. The Commission notes, however, that the Appellant did make submissions that the City's failure to post timely notice did also amount to a procedural error such that the residents of Southview Estates were denied the right to seek reconsideration pursuant to the City's Bylaw. This will be addressed below.

Aggrieved person

29. In November 2023, the *Planning Act* was amended to introduce a requirement that prospective appellants be "aggrieved persons" as defined by section 27.1 of the *Planning Act*. Neither the City nor the Developer challenged the Appellant's standing as an aggrieved person.

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[2] *Landfest* at para 32.

[3] Order LA18-02, *Queens County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41 [*QCC No. 40*].

30. On the Commission's review of the Appellant's Notice of Appeal, the Commission was satisfied that the Appellant meets the standard of an "aggrieved person" and demonstrated he, in good faith, believes this decision to issue the Foundation Permit will adversely affect the reasonable enjoyment of his property.

Site visit

31. In the course of the Appellant's direct examination of Coons, he suggested that it would be advantageous for the Panel of Commissioners to visit the Subject Property in person. Rule 8 of the Commission's Rules of Practice and Procedure do contemplate this possibility, stating:

> **8. On-Site Viewing**
>
> The Commission, in its sole discretion and having informed the parties, may conduct an on-site view of lands or facilities to gain knowledge pertaining to any matter relevant to the disposition of a hearing. The on-site view will be considered part of the hearing and the parties may accompany the Commission during this visit.

32. In this case, the Commissioners declined to exercise their discretion to conduct an on-site view of the Subject Property. However, the Chair of the Panel did advise the Appellant that each Panelist was familiar with the Subject Property.

## C. Procedural Issues

33. The Appellant made several submissions at the hearing about alleged procedural deficiencies with the City's approval of the Foundation Permit. Each of those procedural issues will be discussed below.

i. Posting of notice and reconsideration

34. The Appellant raised the City's failure to post notice of the approval of the Foundation Permit in a timely manner. In particular, the Appellant argued this failure limited the ability of the residents of Southview Estates to seek reconsideration of the decision pursuant to section 3.15 of the City's Bylaw. That section permits an aggrieved person to seek reconsideration within twenty-one calendar days of the initial decision. The Appellant argued that not posting notice of the Foundation Permit left the residents only seven days to decide whether to seek reconsideration.

35. The City acknowledged the failure to post the notice until December 3, 2024; however, the City argued that this did not result in any harm or prejudice to the Appellant, as the appeal was accepted and heard by the Commission.

36. Section 2.6 of the City's bylaw states:

> **2.6 PUBLIC NOTICE OF APPLICATION APPROVALS**
>
> 2.6.1 The City shall post notice on their website of the approval of any Permit and Subdivision and this shall be deemed to be notification under the by-law of a Permit being issued.
>
> 2.6.2 The notice on the City's website shall:

a. Be updated at least every second week; and

b. Will include the parcel identification number (PID), property address and type of Development approved.

37. With respect to this procedural issue, the Commission understands the position of the Appellant that the City's error in posting notice of the decision impacted the residents' timeline to consider whether to seek reconsideration. However, the Commission is not of the opinion that this error is of such a nature to overturn the City's decision. The Appellants were not prejudiced, for example, in brining this appeal and having this opportunity for review of the City's decision. That said, the Commission does remind the City that timely notice of decisions is a requirement of both the *Planning Act* and the City's Bylaw.

ii. Validity of permit

38. The Appellant has also made submissions and argument with respect to the validity of the Foundation Permit.

39. First, the Appellant has submitted that there is no indication in the evidence that MacDonald is a "development officer" as appointed by City Council. He points to section 2.1.1 of the Bylaw, which states:

> **2.1 DEVELOPMENT OFFICER**
>
> 2.1.1 The Council shall appoint a Development Officer who shall administer this by-law, and the Council may name a designate or designates to the Development Officer.

40. The Appellant submits that it appears MacDonald had no authority to approve the Foundation Permit as she was not appointed as a development officer by Council.

41. For the City's part, neither MacDonald nor Gundrum could say whether MacDonald was formally designated in accordance with section 2.1.1. However, both MacDonald and Gundrum testified that MacDonald, by virtue of her employment with the City as a Planner I, is considered a "development officer" authorized to issue permits.

