



Docket LA14005
Order LA15-06

IN THE MATTER of an appeal by Hanmac Inc.
of a decision of the City of Charlottetown, dated July
14, 2014.

BEFORE THE COMMISSION
on Friday, the 18th day of December, 2015.

J. Scott MacKenzie, Q.C., Chair
Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

Compared and Certified a True Copy

Philip J. Rafuse
Appeals Administrator
Corporate Services and Appeals Division

IN THE MATTER of an appeal by Hanmac Inc.
of a decision of the City of Charlottetown, dated July
14, 2014.

Contents

<i>Contents</i>	<i>ii</i>
<i>Appearances & Witnesses</i>	<i>iii</i>
<i>Reasons for Order</i>	<i>1</i>
1. Introduction	1
2. Testimony & Discussion	9
3. Findings	15
4. Disposition	25
<i>Order</i>	

IN THE MATTER of an appeal by Hanmac Inc.
of a decision of the City of Charlottetown, dated July
14, 2014.

Appearances & Witnesses

1. For the Appellant Hanmac Inc.

Counsel:

**William F. Dow, Q.C.
Jason Morais**

Witnesses:

**Cecil MacLaughlin
Jeff Ready**

2. For the Respondent City of Charlottetown

Counsel:

David W. Hooley, Q.C.

Witnesses:

**Laurel Palmer-Thompson, Planning and Development Officer
Alex Forbes, Manager of Planning and Heritage**

IN THE MATTER of an appeal by Hanmac Inc.
of a decision of the City of Charlottetown, dated July
14, 2014.

Reasons for Order

1. Introduction

[1] The Appellant Hanmac Inc. (“Hanmac”) has filed an appeal with the Island Regulatory and Appeals Commission (the “Commission”) under section 28 of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8, (the “*Planning Act*”). This appeal concerns a July 14, 2014 decision of the Respondent City of Charlottetown (the “City”) to reject a joint rezoning application filed on March 12, 2014 by Hanmac as developer and the Belvedere Golf Club (“Belvedere”) as property owner to rezone the property located at 1 Greensview Drive, property number 279091, in the City of Charlottetown, being a parcel of land approximately 500’ x 170’ located in the northwest corner of lands comprising the Belvedere Golf Course (the “Subject Property”) from Open Space Zone (OS) to Medium Density Residential Zone (R-3).

[2] The application was processed by the City's Planning and Heritage Department in a good and business like manner and on April 7, 2014, the City's Planning and Heritage Committee – Planning Board ("Planning Board") recommended to the City's Council ("Council") that the application to rezone the Subject Property proceed to the public consultation phase. Planning Board noted that the rezoning amendment would also require an amendment to the City's Official Plan Future Land Use Map from Recreational to Medium Density Residential. Planning Board also noted that the proposed development involves an 18-unit residential development consisting of three (3) buildings containing six (6) units each.

[3] On April 14, 2014, Council approved the request to proceed to the public consultation phase to consider the proposed amendments to the Official Plan's Future Land Use Map and the City of Charlottetown Zoning and Development Bylaw (Bylaw) Appendix "H" Zoning Map.

[4] Following due public notice and specific notice with information packages sent to residents within a 100-metre radius of the Subject Property, the City held a public meeting on April 30, 2014. Minutes of this public meeting are provided at Tab 17 of the Record filed by the City as Exhibit R1. The public meeting lasted approximately one hour and was attended by only six neighbouring residents of the Subject Property and one member of the public who did not live in the immediate area. The meeting proceeded with a description of the project by John Mantha, provincial land surveyor, as spokesman for Hanmac. The comments from the public were the usual comments that would be expected from neighbours of a proposed new development. There were questions asking for clarification as to how the development would proceed, whether the units were to be rented or sold, concerns that the project was originally proposed to be developed in stages, concerns that there would be dust during the building stage, questions around the value of the units to be built, whether or not the construction would interfere with water main and other infrastructure on the property and water run-off and drainage. All questions that the members of the public put to the meeting were answered by Mr. Mantha on behalf of Hanmac, Councillor Rob Lantz or by Laurel Palmer-Thompson, City planner. Two members of the public raised concerns with respect to traffic. However, their concerns related more to the fact that Kensington Road had become a thoroughfare and was being used by tractor trailers. Councillor Rob Lantz directed the city staff "to contact Police to review and to inquire if there are any existing traffic studies or reports for the area, and asked that the developers look into a possible road access from the site on to Walker Drive". The member of the public who does not live in the area of the subject property objected on the grounds that in his opinion this was spot zoning and that spot zoning was something that should not be done by the City. Spokespersons for the Belvedere Golf Club also spoke at the meeting and addressed questions with respect to the golf club's practices and concerns raised at the meeting about the amount of water being used by the golf course. According to the Minutes no member of the public or anyone else in attendance at that public meeting brought up or even mentioned any concern with respect to whether or not it was appropriate to rezone a portion of an outdoor urban recreational space to a zone that would permit medium density residential use. As will be discussed later, the verbatim transcript of the public meeting showed that one person in attendance did mention that the area was a green zone and was under the impression that it could not be developed.

[5] The City's Planning and Development Officer processed the application to rezone the Subject Property and prepared a report to the City's Planning Board delivered to its meeting on May 5, 2014. This report noted in part:

This form of development is prevalent in many other larger urban centres and tends to attract, executive professionals and middle aged to retirement aged persons who are looking to downsize from larger single detached dwellings. Housing alternatives may be beneficial for the area as it provides more choice for people who want to locate to the area or for people who are looking to downsize as they age but want to remain within their neighbourhood. The Official Plan states, "If Charlottetown is going to continue to grow as a healthy community, affordable housing for all segments of society must generally be available throughout the City."

The City is currently reviewing its existing Official Plan and through this review policies for alternate forms of housing are being explored. Denser development with narrower frontages is more sustainable as it makes for more efficient use of municipal services and uses less land resources. Kensington Road is also a bus route and it is good planning practice to locate this form of development in areas where residents can take advantage of public transit.

