

Our File: 254777
November 27, 2024

Island Regulatory and Appeals Commission
PO Box 577
Charlottetown, PE C1A 7L1

Attention: Michelle Walsh-Doucette

Dear Ms. Doucette:

RE: Notice of Appeal File No: LA24014

We write on behalf of the Developer, Amar Seafoods PEI Ltd., in response to the Commission's email dated November 8, 2024, inviting submissions on whether the named Appellants can invoke the Commission's appellate jurisdiction.

Standing

We have had the benefit of receiving and reviewing the submissions made on behalf of the Municipality dated November 20, 2024. The Developer does hereby adopt as its own the Municipality's submissions in their entirety.

In summary, neither of the Appellants fall within the definition of "aggrieved person" for the purposes of Section 28 of the *Planning Act* of Prince Edward Island, and as such lack standing to bring their respective appeals.

"Aggrieved person" is defined in Section 27.1 of the *Planning Act*. The Appellant, "Victoria Business Association", concedes that it does not fall within that definition, writing in their email of November 19, 2024, that "after reading the criteria of the appeal to be deemed an aggrieved person, [they] recognize that [they] do not fit into any category" as set out in that definition. The same is true for the second Appellant, "Victoria Village Friends of the Park."

Neither of the Appellants are individuals; incorporated bodies; registered nonprofit organizations; nor any other category of "aggrieved person" as defined.

Consequently, in the Developer's respectful submission, the Appellants do not have standing as "aggrieved persons" to bring appeals from decisions of the Council of the Municipality pursuant to subsection 28(1.1) of the *Planning Act* of Prince Edward Island.

The Developer respectfully submits that the appeals should be dismissed at this early stage, on that basis, to avoid further cost and expense to all parties.

The Commission's Appellate Guideline

The Developer further takes this opportunity to draw attention to the legal test identified by the Commission for application to appeals from decisions of the Council of a Municipality made pursuant to subsection 28(1.1) of the *Planning Act*.

The Commission has stated explicitly that it:

*"does not lightly interfere with decisions made by a Municipal Council. The Commission will typically be deferential towards planning decisions by Council that are properly made, and will generally be reluctant to interfere with the 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 Planning Act, the applicable official plan and bylaw, and sound planning principles."*¹

Further, we note that the Commission has developed a guideline for exercising its appellate authority under the *Planning Act* in cases such as this. The guideline involves two main considerations:

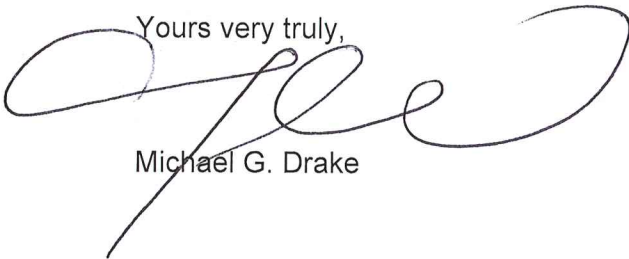
- (1) whether the Municipal Council followed the proper procedure as required by its bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness; and
- (2) whether the decision made by the Municipal Council has merit based on sound planning principles in the field of land use planning and as enumerated in the Official Plan and Bylaw.²

In the Developer's respectful submission, neither of the Appellants have advanced any grounds of appeal directed to either of these two main considerations.

In these circumstances, when considered in connection with the fact that neither Appellant meets the definition of "aggrieved person" for the purposes of standing to bring the appeal in first instance, the Developer once again respectfully submits that the appropriate resolution is to dismiss the appeals at this early stage and thereby avoid further cost and delay to all parties.

All of which is respectfully submitted on behalf of the Developer.

Yours very truly,



Michael G. Drake

¹ Commission Order No: LA 24-04, at paragraph 19.

² Commission Order No: LA 24-04, at paragraph 18.