42. The Appellant has also made argument and submissions that the Foundation Permit was unsigned and, therefore, invalid. In response, MacDonald testified that the Foundation Permit was unsigned because of an issue with their online system that failed to attach her digital signature to the permit.

43. Finally, the Appellant has also argued that the City's process was flawed because MacDonald was not a professional land-use planner. The Appellant has submitted this is contrary to previous orders of the Commission (e.g. Order LA17-06). The City's submits that MacDonald has worked in planning for over 10 years and provided her curriculum vitae as support for her qualifications. Further, the City submits that – in any event – Gundrum was consulted prior to the issuance of the Foundation Permit, and Gundrum's involvement satisfies the requirement that a professional land use planner be consulted.

44. With respect to these procedural issues, the Commission accepts the positions of the City. First, though neither MacDonald nor Gundrum could comment on whether there was a delegation from Council per section 2.1.1 of the Bylaw, the Commission is not

satisfied that this kind of technical error invalidates the City's decision in these circumstances. The Commission makes this same finding regarding fact that the Foundation Permit was unsigned. Finally, with respect to the Appellant's argument that MacDonald was not a "professional land use planner", the Commission notes that the decision at issue was technically for an "as-of-right" development, which is different than the circumstances in Order LA17-06 (*Stringer*). In any event, the Commission notes that Gundrum, who is the manager of the City's Planning and Heritage department, is a registered professional planner.

iii. Permit condition 7

45. The Appellant submits that the failure of the City to revoke the Foundation Permit and require a new set of plans when the Developer's project plans changed was both a procedural and substantive error. The following is a discussion of the procedural aspect.

46. For context, the Foundation Permit included several conditions, including the following condition as number 7:

> Review against Zoning and Development Bylaw was completed for the proposed drawings that have been submitted which consists of existing structures that are being moved to the lot. If the proposed plans change and/or alternative structures will be placed on the lot, a revision will be required, including a new set of complete plans, as per our requirements list, to be reviewed against the Zoning and Development Bylaw as well as the Building Code Bylaw and National Building Code.
>
> [emphasis added]

47. Initially, when the Developer submitted the Building & Development Permit Application, it described the following project (in part):

> Move existing cottage business form neighboring property PID 388199 to 889873 (18 Trainor Street Charlottetown)

48. In or about October 2024, however, the Developer sold the existing cottage structures and decided to build new ones on the previously approved foundations. The Developer did not submit new plans or apply for a new foundation permit. The Appellant has argued that this was a significant change of plans and the failure of the City to require a new set of plans when they became aware of the change was a procedural error.

49. MacDonald, for the City, testified that the measurements for the foundation project did not change despite the change from moving existing cottages to building new ones. Gundrum testified that the Foundation Permit was for the foundations only and that condition 7 was intended to address adding or removing planned foundation pads. Gundrum testified that both moving the existing cottages and building new cottages required a separate permit and were not intended to be addressed by condition 7 on the Foundation Permit.

50. The City submits that condition 7 was satisfied when the Developer applied to the City for a second phase Building & Development permit to approve the new construction of cottages to be built in accordance with the previously approved foundations.

51. On review, the Commission can understand the Appellant's ground of appeal regarding condition 7. The Commission agrees that condition 7 is somewhat unclear as to what was expected of the Developer. However, the Commission also accepts the evidence of the City about its intention and that the foundations approved by the Foundation Permit were not altered in any way and, therefore, did not trigger a permit revision.

iv. Approved street access

52. The Appellant submits that the Development is not compliant with the City's Street Access Bylaw. He submits that the Street Access Bylaw is clear that a permit application and approval were required in this case because there was both a change of use (residential to commercial) and a change in intensity of use from the historical single private residential driveway.

53. The Appellant submits that the Developer did not submit the required application to Public Works per the Street Access Bylaw, and as a result, the Foundation Permit is not compliant with section 3.3.9.a of the Zoning and Development Bylaw, which states:

> 3.3.9 An application for a Development and/or Building Permit shall be rejected if:
>
> a. The proposed Development does not conform to this by-law or other by-laws or applicable provincial legislation;

54. The Appellant has argued that ignoring the requirement to comply with the City's Street Access Bylaw was a procedural error that circumvented the public safety measures that bylaw was intended to mitigate.