Staff feels that this request is consistent with good planning principles and are recommending for approval of this application.

[6] On May 5, 2014, Planning Board met to review the application to rezone the Subject Property. Planning Board approved a recommendation to Council that Council approve the proposed amendments to the Future Land Use Map and to the Zoning Map. The minutes of Planning Board's deliberations with respect to the Subject Property are reproduced below. As the Minutes note, the City staff consulted with the City Police who reviewed the application and indicated there were limited concerns with respect to traffic and site distances were good for the location of this development. In addressing some of the concerns of the public, Planning Board concluded that rather than proceeding in stages the development should proceed as one phase and that these types of developments on city golf courses were not uncommon in other jurisdictions. It is at this stage that the issue of "public space" was raised, but was obviously not a significant concern as Planning Board unanimously recommended to Council that the application be approved.

**PLANNING AND HERITAGE COMMITTEE – PLANNING BOARD
MAY 5, 2014
4:30 P.M.**

EXCERPT
FROM
MINUTES

Present:	Councillor Rob Lantz, Chair Councillor Melissa Hilton David Archer, RM Ritchie Simpson, RM Greg Rivard, RM Lynn MacLaren, RM Pat Langhorne, RM Laurel Palmer Thompson, PDO Greg Morrison, PDO	Councillor Jason Coady Lou Barry, RM Lea Macdonald, RM Roger Doiron, RM Joan MacKinnon, RM Pat Thompson, RM Donna Waddell, DCS Alex Forbes, PHM Brad Wonnacott, AA
Regrets:	Mel Cheverie, CBI	Linda Thorne, AA

1. 1 Greensview Drive (PID# 279091)

This item is a request to rezone a portion of the Belvedere Golf Course from Open Space to R-3 to permit the development of 3 townhouses comprised of six dwellings each for a total of 18 units. An Official Plan Map amendment from Open Space to Medium Density Residential is also required. Please see attached staff summary. On April 7, Planning Board requested that this application be sent to a public meeting. The meeting was held on Tuesday, April 30, 2014 (Minutes are attached).

Staff reviewed the proposal and covered key areas of concerns brought up at the Public Meeting. Staff pointed out that they do not regard this application as a “Spot Zoning”. City Police have reviewed the application and have limited concerns regarding traffic as site distances are good at this location. To minimise construction impacts on the neighbourhood Staff indicated that this development should proceed in one phase and instead of three and that a development agreement could be required outlining the terms and conditions of the development process. Staff also indicated that they researched what is happening in other municipalities relating to this type of development. Research confirmed that it is not uncommon in other jurisdictions and that such development helps to offset costs for city golf courses. The Board had questions regarding the existing lane. Furthermore, they were concerned that the public views this as “Public Space” even though it is privately owned.

The developers (Cecil MacLauchlan and Thane Hansen) were on hand to speak about the proposal and answer questions. Councillor Lantz explained the process and how it would proceed on to Council. The applicants answered questions from the Board and explained that this development would be served on a public road instead of a private lane. The development would consist of 18 condominium units with approximately 1400 sq. ft.

Moved and seconded that the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be recommended to Council for approval.

CARRIED

[7] The recommendation of Planning Board was sent to Council and was dealt with at its meeting on June 9, 2014. Council approved a one-month deferment of consideration of the motion with respect to the Subject Property. The minutes note that the delay was requested by the applicant to address ongoing concerns from local residents.

[8] Hanmac dealt further with the residents of the area but no further objections beyond those that had already been raised were brought forward. The matter was then forwarded to Council for decision.

[9] At a regular meeting of Council on July 14, 2014, Council rejected Hanmac’s rezoning application with respect to the Subject Property. The verbatim transcript of Council’s deliberations is reproduced below.



Verbatim Excerpt re:
1 Greensview Drive

R10

**Regular Meeting of Council
Monday, July 14, 2014 at 4:30 PM
Council Chambers, City Hall**

Mayor Clifford Lee presiding

Present: Deputy Mayor Stu MacFadyen
Councillor Cecil Villard
Councillor David MacDonald
Councillor Edward Rice
Councillor Mitchell Tweel

Councillor Jason Coady
Councillor Melissa Hilton
Councillor Rob Lantz
Councillor Danny Redmond

Also: Roy Main, CAO
Alex Forbes, PM
Randy MacDonald, FC
Craig Walker, UM
Wayne Long, EDO
Laurel P. Thompson, PDO
Allan MacKenzie, FO
Greg Morrison, PDO
Tracy McLean, RMC

Donna Waddell, DCS
Paul Smith, PC
Mandy Feuerstack, HRM
Ron Atkinson, EconDO
Donna Hurry, TO
Ramona Doyle, SC
Belinda Rogers, FC
Karen Campbell, CS

Regrets: Councillor Terry Bernard
Scott Ryan, FM

Paul Johnston, PWM
Sue Fraser, PRM

**Regular Meeting of Council
Verbatim Excerpt re: 1 Greensview Dr.**

2

July 14, 2014

Councillor Danny Redmond: Council, this application has been around for a few months now. First of all, I want to thank the developer for taking their time to come out and present the application to Council and also to meet with the residents in the immediate area; some of them are here this evening and want to thank them for showing up. As of last month, as I understand, they pulled the application off the table because they want to see if there are any more concerns. I haven't heard of any of the residents that have been spoken to since then. I still have concerns about this application. As we all know, we have an Official Plan review underway and I think with an application such as this and we are looking at rezoning it to an R-3; I think it is going to change the landscape of the area, traffic and whatever. I am concerned about the lack of information regarding the traffic study. I am not quite sure what the Police Department did in terms of that. They did give comments that they had no concerns. I am not sure what the information is however to me when I look at R-3 to me its spots only and I don't think that is something the residents in the area like to see. So having said that, Your Worship and Members of Council, I am going to vote against the application because I see it as not the perfect fit for that area.

Mayor Clifford Lee: Councillor Tweel.

