

December 13, 2023

VIA EMAIL

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

Attention: Philip J. Rafuse

Dear Mr. Rafuse:

RE: LA23009 – Andrea Battison v City of Charlottetown (the “Appeal”)

This correspondence is provided on behalf of the City of Charlottetown (the “City”) in response to the Island Regulatory and Appeals Commission’s (the “Commission”) request for submissions on the following issues:

- 1) Do demolition permits meet the definition of “development permit” under the *Planning Act* such that they can be appealed to the Commission per subsection 28(1.1) of the *Act*?
- 2) Is the appeal moot due to the expiry of the Demolition Permit?

The Appeal was filed on April 17, 2023 by the Appellant appealing a decision of the City of Charlottetown to issue a demolition permit with respect to the property located at 231 Richmond Street, Charlottetown, Prince Edward Island, being PID 340703 (the “Property”). An appeal hearing was scheduled for November 14, 2023 and was postponed per the correspondence from the Commission dated November 10, 2023, in response to the jurisdiction issue raised by the Developer, the Prince Edward island Housing Corporation (the “Developer”).

The City’s position on the two issues identified by the Commission aligns with the Developer’s position as set forth in their correspondence to the Commission dated November 7, 2023 and November 29, 2023. Specifically, we agree that (1) the Commission does not have jurisdiction to hear the Appeal as the appeal of a demolition permit is not contemplated by section 28(1.1) of the *Planning Act* and (2) that given the expiration of the demolition permit, the Appeal is moot in any event. The City does not intend to repeat those submissions herein, but wishes to add the following comments to support this position:

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According to section 28(1.1) of the *Planning Act*, appeals to the Commission must be from decisions of the council of a municipality. In addition to the reasons provided by the Developer, to which we concur, a demolition permit further cannot be a development permit as contemplated by section 28(1.1)(i) of the *Planning Act*, because the issuance of a demolition permit is not a decision of Council. Demolition permits are as of right and issued by staff of the Planning and Heritage Department. Council's approval is not required.

The Commission is a body of statute, pursuant to the *Island Regulatory and Appeals Commission Act*, RSPEI 1988, c I-11. This means that the Commission's jurisdiction is also determined by statute and is outlined in several pieces of legislation in Prince Edward Island including, but not limited to, the *Planning Act*, RSPEI 1988 c P-8, *Environmental Protection Act*, RSPEI 1988, c E-9 and the *Lands Protection Act*, 1988 RSPEI c L-5, as examples. In this case, the *Planning Act* is applicable, specifically section 28(1.1). The language in section 28(1.1) and the relevant definitions as set out in section 1 are, in our view, clear in setting out what is appealable to the Commission and what is not. The City submits that the Demolition Permit issued by the City for 231 Richmond Street is not appealable for the reasons set out herein and by the Developer. The Commission does not have the authority to hear matters outside the scope of section 28(1.1) and the City therefore requests that the Appeal be dismissed.

Yours very truly,


Melanie McKenna & Maggie Hughes
MM/MM

cc. Andrea Battison, Appellant
Stephen Flanagan, Counsel for the Developer