55. In response, the City submits that the driveway access was pre-existing and the access point did not change with the new development. The City's witnesses – MacDonald and Gundrum – testified that the Public Works department is responsible for applying the Street Access Bylaw. For example, MacDonald testified that she is aware of the Street Access Bylaw, but that decisions under that bylaw are deferred to Public Works. Both Gundrum and MacDonald testified to the fact that when the Planning Department receives an application that requires input or approval from other departments in the City, they forward the application to those departments for consultation.

56. In the present case, the City submits that Public Works did approve the driveway, albeit after the Foundation Permit was first issued. MacDonald approved the Foundation Permit on the mistaken belief that Public Works had approved the driveway on October 1, 2024. However, the approval relied on at that time was actually from the City's arborist in relation to trees on the property. Upon realizing this error, and prior to issuance of the phase two permit (for construction of new cottages) the City obtained the necessary approval from Public Works.

57. The Commission does not find this procedural error to be of a nature to overturn the decision. The Commission accepts that it was Public Works that was responsible for applying and considering the Street Access Bylaw and that the Planning Department sought consultation from Public Works when assessing the permit application. Though MacDonald initially approved the Foundation Permit based on an erroneous approval

from the City's arborist, at the end of the day Public Works did signal their approval of the access.

v. General compliance with the Bylaw

58. The Appellant has also made submissions that the City's decision to issue the Foundation Permit was non-compliant with various sections of the Bylaw. These submissions have both procedural and substantive aspects, but the following paragraphs will discuss the alleged procedural errors.

59. The Appellant submits that the City ignored section 6.3.4 of the Bylaw, which provides that a public street access to a corner lot shall be placed no closer than 15.24 m (50 ft) to the right-of-way of the intersection or at the furthest possible distance from the street intersection. He argues this was a procedural error. In response, the City submits that section 6.3.4 of the Bylaw does not apply because the lot is an "interior lot" and not a "corner lot". MacDonald testified to this at the hearing.

60. The Appellant also submits that the City failed to consider section 6.3.14 of the Bylaw which provides that no permit shall be issued where it would be detrimental to the convenience, health or safety of residents in the vicinity or the general public with regards to traffic access and circulation. The Appellant argues that MacDonald was not a professional land use planner and there is no evidence that an assessment of this section was considered in her approval. Generally, the City submits that all relevant development principles were considered by MacDonald in issuing the Foundation Permit. MacDonald testified that Public Works was consulted with respect to the driveway access prior to issuing the permit.

61. Finally, the Appellant submits that the City did not consider the land use buffer requirement at section 6.6.1 of the Bylaw. He submits that the site plan drawings submitted by the Developer with his application do not include the land use buffer anywhere on the drawings. He points out that plotting the land use buffer on the site plan is a specific requirement under section 6.6.2 of the Bylaw. In response, the City submits this allegation is incorrect. The City submits that the plans show a buffer between the foundations and the neighbouring property. While the distance is not referenced on the plan itself, MacDonald testified that as part of her review she has the tools available to measure the distance. She testified that she did these measurements before approving the Foundation Permit. The City submitted these measurements as part of their supplementary submissions ahead of the hearing.

62. On the whole, the Commission does not accept these grounds of appeal as procedural errors that should overturn the City's decision. The Commission is satisfied that the City's review and processing of the permit application was generally compliant with the process prescribed by the Bylaw for the reasons explained by the City as outlined above.

vi. Conclusion on procedural errors

63. In conclusion, the Commission is satisfied on the whole that the City discharged its duty of fairness in processing and considering the Developer's permit application. The procedural defects raised by the Appellant do not rise to a nature such that the Commission feels it must overturn the City's decision. That said, the Commission can see how, taken together, these errors have contributed to the dissatisfaction, and

perhaps distrust, of the residents of Southview Estates in this matter. The Commission reminds the City to take care in its application review process.

## D. Sound Planning Principles

64. The second consideration in the Commission's two-step guideline asks whether the decision made by the City has merit based on sound planning principles in the area of land use planning and as enumerated in the Official Plan and Zoning & Development Bylaw. In order to uphold a decision of a municipality on appeal, it well-settled that the Commission must be satisfied that the final decision made by the municipality was animated by sound planning principles.

i. Appellant's position

65. Generally, the Appellant submits that the City's decision must fail the second step of the Commission's two-part test because it was not made in accordance with sound planning principles. The Appellant submits that certain substantive provisions of the Bylaw were not followed in issuing the Foundation Permit and he also highlights specific goals, objectives and policies of the City's Official Plan that he says conflict with the decision to approve the Foundation Permit. The Appellant argues that his appeal is about the protection of an established, low-density residential neighborhood from a dramatic shift in land use planning and the "annexation" of a highway commercial land use, with the only access point of the Subject Property being moved from the highway to the centre of the existing neighborhood.