Councillor Mitchell Tweel: Councillor Lantz. Councillor Redmond represents the area that talked about some of the issues that have been identified by the residents. The question that I have is whether it is increased traffic, the change of zoning and other issues that were highlighted by the area residents. Was there more time and effort given to addressing those issues and was that information relayed back to the residents to see whether they approve or disapprove?

Councillor Rob Lantz: Your Worship, this item has been around for a couple of months and as you know, Councillor Tweel, we had a public meeting about this item and a number of issues were discussed. I am the Chair of Planning Board and these applications come to Planning Board for our ten resident members, our three Councillors that sit on the Board to adjudicate. At that Planning Board meeting, ultimately, the recommendation was to approve the development. I can tell you there was some discussion about the concerns that were raised by residents at the public meeting. It was felt the primary concern was around the traffic issues which Councillor Redmond referred to and the Board was anxious to hear from our traffic authority, the Police, and how they felt about that and frankly the response we got from them and I can't tell you what they did in terms of research or what they do as the traffic authority to determine these things but their response was that the development would have no significant impact on the traffic in the area.

With that and with the other information that the Board discussed came the recommendation to approve. We deferred this resolution for a couple of months now at the request of the developer. They have done some further research on some of the other issues which were raised with regard to potential water run-off. I think Council received a draft drainage plan by a certified civil engineer that the applicant had drawn up that shows the way the water flows on the property. The developers organized an open house that was not very well attended but I don't know how the invitations for that went out but to their credit they made an effort to communicate with the public. I am here as the Chair of the Board representing the resolution and recommendation that came from the Board.

**Regular Meeting of Council
Verbatim Excerpt re: 1 Greensview Dr.**

3

July 14, 2014

Mayor Clifford Lee: Councillor Tweel.

Councillor Mitchell Tweel: I did attend that neighbourhood meeting and one issue that did come up was property values and the impact of the development on the adjoining property owners and their property values. I am not sure if you are in a position to talk about property values or not but in your personal assessment, would this increase or decrease the neighbours property values?

Councillor Rob Lantz: Your Worship, I can't answer that question. I am absolutely not in a position to answer that at all.

Mayor Clifford Lee: Seeing no further questions, all those in favour of the motion. Those opposed. Motion is Lost with a 5-3 vote with Councillors Coady, Lantz and Hilton in favour.

So the motion is lost. Could we have a new resolution to reject the application?

Roy Main, CAO reads the following resolution:

**Moved by Councillor Mitchell Tweel
Seconded by Councillor Danny Redmond**

RESOLVED:

That the request to consider an amendment to Appendix "A" – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be rejected.

Mayor Clifford Lee: Questions called. All those in favour. Those opposed. Motion is Carried 5-3 with Councillors Coady, Lantz and Hilton opposed.

[10] The above July 14, 2014 verbatim minutes were summarized into the following minutes of Council reproduced below.



DRAFT

**Regular Meeting of Council
Monday, July 14, 2014 at 4:30 PM
Council Chambers, City Hall**

Mayor Clifford Lee presiding

<u>Present:</u>	Deputy Mayor Stu MacFadyen	Councillor Jason Coady
	Councillor Cecil Villard	Councillor Melissa Hilton
	Councillor David MacDonald	Councillor Rob Lantz
	Councillor Edward Rice	Councillor Danny Redmond
	Councillor Mitchell Tweel	

<u>Also:</u>	Roy Main, CAO	Donna Waddell, DCS
	Alex Forbes, PM	Paul Smith, PC
	Randy MacDonald, FC	Mandy Feuerstack, HRM
	Craig Walker, UM	Ron Atkinson, EconDO
	Wayne Long, EDO	Donna Hurry, TO
	Laurel P. Thompson, PDO	Ramona Doyle, SC
	Allan MacKenzie, FO	Belinda Rogers, FC
	Greg Morrison, PDO	Karen Campbell, CS
	Tracey McLean, RMC	

<u>Regrets:</u>	Councillor Terry Bernard	Paul Johnston, PWM
	Scott Ryan, FM	Sue Fraser, PRM

2. Planning & Heritage – Councillor Rob Lantz

Councillor Lantz indicated his Committee’s report was included in the weekend package.

Councillor Villard declared a conflict of interest and left the Chambers for the following motion.

Moved by Councillor Rob Lantz
Seconded by Councillor Jason Coady

RESOLVED:

That the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be approved.

Concerns were raised with respect to traffic in the area, type of zoning (R-3) proposed and

drainage.

DEFEATED 5-3

Councillors Lantz, Coady & Hilton recorded “yea” votes

**Moved by Councillor Mitchell Tweel
Seconded by Councillor Danny Redmond**

RESOLVED:

That the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) be rejected.

CARRIED 5-3

Councillors Lantz, Coady & Hilton recorded “nay” votes

[11] The City’s Planning and Development Officer then notified Hanmac of Council’s decision to reject the rezoning application in a July 15, 2014 letter, which is reproduced below.



CHARLOTTETOWN

PLANNING, DEVELOPMENT & HERITAGE DEPARTMENT

July 15, 2014

Mr. Thane Hanson
Hanmac Inc.
106 Kensington Road
Charlottetown, PE C1A 5J5

Dear Mr. Hanson:

Charlottetown City Council passed the following resolution at the regular monthly meeting held on July 14, 2014:

“That the request to consider an amendment to Appendix “A” – Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix “H” – Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091) **be rejected.**”

Council felt that it was not appropriate to re-zone a portion of an outdoor urban recreational space to a zone that would permit a medium density residential use.

In accordance with Section 4.28 of the City of Charlottetown Zoning & Development Bylaw you may, within 21 days from Council's decision, request a reconsideration of Council's decision or appeal the decision to the Island Regulatory and Appeals Commission. The process for which is attached for your reference.

If you require any further information, please contact the Planning Department at 629-4158.

Yours truly,



Laurel Palmer Thompson, MCIP
Planning & Development Officer

/ldt
Enclosure

233 Queen Street, PO Box 98, Charlottetown, PE, Canada C1A 7K2
t (902) 629-4158, f (902) 629-4156, e planning@charlottetown.ca, w www.charlottetown.ca

[12] Hanmac's legal counsel filed a Notice of Appeal with the Commission on August 4, 2014. The Commission gave due public notice of the appeal and the matter was heard before the Commission on October 22, 2014 and November 18, 2014.

2. Testimony & Discussion

Hanmac's Position

[13] Hanmac presented two witnesses, Cecil MacLaughlin and Jeff Ready.

[14] Cecil MacLaughlin, an officer and part owner of Hanmac gave evidence that the Subject Property borders Kensington Road and the 4th hole of the golf course. Mr. MacLaughlin testified that the Subject Property was approximately two acres of land being 500' by 170'. He testified that the Subject Property was a left over part of the golf course, was essentially scrub land upon which trees and debris were placed and had approximately 10 years of uncontrolled growth on it. He explained that Hanmac would like to build three six unit buildings. Mr. MacLaughlin testified that to his recollection the loss of open or green space was never mentioned by members of the public at any public meeting. As a developer he indicated that the rejection of Council for reasons

that he does not understand and the only reason given to him is as set out in the letter addressed to Hanmac on July 15, 2014. He expressed frustration that Planning Board staff were in favour of the development, Planning Board unanimously approved the development and then the Council rejected the development and he still does not know why.

[15] Jeff Ready, the President of Belvedere Golf Club gave evidence that Hanmac had approached Belvedere seeking to purchase the Subject Property for development and Belvedere thought that Hanmac's proposal for development was a great idea. Mr. Ready noted that the Subject Property is land attached to Belvedere's golf maintenance shed. The Subject Property has a berm on it to block the view of the back of an adjacent commercial building owned by a third party. The Subject Property has trees, brush and "scrub" on it and it is excess land not used by the golf course. He noted that there is already a private roadway to the maintenance shed and the Subject Property separates this roadway from the 4th hole. Mr. Ready testified that the golf course development was being pursued by the developer as this had been done in other golf courses where, to support the operations of the golf course, portions of the land were sold to raise funds. He indicated that this had been done at the Glen Harbour Course in Nova Scotia and the Fox Creek Course in Moncton.

[16] Counsel for Hanmac presented oral submissions that may be summarized as follows:

- The City's Council cannot arbitrarily reject a proposal and then later justify their decision based on sound planning. Council is required to consider and apply sound planning principles when making their decision.
- If Council makes a decision contrary to the advice of the City's Planning Board, Council must give sufficient reasons for its decision and these reasons must be based on sound planning principles.
- The City's Planning and Development Officer and the City's Manager of Planning and Heritage are both experts in land use planning. These City planning professionals both agree that Hanmac's application is consistent with sound planning.
- Council did not base its decision on a loss of open or green space. Nowhere in the verbatim minutes of Council's July 14, 2014 meeting is there any mention of open or green space.
- The Subject Property is not used as open space or green space by the public. The Subject Property is excess land belonging to a golf course and contains construction debris and scrub vegetation on it.

- The verbatim minutes of Council's July 14, 2014 meeting refer to traffic, spot zoning and drainage.
- In response to an inquiry by the City's Planning and Development Officer, the City's traffic authority advised that it had no traffic concerns with respect to Hanmac's proposed development.
- The City's Planning and Development Officer stated in her May 5, 2014 report to Planning Board that the re-zoning proposed by Hanmac is not spot zoning.
- Hanmac retained the services of an engineer to consider drainage issues. A summary of the engineer's report and an attached storm water concept plan were emailed to the then Chair of Planning Board on July 8, 2014.
- The July 14, 2014 verbatim minutes reveal that one Councillor had concerns over property values. Hanmac submits that such a concern is not relevant to sound planning.
- The Commission gives deference to municipal councils when rational reasonable reasons are apparent from the minutes of a council's deliberations.

[17] Hanmac submitted that the City's Council failed to apply sound planning principles when it made its July 14, 2014 decision to deny Hanmac's rezoning application. As sound planning principles were not followed, no deference should be given to the City's Council, the Commission should reject Council's decision and the Commission should approve Hanmac's application on its merits.

The City's Position

[18] The City presented two witnesses, Laurel Palmer-Thompson and Alex Forbes.

[19] Laurel Palmer-Thompson is a Planning and Development Officer for the City. Ms. Palmer-Thompson is a land use Planner by profession and she testified before the Commission that she has been employed with the City for ten years. She noted that Hanmac's development proposal is consistent with the City's Official Plan and promotes density, provides a good mix of housing forms and choices and gives nearby residents the option to downsize yet remain in their neighbourhood. She noted that Hanmac's proposal would front onto an industrial / commercial area and back onto an open space. She stated that the golf course provides a vast open area within the City. The proposed development would make efficient use of infrastructure resulting in less cost to provide municipal services. The City's Future Land Use Map designates the intended future use of properties within the City. For Hanmac's application to proceed

to development, the Future Land Use Map would need to be amended along with the City's zoning map. She reviewed Hanmac's proposal along with the City's Official Plan and the surrounding land uses. She noted that the moderate densities proposed by Hanmac provided no adverse effect on adjacent properties. She submitted that Hanmac's proposal for development of the Subject Property did not constitute spot zoning and is consistent with sound planning principles. She noted that if the rezoning is approved the City's staff would review the drainage plan in detail at the building permit stage.

[20] Ms. Palmer-Thompson briefly reviewed portions of the City's Official Plan during her testimony. She noted section 3.2 which speaks to sustaining existing neighbourhoods and section 3.2.1 which refers to the footprint, height and massing of buildings pertaining to the distinct character of the City's neighbourhoods. She referred to section 3.2.2 which permits moderately higher residential densities. She referred to section 5.1 of the Official Plan that speaks to recreational needs and section 5.2.1 which refers to open spaces.