66. The Appellant submits that the City's decision does not comply with various sections of the City's Bylaw that require a substantive review of a permit application. For example, the Appellant submits that the issuance of the Foundation Permit did not comply with sections 3.3.9(c) and (e) of the Bylaw which provide:

> 3.3.9 An application for a Development and/or Building Permit shall be rejected if:
>
> […]
>
> c. There is not a safe and efficient access to the Public Street;
>
> […]
>
> e. The proposed Development would be detrimental to the convenience, health or safety of the occupants or residents in the vicinity or the general public.

67. The Appellant submits that there is no indication in the City's Record that these provisions received any consideration in the application review process. He submits that the approval of the permit does not comply with either section. The Appellant also submits that the issuance of the Foundation Permit did not comply with the City's Street Access Bylaw, such that it should not have been approved pursuant to section 3.3.9(a) of the Bylaw, which requires conformance with other applicable City bylaws.

68. The Appellant also points to sections 3.3.14 and 3.3.15 of the City's Bylaw, which each include a list of factors to be considered by a Development Officer when reviewing a development permit application. Section 3.3.14, in particular, refers to "development

principles" such as compatibility of proposed uses, convenience and safety of driveways and access points. The Appellant submits that approval of this Development is contrary to both of these principles as it permits the injection of commercial C-2 Zone traffic into the heart of an existing, incompatible, low-density residential neighborhood. The Appellant also argues that the Development is contrary to section 3.3.15 because it did not consider the lack of sidewalks and traffic control within the residential subdivision, and the incompatibility of residential streets and commercial zone traffic.

69. Further to the traffic concerns, the Appellant submits that there was no consideration or application of section 6.3.14 of the Bylaw, which states that no development permit shall be issued where the proposed development would be "detrimental to the convenience, health or safety" of residents in the vicinity or the general public with regards to traffic access and circulation.

70. The Appellant's witnesses Murphy and Noonan both provided evidence with respect to the traffic issues in the neighborhood as a result of this Development. Murphy testified that the traffic in and out of the Subject Property used to be consistent with residential traffic, but there are now considerably more vehicles than there used to be. He testified that the streets are narrow with no sidewalks, and the increased traffic threatens the residents' use of the streets. Murphy testified that cottages and a motel threaten the very character of the neighbourhood. He said the new use of the Subject Property contrasts greatly with the current neighbourhood and is not harmonious. The Appellant read into the record a written statement of Noonan outlining her personal experience and observations about traffic and safety concerns in the neighbourhood as a result of the Development

71. The Appellant also argues that the City's decision conflicts with specific goals, objectives and policies of the Official Plan that aim to preserve existing residential low-density neighbourhoods and to protect and nourish the City's rural neighbourhoods:

    - The goal to maintain the distinct character of Charlottetown's neighbourhoods;[4]
    - The objective to preserve the built form and density of Charlottetown's existing neighbourhoods and to ensure that new development is harmonious with its surroundings;[5]
    - The policy to ensure that the footprint, height, massing and setbacks of new commercial development in existing neighbourhoods are physically related to its surroundings;[6] and
    - The policy to ensure that a short-term rental operation in a residential area shall be restricted to the operator/hosts' principal residence and be of a scale that is compatible with the character of the surrounding neighbourhood.[7]

72. The Appellant argues that ignoring the Official Plan amounts to "arbitrary" decision-making that the Commission has previously said should be avoided (Order LA17-06).

[4] Official Plan, Section 3.2, pg. 18.
[5] Official Plan, Section 3.2.1, pg. 18.
[6] Official Plan, Section 3.2.1, pg. 18.
[7] Official Plan, Section 3.2.3, pg. 19.

73. Finally, the Appellant also submitted expert opinion evidence from James Coons ("Coons"), LPP, MCIP, a Senior Planner with FBM Architecture Ltd. Coons prepared a report titled "Memorandum on the Application of Sound Planning Principles in Development Permit #304-BLD-24" and testified to the findings in his report at the hearing.

74. In his report, Coons comments that the details of this application make it "highly unique" for a C-2 Zone development such that it requires the consideration of sound planning principles to ensure discretion is "exercised in a principled an informed manner", per the Commission's previous comments in Order LA17-06. Coons assessed the following sound planning principles, which he says are uniquely applicable in this case:

    1. Separation of incompatible uses;
    2. Protection of established residential neighbourhood character; and
    3. Deference to the hierarchy of roads.

75. At the hearing, Coons testified that his opinion is rooted in the Commission's previous finding in Order LA17-06 that sound planning principles are particularly applicable in anomalous applications. In his opinion, there were sufficient grounds to consider this Development anomalous because of the C-2 Zone being abutted right next to a residential neighbourhood with no access to a commercial highway.

76. With respect to the separation of incompatible uses, Coons' report concludes that the Development represents an intensive commercial use relative to the residential neighbourhood and is, therefore, considered an incompatible use. He testified that separating uses that create conflict is a core tenet of zoning and that this particular Development is a significant increase in intensity beyond what would normally be considered in an established residential neighbourhood.

77. Coons testified that sound planning principles focus on incremental intensification. His report concludes that the Development, at 11 cottages and 17 units (including the proposed motel), is too intensive in scale to be considered as protecting the established neighbourhood character. Coons testified that intensification of commercial uses in neighbourhoods should be more related to a use that serves the neighbourhood.

78. Coons' report comments that the hierarchy of roads begins with local residential streets and ends with roads such as arterial roads or controlled-access highways. He states that locating the sole commercial vehicle access on a local residential street hinders the operation of the business while also stretching the use of the residential street beyond its intended purpose.

79. In conclusion, it was Coons' professional opinion that the decision to issue the Foundation Permit failed to adequality adhere to sound planning principles.

ii. City's position

80. For its part, the City submits that its decision to issue the Foundation Permit reflected sound planning principles. The City submits that the Subject Property has been zoned

in the Highway Commercial (C-2) Zone since at least 1995 and has historically had safe and efficient access to Trainor Street, which is a public street. The City submits that the Developer's proposed use of the property for cottages and a motel is a permitted use in the C-2 Zone and that the Developer's application met all requirements for development in the C-2 zone. Therefore, this was an as-of-right development that the City did not have discretion to deny. The City submits that its decision was made in accordance with sound planning principles, which were considered throughout the development application process and, in the case of an as-of-right development, are integrated into the requirements of the Bylaw.

81. In written submissions, the City submits that there is no evidence to suggest that the Foundation Permit fails to comply with sections 3.3.9, 3.3.14 and 3.3.15 of the Bylaw. Instead, the City submits that MacDonald completed a review of the application and determined that the requirements of the Bylaw were met. MacDonald testified to this at the hearing. In fact, at the hearing, Gundrum testified that "to be blunt", the Planning Department looked for a way to deny the permit application but could not find a reason. Gundrum testified that based on the Planning Department's full review of the application, the City did not have discretion to deny the Foundation Permit. Gundrum testified that the Planning Department was no oblivious to the implications of the Development on the existing neighbourhood, but they have to balance that with the rights of the property owner (Developer) under the Bylaw. In this case, the permit application met all zoning requirements so it was approved. Gundrum testified that to deny the application would be to deny rights to the Developer.

82. First, MacDonald testified that, on her review, the permit application conformed to the Bylaw per section 3.3.9. She did not feel that any subsections (a) through (e) were applicable, or that the proposed foundations did not meet those sections. The City submits that the Subject Property as safe and efficient access to Trainor Street, which is a public street that the Subject Property has always accessed. The City submits that, in the end, the Planning Department properly consulted with the Public Works Department on the matter of street access in relation to the Development, and Public Works approved the access. The City submits that there is no objective evidence to suggest that the Foundation Permit or the Development would be "detrimental to the convenience, health or safety" of the residents in the vicinity. The City comes to this conclusion, in particular, when considering the use of the Development as a cottage rental business in relation to the other as-of-right permitted uses in the C-2 Zone (e.g. a fire station, a funeral establishment, a hospital).[8]

83. With respect to the concerns around convenience, health and safety, Gundrum testified that though he understands the perspective of the residents, the application met the requirements of the Bylaw. He said there was nothing the application did not meet and they cleared it on the planning review against the Bylaw.