[21] Ms. Palmer-Thompson testified that in her review of the proposed application and how it fit with the future plan for the City she noted that it is good planning to promote moderate density use in areas as they provide a good buffer between open areas and other housing, and offer a good range of housing to the public. She testified that the City Police had no real concerns with respect to traffic or access with the new development and that any concerns with respect to dust and construction time could be dealt with in a development agreement.

[22] She indicated that it was her understanding from what was expressed at public meetings that there was a concern with respect to the loss of open spaces. However, on cross examination Ms. Palmer-Thompson confirmed that there was no reference in the record as to any concerns having been made with respect to a loss of open space. She was questioned with respect to the reference in her report to Council that dealt with these concerns and indicated that she stated she remembered hearing some citizens at a meeting voice this concern. Ms. Palmer-Thompson's handwritten notes of the meeting do contain one reference to a single comment on the loss of open space. She recorded one member of the public as having commented - it's a green zone and that he was under the impression it wouldn't be developed.

[23] She confirmed that the portion of the golf course in question was, in fact, a maintenance access area that contained brush or was treed. She did not dispute that there was a ready supply of open land but she did note that there are two different views on the use of golf course properties for other development. She testified that the proposal as presented did not interfere with any recreational needs of the City. She agreed that the proposed development of Hanmac would use less than 1% of the golf course area.

[24] During redirect examination City legal counsel suggested that the verbatim transcript of the public meeting might provide for clarification on the public's objection to the rezoning of the open green space. On November 3, 2014 legal counsel for the City provided a copy of the verbatim transcript of the public meeting held on April 30, 2014. The verbatim transcript confirms the handwritten notes of Ms. Palmer-Thompson that during the entire public meeting there was only one single reference to the loss of green space or open space. The verbatim minutes of that meeting indicate that one gentleman stated:

"I knew this was coming for other reasons and I know there is going to be another up on Greenfield and that's a green zone there. I have the documents back four or five years ago. I was under the impression that it couldn't be developed and anything, you never say never, so I know with Council and it can be rezoned and it doesn't take much."

And further on in the meeting the same gentleman stated:

"Anyway, I'm not against the development."

The verbatim transcript of that meeting confirms that some of the members of the public were, in fact, not against the development and that many of the concerns voiced dealt with water and drainage on the golf course and the fact that Kensington Road had become a traffic thoroughfare for large trucks. Some members of the public did voice concerns with respect to how long the construction would take, dust, etc. and the fact that this would increase the number of people living in the area.

[25] Ms. Palmer-Thompson acknowledged that she did not provide a report to Council or Planning Board that the existing zoning is sound planning. She testified that there are no conflicting land uses in the area, noting that at the Subject Property the OS open space zone does border a light industrial M-1 zone. When asked by legal counsel for the City whether she considered that the existing zoning was consistent with good planning she stated in her oral testimony:

"When you look at the existing plan and how it is laid out and the zoning for the area, it isn't bad planning that is currently in place."

[26] Alex Forbes is the City's Manager of Planning and Heritage and is a member of both the Canadian Institute of Planners and the American Planning Association. He notes that his current work involves overseeing the work of planning staff at the City. He testified that he had reviewed Ms. Palmer-Thompson's written reports addressing Hanmac's application and he concurs with her recommendation approving the application. He noted that Hanmac's application for the Subject Property had strong support before Planning Board. He noted that the Subject Property is presently designated as OS open space and he stated that the current Official Plan is consistent with sound planning and it was developed in full consultation with the public. He noted that ultimately a decision of Council with respect to a rezoning land is a political

decision. Mr. Forbes' final position was that both the proposed development of Hanmac and the current Official Plan were both consistent with sound planning principles.

[27] Counsel for the City presented oral submissions to the Commission. A complete outline of these written submissions was filed with the Commission as Exhibit R11. Highlights of the City's submissions include the following.

- The Subject Property is currently zoned as open space (OS). This zoning has been in place for a very long time. In this case, an amendment to the Official Plan's Future Land Use Map is required in addition to an amendment to the Bylaw's Zoning Map.
- Appeals before the Commission have a twofold role. The Commission reviews the record in a way similar to a judicial review. The Commission also hears the matter afresh as a hearing de novo.
- The City submits that the Commission's reasoning in *Doiron* [Order LA10-06, *Warren Doiron v. City of Charlottetown* July 14, 2010] is applicable in the present appeal. *Doiron* also involved a rezoning application and would have required an amendment to the Official Plan's Future Land Use Map. In *Doiron*, the "consistent approach" was followed, recognizing that the Future Land Use Map is an important long-term planning tool that was developed in consultation with professional planners. *Doiron* recognized that the public is likely to rely on the Future Land Use Map when making a decision to purchase a residence in the neighbourhood.
- The City submits that Council as a group of elected officials have a vital role to protect the public interest. As a result, Council may have a different view of what constitutes spot zoning than that held by the City's Planning and Development Officer. Council's concern about spot zoning was a legitimate planning concern. While acknowledging that City planning staff were of the view that the proposed development was not an example of spot zoning, the City submits that the councillors could have a reasonable alternate view of what constituted spot zoning and filed a Wikipedia page to support his premise.
- The City submits that the traffic authority's opinion was brief and without a basis offered for the opinion. It was not detailed like a traffic study provided by an engineer. Council was concerned about traffic and felt that the response from the City's traffic authority was not enough.
- The City submits that Council does not need to articulate reasons in the same way as an administrative tribunal. Council was of the view that the proposed development was not the perfect fit for that area of the City.

- In *Seanic Canada Inc. v. St. John's (City)*, 2014 NLTD(G) 7 (*Seanic*), the test was enunciated as to whether a municipal council was “alive to the question at issue”. The City submits that Council was in fact alive to the issues before it.
- There is no issue of procedural fairness in the present appeal. Reasons were given during the “continuum of process”. It is not feasible to require each Councillor to verbalize their reasons for decision. Council met the standard for giving reasons as set out in *Seanic*. Even if a higher standard is required, it is submitted that Council has met such standard.

[28] For all the reasons expressed orally and as set out in depth in Exhibit R11, the City requests that the Commission deny the appeal.

3. Findings

[29] After a careful review of the evidence, the submissions of the parties and the applicable law, it is the decision of the Commission to allow the appeal.

[30] Appeals under the **Planning Act** take the form of a hearing *de novo* before the Commission. *In the matter of Section 14(1) of the Island Regulatory and Appeals Commission Act* (Stated Case), [1997] 2 P.E.I.R. 40 (PEISCAD), Mitchell, J.A. states for the Court at page 7:

*...it becomes apparent that the Legislature contemplated and intended that appeals under the **Planning Act** would take the form of a hearing *de novo* after which IRAC, if it so decided, could substitute its decision for the one appealed. The findings of the person or body appealed from are irrelevant. IRAC must hear and decide the matter anew as if it were the original decision-maker.*

[31] In previous appeals, the Commission has found that it does have the power to substitute its decision for that of the municipal or ministerial decision maker. However, in planning matters the Commission does not lightly interfere with such decisions.

[32] The Commission finds that the two-part test that it has used in the past also serves as a guideline in determining this appeal.

- Whether the municipal authority, in this case the City, followed the proper process and procedure as required in its Bylaw, in **the Planning Act** and in the law in general, including the principles of natural justice and fairness, in making a decision on a rezoning application, requiring amendments to the Bylaw's Zoning Map and also in this case requiring a companion amendment to the Official Plan's Future Land Use Map; and

- Whether the City's decision with respect to the proposed Zoning Map and Future Land Use Map amendments have merit based on sound planning principles within the field of land use and urban planning and as enumerated in the Official Plan.

[33] In reviewing the entire application from beginning to final decision of Council the Commission notes that the City's Planning and Development office handled this application in a good, business like and exemplary manner. The application for rezoning was filed with the Planning and Development office and was processed by that office in a timely manner. Public notices were given and public meetings were held, minutes produced and recommendations made based on facts made available to Planning and Development staff. Reports were written and recommendations made to Planning Board. Planning Board accepted the recommendations and issued its own recommendation to Council for approval of the application and the rezoning. It is clear from the record that the matter was given and received due consideration from individuals and committees that took the time to inform themselves to the issues involved in the matter before them. It is clear from the minutes of Council that the councillors who chose to speak had not bothered to inform themselves on the matter of the application before them. Those councillors spoke of concerns for which there were answers in the record, expressed concerns about matters which could have been and should have been canvassed by them long before they entered the Council chamber for a vote on such an important matter. At the Council meeting the chairman of the Planning Board addressed these issues and answered them in a full and complete manner. Three of the councillors voting against the motion did not even see fit to make comment at the meeting.

[34] In the minutes for Council's July 14, 2014 meeting dealing with Hanmac's rezoning application, the sole reason and explanation for the denial and rejection of the application was noted as follows:

Concerns were raised with respect to traffic in the area, type of zoning (R-3) proposed and drainage.

[35] The Commission is concerned with the inaccuracies as set out in these minutes of the meeting. The verbatim Minutes of Council show that there were no concerns raised with respect to drainage. The only reference to drainage was a confirmation from the chairman of Planning Board that the developers had provided a draft drainage plan by a certified civil engineer. Drainage matters may have come up earlier in the application process but they certainly were not a concern at the regular meeting of Council on July 14, 2014 and it was improper for that concern to have been stated as such, in the minutes of Council.

[36] Following the decision of Council to reject the application, the Planning and Development officer then forwarded a letter, dated July 15, 2014 to Hanmac setting out the following reason for Council's rejection, it reads:

Council felt that it was not appropriate to re-zone a portion of an outdoor urban recreational space to a zone that would permit a medium density residential use.

[37] The Commission is very concerned with the letter noted above that was forwarded to the developer. This is the only communication sent to the developer to explain to the developer the reason why its application was rejected by Council. The reason and rationale set out in this letter is not the reason that is recorded in the Council's Minute of July 14, 2014 and cannot be gleaned from the verbatim transcript of the Council meeting. It is not acceptable that the written explanation given to the developers as to why their project was rejected states a reason that was not even an issue at the Council meeting.

[38] In his summation, Counsel for the City referred the Commission to the decision of the Newfoundland and Labrador Supreme Court (Trial Division) in *Seanic, supra*, and submitted to the Commission that the Commission should not interfere with the decision of a Council where it is clear that the councillors were "alive to the issue" before them. It is apparent to the Commission that the councillors were most definitely not "alive to the issue" that was before them. It is also apparent to the Commission that although this application had been before the City for months, councillors expressed questions and concerns that could easily have been answered by discussing the matter with Planning Department staff and by a review of the application material that had been provided to them by Planning Board staff. But, instead, as the record confirms, they chose to enter the Council chamber and vote on a matter for which they were not fully informed.

[39] The Commission finds that the reason set out in the July 15, 2014 letter from the Planning and Development Officer to Hanmac does not reflect either the written minutes or the verbatim transcript of the meeting of Council on July 14, 2014 pertaining to Hanmac's application.

[40] In *Seanic, supra*, the Court referred to a decision of the Supreme Court of Canada in *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, [2004] 2 S.C.R. 650, 2004 SCC 48. In that decision, McLachlin C.J. noted the following at paragraphs 12 and 13:

12 The five Baker factors suggest that the Municipality's duty of procedural fairness to the Congregation required the Municipality to carefully evaluate the applications for a zoning variance and to give reasons for refusing them. This conclusion is consistent with the Court's recent decision in Prud'homme v. Prud'homme, [2002] 4 S.C.R. 663, 2002 SCC 85, at para. 23, holding that municipal councilors must always explain and be prepared to defend their decisions. It is also consistent with Baker, where it was held, at para. 43 dealing with a ministerial decision, that if an organ of the state has a duty to give reasons and refuses to articulate reasons for exercising its discretionary authority in a particular fashion, the public body may be deemed to have acted arbitrarily and violated its duty of procedural fairness.