84. Next, the City submits that the development principles enumerated at section 3.3.14 of the Bylaw, as applicable, were considered by MacDonald before issuing the Foundation Permit and, more generally, are always considered by the City prior to issuing any permit or approval.

[8] Exhibit Book, Tab R8 – November 21, 2025 submissions

85. MacDonald testified that an “as-of-right” development is one that is a permitted use within a zone that meets all development criteria set out in the Bylaw. She said she does consider sound planning principles to some degree on an as-of-right application, but not to the same extent as a rezoning, for example. In this case, MacDonald testified that, on her review, the use of the Subject Property for short-term dwellings was the most compatible permitted use of the property. She said that this use would bring in less traffic than a warehouse, for example, or even an apartment building.

86. MacDonald testified that had other permitted uses been applied for (e.g. a funeral establishment, car dealership) she would have had to do a thorough review of the application.

87. The City’s position stresses that the Subject Property was zoned C-2 – this was not a rezoning application, nor did it require any kind of variance. The proposed use for the Development was permitted in the existing zone.

88. With respect to the City’s alleged non-compliance with the goals, objectives and policies of the Official Plan, the City’s written submissions say that the Foundation Permit satisfied the Official Plan as well as the more technical requirements of the Bylaw.[9] At the hearing, both MacDonald and Gundrum testified that for an as-of-right development, they confirm it is compliant with the Bylaw and do not specifically review the application against the Official Plan. Gundrum testified that with an as-of-right permit, it would be going “way beyond” the regulatory role to apply a discretionary review. He explained that the Official Plan is a visioning document for the City, and the Bylaw implements the plan that provides the land use rights that property owners have. Gundrum testified that sound planning principles come into the review when an applicant is seeking discretionary approval form the City (e.g. a rezoning or variance). He testified that they cannot deny someone their development right arbitrarily because they disagree based on sound planning principles.

iii. Developer’s position

89. The Developer agrees with the position of the City and submits that the appeal is of an “as-of-right” permit for foundation work only. The Developer reiterated the City’s submission that the matter under appeal is not a rezoning decision as the Subject Property is and was zoned C-2 before the Developer’s application

90. The Developer also stressed to the Commission that while the history of proposed development for the Subject Property had been discussed throughout the hearing, the permit under appeal is the Developer’s Foundation Permit for foundation work only.

91. In response to Coons’ expert report and testimony, the Developer submitted that his opinion did not sufficiently recognize the pre-existing zoning of the Subject Property. The Developer also submitted that, contrary to the opinion of Coons and the position of the Appellant, the Subject Property is not central to the essential character of the existing subdivision. Instead it is sequestered to the back of the neighbourhood.

92. With respect to the access to the Subject Property, the Developer submitted that the City’s Public Works department confirmed the approved access to the Subject

[9] Exhibit Book, Tab R8 – November 21, 2025 submissions, at para 32

Property and did not identify concerns. The Developer testified at the hearing that he had installed a stop sign at the end of the driveway to address some of the concerns raised by neighbours.

93. To summarize, the Developer's position is that he properly applied for the permit and it was properly issued by the City.

iv. Commission's analysis

94. As a preliminary comment to the analysis and decision that follows, the Commission wishes to clarify its understanding that:

a) The matter under appeal is not a rezoning application. The Commission is satisfied that the Subject Property is, and was, zoned C-2 at all material times.

b) The Appellant made several arguments that, over the years, other developments on the Subject Property were either denied by the City or overturned by Council on reconsideration. The City and Developer consistently submitted that these previous applications were not relevant to the assessment of the Foundation Permit under appeal. The Commission agrees and has not considered the history of proposed development of the Subject Property in its reasons.

95. The analysis that follows will explain the Commission's decision that, in all of the circumstances of this matter, the Commission is satisfied that the City's decision to approve the Foundation Permit was made in accordance with the City's Bylaw and had merit based in sound planning principles.

96. As a starting point, the Commission is satisfied that the permit application was "as-of-right" and complied with the permitted uses and development criteria of the C-2 Highway Commercial Zone. The planners who testified in this matter – MacDonald, Gundrum and Coons – all generally agreed that the Developer's permit application was an "as-of-right" application. The planners' testimony was largely consistent that an as-of-right application is for a use that complies with the existing zoning rules. In the present case, this means that the proposed use of the Subject Property was permitted in the C-2 Highway Commercial Zone and that the proposed development met the development criteria in the zone (e.g. lot area, height, and setbacks). In other words, the Developer's permit application and proposed development did not require a rezoning, Bylaw amendment or variance, for example. One difference between the planners' testimony was that Coons testified that, in his opinion, "as-of-right" does not mean absolute. The Commission understands Coons' testimony in this regard was informed, in large part, by the Commission's previous findings in Order LA17-06 (*Stringer*).