13 Giving reasons for refusing to rezone in a case such as this serves the values of fair and transparent decision making, reduces the chance of arbitrary or capricious decisions, and cultivates the confidence of citizens in public officials. Sustained by both law and policy, I conclude that the Municipality was bound to give reasons for refusing the Congregation’s second and third applications for rezoning. This duty applied to the first application, and was complied with. If anything, the duty was stronger on the Congregation’s second and third applications, where legitimate expectations of fair process had been established by the Municipality itself. Emphasis added by the Commission

[41] The direction from the Supreme Court of Canada is clear: a municipality must carefully evaluate an application, give reasons when refusing the application and municipal councillors “must always explain and be prepared to defend their decisions”.

[42] A careful evaluation of Hanmac’s application was given by the Planning and Development Officer and by Planning Board and these evaluations supported Hanmac’s rezoning application. While Council is free to make a decision contrary to the recommendation of its staff and its Planning Board, as noted in *Congrégation*, a municipality must undertake a careful evaluation of the application before it in order to meet the duty of procedural fairness. The verbatim minutes of July 14, 2014 persuade the Commission that there is insufficient evidence to support a finding that Council carefully evaluated the application before it. The Commission finds that the City did not meet the duty of procedural fairness as it failed to decide Hanmac’s application on its merits.

[43] In considering whether Hanmac’s application is consistent with sound planning principles, the Commission is mindful that the City’s Planning and Development Officer is an experienced professional planner who prepared her report for Planning Board and testified before the Commission. Indeed, the Planning and Development Officer has testified before the Commission on several matters over the years and the Commission remains impressed with her knowledge, professionalism and candour. The City’s Planning Board also recommended in favour of granting Hanmac’s application for rezoning.

[44] However, the Commission must also be satisfied that an application for rezoning has the support of the Official Plan. The Commission notes the following provisions of the Official Plan that are germane to an assessment of both Hanmac’s application and the existing status of the Subject Property from the perspective of sound planning principles.

3. DIRECTING PHYSICAL GROWTH

The City of Charlottetown will strive to create for its residents a truly unique environment in which to live, work, and play. It will protect the distinct character of the municipality while at the same time encouraging compact urban form and creative approaches to residential, commercial, and industrial development. The City will continue to build on its past by stimulating the revitalization of heritage resources; maintaining the special qualities of Charlottetown's neighbourhoods; and safeguarding the municipality's open space characteristics and view corridors.

3.1 Guiding Settlement

Starting Point

As a recently amalgamated municipality, Charlottetown has a unique window of opportunity to create a growth profile that will help shape the City's urban fabric well into the 21st century. In large measure, the way in which the municipality now chooses to guide its settlement patterns will provide the template that molds urban development—and the quality of life issues which arise from it—for many years to come.

...

An effective municipal growth management program is founded on the principles of fiscal efficiency, environmental conservation, and urban containment. In Charlottetown, this means that the City will maximize the use of existing underground services before new water and wastewater lines are extended into areas that are essentially undeveloped. Finally, it means that moderately higher density development may be permitted in existing commercial areas and arterial corridors where it does not interfere with existing built-up residential neighbourhoods...

Collectively, these measures will promote compact and contiguous development patterns, the deployment of efficient municipal services, and the preservation of significant resource areas for present and future generations. This approach will enable the City to anticipate growth, identify areas and services which can accommodate it, while also minimizing fiscal expenditures and environmental impacts. To this extent, it will ensure that urban growth in Charlottetown takes place in a rational,

efficient, and orderly fashion, as well as being consistent with the provincial government's general land-use policy.

...

Defining Our Direction

Our goal is to develop settlement patterns which are efficient in their use of land resources and cost of servicing, encourage equitable and harmonious community relationships, and help to sustain Charlottetown's distinctive character and identity.

1. *Our objective is to contain urban sprawl by introducing a staging strategy for new development, and to ensure that there is concurrency between proposals for new development and the provision of underground municipal services.*

- *Our policy shall be to direct urban growth to land that is a logical extension of an existing urban area, or neighbourhood, and will be serviced by municipal water and wastewater systems;*

- *Our policy shall be to monitor the long-term public costs of additional infrastructure, public services, and public service facilities prior to approving development proposals.*

- *Our policy shall be to place each key re-urbanization area identified in subsection 3.6 in a Comprehensive Development Area zoning designation until such time as a detailed concept plan has been prepared and adopted.*

- *Our policy shall be to have the responsible municipal departments ensure that adequate infrastructure and servicing facilities are in place prior to, or are developed concurrently with, new development.*

2. *Our objective is to promote compact urban form and infill development, as well as the efficient use of infrastructure and public service facilities.*

- *Our policy shall be to allow moderately higher densities in neighbourhoods, and to allow in-law suites in residential land-use designations, and to make provision for multiple-family dwellings in the downtown core, and multiple-family dwellings in suburban centres and around these centres provided it is development at a density that will not adversely affect existing low density housing.*

- *Our policy shall be to encourage in-fill development through public land assembly initiatives, flexible zoning provisions and the reduction or waiver of development fees for small or irregularly shaped lots and, when warranted, the use of tax incentives within fully serviced areas of the City.*

- *Our policy shall be to use existing underground services to its fullest practical capacity before public funds are used to extend new water and wastewater lines into areas that are essentially undeveloped.* [Emphasis added by the Commission]

3.2 Sustaining Charlottetown's Neighbourhoods

Starting Point

In most municipalities, the neighbourhood is the basic building block of residential development and community identity. Every neighbourhood has its own distinguishing characteristics which help to identify it as an individual entity, as well as to set it apart from adjoining areas. In Charlottetown, the former communities which now comprise the new municipality, retain their distinctive characteristics and sense of identity. Indeed, even within the former communities there are several districts -- such as Brighton, Spring Park, Marysfield, and Lewis Point -- which are seen as distinct neighbourhoods.