97. The Appellant's grounds of appeal include that the City's decision to approve the Foundation Permit was not compliant with the Bylaw, sound planning principles, or the City's Official Plan.

98. Beginning with the Bylaw, the Commission agrees with the position of the City that there is no objective evidence before the Commission to suggest that the Foundation Permit fails to comply with sections 3.3.9, 3.3.14 or 3.3.15 of the Bylaw. Previous decisions of the Commission have, generally, accepted the premise that an applicant

is entitled to an "as-of-right" development permit if the application meets the requirements of the applicable bylaw. However, in those same cases the Commission also accepted that there is some measure of discretion when it comes to assessing and applying factors such as those found in sections 3.3.9, 3.3.14 and 3.3.15. The Commission has said, however, that where the applicable bylaw authorizes some discretion, it must be exercised objectively.[10]

99. Section 3.3.9 requires an application for a development to be rejected for various reasons, including if there is not safe and efficient access to public street (3.3.9(c)) and if the proposed development would be detrimental to the convenience, health or safety of residents in the vicinity (3.3.9(e)). Sections 3.3.14 and 3.3.15 also include lists of factors for a development officer to consider when reviewing a development permit application. In this case, the Appellant highlighted sections that relate primarily to safety, impact on the public street and traffic concerns.

100. The Appellant's evidence to support his position about the City's failure to adequately consider traffic and safety concerns was primarily in the form of testimony from residents of the neighbouring subdivision, Southview Estates. The Commission accepts that the residents are well suited to provide fact evidence about their experiences and observations about traffic in their neighbourhood. However, this evidence is subjective and anecdotal rather than empirical or objective.

101. For the City's part, MacDonald testified that she considered the relevant sections of the Bylaw when reviewing the permit application and that, in her assessment, none of these criteria were applicable. The City's Public Works department approved the driveway access to the Subject Property (albeit later in the development process). MacDonald further testified that she considered the proposed use of the Subject Property for rental properties to be a less intense use, traffic wise, than other permitted uses in the zone. The Commission also notes that the nature of traffic associated with rental units and a motel is of a similar nature to residential traffic.

102. On the whole, the Commission is satisfied that the City adequately considered the applicable sections of the Bylaw when reviewing and assessing the permit application.

103. With respect to sound planning principles, the Commission has previously held that planning decisions must be animated by sound planning principles.[11] This is a well-established feature of the Commission's two-part guideline. The Appellant submits, supported by Coons' report and testimony, that the Foundation Permit is inconsistent with sound planning principles in three main ways: (1) separation of incompatible uses; (2) protection of established neighbourhood character; and (3) deference to the hierarchy of roads. Coons' more detailed opinion with respect to each of these is outlined above at paragraphs 73 to 79. Coons testified that his opinion is rooted in the Commission's previous finding in Order LA17-06 that sound planning principles are particularly applicable in "anomalous" applications. He testified that there were

[10] See, for example: Order LA11-10 *Biovectra v. City of Charlottetown,* Order LA16-05, *Marshall MacPherson v. Town of Stratford*, and Order LA15-05 *Philip O'Halloran v. Community of Miltonvale Park*.

[11] See, for example: Order LA17-06, *Stringer v. Minister of Communities, Land and Environment* and Order LA17-08, *Pine Cone v. City of Charlottetown.*

sufficient grounds to consider the Development anomalous because of the C-2 zone abutting and accessing an established residential neighbourhood.

104. The City submits that the decision to issue the Foundation Permit is consistent with sound planning principles in two main ways. First, the City submits that in the case of an as-of-right development, sound planning principles are integrated into the sections and requirements of the Bylaw. Second, the City submits that these principles were considered throughout the development application process.

105. On this ground, the Commission is again satisfied on the evidence before us that the City did consider sound planning principles in its assessment and approval of the Foundation Permit. First, MacDonald testified that she considered sound planning principles when she reviewed the permit application. Though, she testified that she does not consider sound planning principles to the same degree on an as-of-right application as a discretionary (e.g. rezoning) application. In this case, MacDonald testified that the proposed Development was the lowest intensity use of the Subject Property, even less than a high-density apartment building which is a residential (and permitted) use. She said that given the regulations she had to work within, this was the least risky use. Gundrum testified that – in his opinion – sound planning principles play a role in a discretionary application, but it is a very different context when reviewing an as-of-right application. He said that if an application meets the requirements of the Bylaw, the City cannot deny it. He testified as this would be denying landowners of their rights to use their property as established in the Bylaw. Gundrum also testified that based on the full review of the permit against the Bylaw, there were no provisions that were not satisfied.

106. As a further comment, the Commission also notes that, on our review, the sound planning principles highlighted by Coons are also replicated in sections of the Bylaw:

1. Separation of incompatible uses: sections 3.3.9(e) and 3.3.14(a).

2. Protection of established residential neighbourhood character: sections 3.3.9(a), 3.3.14(a) and 3.3.15(e).

3. Deference to the hierarchy of roads: sections 3.3.9(c), 3.3.14(b), and 3.3.15(c) and (d).

107. As found above, the Commission is satisfied that MacDonald considered these sections in her assessment of the Developer's permit application. This further satisfies the Commission that sound planning principles were considered by the City in reviewing and approving the Developer's Foundation Permit.

108. Finally, with respect to whether the City was required to consider the policies and objectives of the Official Plan, the evidence of Gundrum was clear that this is not something that the Planning Department considers in an as-of-right development application. Gundrum testified that the Official Plan is a "visioning document" and that the Bylaw implements that plan and provides the land use rights that landowners have. He testified it is not appropriate, in his opinion, to consider the policies of the Official Plan in an as-of-right application.

109. In contrast, the Appellant pointed to several specific goals, policies and objectives of the Official Plan that he says this Development conflicts with. The Appellant argued that that failing to consider the Official Plan led to arbitrary decision-making by the City.

110. On this ground of appeal, the Commission agrees with the City that, in this case, the Planning Department was not required to specifically weigh the permit application against the policies and objectives of the Official Plan. The Commission finds Gundrum's testimony on this point compelling. Land use rights are prescribed by the Bylaw, which is developed based on the guidance and vision of the Official Plan. The Commission notes that both of these documents are approved at a Council level after a rigorous process. The decision at issue on this appeal was for an as-of-right application that was considered and approved at a staff level, as provided for in the Bylaw. The Commission is not satisfied that the land use rights prescribed by the Bylaw are to be displaced by a discretionary review of the Official Plan, at least where the where the development permit application is not reviewed by Council.

iv. Commission's decision

111. In conclusion, the Commission is satisfied that the City discharged its duty of fairness in processing and reviewing the permit application and approving the Foundation Permit. The Commission is also satisfied that the decision to approve the Foundation Permit was made in accordance with the Bylaw and sound planning principles.

112. As a final comment, the Appellant made submissions at the hearing that the City's continued approval of other permits in respect of the Development during the appeal process before the Commission demonstrates a disregard for procedural fairness and due process provided under the *Planning Act*. He submitted that upon appeal, the Commission had jurisdiction over the decision and further permits could not be issued. In written submissions, the City stated that further permits beyond the Foundation Permit were required and subsequently obtained. The City stated it is obligated to process complete applications. In respect of these arguments, the Commission comments that an appeal to the Commission pursuant to the *Planning Act* does not operate to "stay" the decision of the planning authority. The Commission does not have the legislative authority to require a developer to pause their development until the appeal process plays out or to require a planning authority to hold future permit applications. Any continued development during the Commission's appeal process is at the risk of the developer, but the Commission stresses that those choices of a developer do not in any way influence the Commission's hearing process or decision on appeal.

# 7. CONCLUSION

113. The appeal is dismissed.

114. The Commission thanks the parties for their submissions in this matter.

# 8. ORDER

**115. The appeal is dismissed.**

**DATED** at Charlottetown, Prince Edward Island**, June 8, 2026.**

**BY THE COMMISSION:**

*[sgd. Pamela J. Williams, K.C.]*

Pamela J. Williams, K.C., Chair

*[sgd. Gordon MacFarlane]*

Gordon MacFarlane, Commissioner

*[sgd. Murray MacPherson]*

Murray MacPherson, Commissioner

**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.