In order to preserve the unique characteristics of Charlottetown's neighbourhoods the CHARLOTTETOWN PLAN introduces policies which promote both stability and community identity. The aim is to sustain vibrant neighbourhoods which have a distinct sense of community, are places of close social contact, and are generally enjoyable. This is the clear preference of Charlottetown's residents.

However, it is also important to recognize that change which results from economic and social transformation is already having an impact at the neighbourhood level. Smaller households, a decrease in family-oriented households, an aging population base, and an increase in home-based businesses are several of the factors for some needed flexibility in housing densities, design options, permitted uses, and lot sizes within Charlottetown's neighbourhoods. With some future adjustments in development standards, the City's residential communities will be better able to sustain a diversity of household types and lifestyles, and continue to be vibrant places to live.

Similarly, if Charlottetown's neighbourhoods are to remain healthy and sustainable, the policies of this plan should enable people to continue to reside in their residential communities as they move through various ages and stages of their lives. The provision of community-based services, appropriate public realm amenities, and reasonable access to shopping and facilities are measures which will support this aim.

As a new municipality, it is also important for Charlottetown to find ways to embrace its various neighbourhoods and bind them into the larger community. To some extent, the passage of time -- along with the equitable distribution of municipal services and amenities -- will help to solve this issue. However, the City also needs to provide physical linkages which will connect each neighbourhood to others, as well as to the downtown core and the suburban centres. The green space connector system shown on the Future Land-Use Map lays the foundation for these physical connections. Upon its completion, it will not only help to link neighbourhoods together, but also provide residents with the opportunity to walk or cycle to a variety of destinations within the City.

Defining Our Direction

Our goal is to maintain the distinct character of Charlottetown's neighbourhoods, to enhance the special qualities of each, and to help them adjust to the challenges of economic and social transformation.

1. Our objective is to preserve the built form and density of Charlottetown's existing neighbourhoods, and to ensure that new development is harmonious with its surroundings.

- Our policy shall be to ensure that the footprint, height, massing, and setbacks of new residential, commercial, and institutional development in existing neighbourhoods is physically related to its surroundings.*

- Our policy shall be to establish an appropriate relationship between the height and density of all new development in mixed-use residential areas of existing neighbourhoods.*

2. Our objective is to allow moderately higher densities and alternative forms of development in any new residential subdivisions which may be established, provided that this development is well planned overall, and harmonious with existing residential neighbourhoods.

- Our policy shall be to permit moderately higher densities in new neighbourhoods and to permit in-laws suites in residential land use designations and to make provision for higher density residential projects located in the Downtown Growth Area which is located in the Downtown Core Area and to permit multiple unit developments in suburban areas provided that it is development at a density which will not unduly adversely affect existing low density housing.*

- Our policy shall be to allow a mix of residential, commercial, institutional, and recreational uses in new subdivisions which are established, provided that there is a comprehensive site plan which ensures that development is well-related to both its internal and external environments.*

...

5.1 Addressing Recreational Needs

Starting Point

The demand for recreation and leisure activities in Charlottetown -- and throughout Canada -- is changing. Increasingly, people are demanding a greater variety of facilities and programs. In the years to come, the challenge for the City will be to provide traditional recreation and leisure activities while at the same time responding to changing demands. The trends and issues that will increasingly begin to influence the delivery of these services are:

- an aging population base;*
- changes in the type of activities demanded by this population; and*

- *the ability of the City to respond to these changing demands.*

...

5.2 The City's Public Places

Starting Point

The way in which we inhabit the land is often articulated through our public places. These special spaces... be they natural, groomed, or fabricated features in the community, are elements that make our daily lives richer and more vivid ... and by the physical facts of their location provide a deeper resonance with the place that is Charlottetown.

In addition to sustaining special relationships between people and their surroundings, the City's public places directly affect both residents and visitors' perceptions of Charlottetown's quality of life. Indeed, there is a very positive public image of the City because of its many public places, its harbour setting, and its collection of heritage buildings. The civic squares, for example, are firmly rooted in the City's earliest plans, and are an integral part of Charlottetown's image and identity. Indeed, all of Charlottetown's public places allow us to gain knowledge about the seasons, the structures, the incidents and lives--human and otherwise--that exist in our home territory. As such, it is important to preserve and build on these fundamental elements which contribute so much to the City's image and sense of place.

Defining Our Direction

Our goal is to provide a diversity of public places throughout Charlottetown to ensure that residents and visitors can relax, celebrate, and enjoy the City's many distinct urban and natural environments.

1. *Our objective is to encourage the upkeep, and to nourish the creation, of open spaces and public places of a grander scale which befit Charlottetown's role as the provincial capital.*

- *Our policy shall be to manage the large open spaces of Charlottetown as part of the growth management strategy, and to ensure that they are protected as long as is reasonably possible from urban development.*

- *Our policy shall be to protect, maintain, and enhance the public places of Charlottetown.*

[45] Sections 5.1 and 5.2.1 have been referenced in the oral testimony of the City's Planning and Development Officer as some of the provisions within the Official Plan which lend support to a retention of the current open space zoning for the Subject Property. Section 5.1 pertains to the City's recreational needs while section 5.2.1 pertains to the City's public places.

[46] The Subject Property is privately owned and thus it should not be confused with a publicly owned open or "green" space such as municipal parkland. The Subject Property, although zoned open space, is not one of the City's public places.

[47] The testimony before the Commission is that development of the Subject Property in no way restricts the existing recreational services provided by Belvedere. Indeed, such development may assist Belvedere in remaining viable and thus continuing to provide an important recreational need.

[48] Section 29 of the City's By-law sets out the provisions with respect to the Open Space Zone (OS). Section 29.1 list the permitted uses within that zone:

29.1 PERMITTED USES

- .1 active and passive recreation;*
- .2 band shell;*
- .3 Campground;*
- .4 curling Club;*
- .5 Golf Course and driving range;*
- .6 Officers Club;*
- .7 Open Space;*
- .8 Park;*
- .9 pavilion;*
- .10 Public Park;*
- .11 public recreation centre; and*
- .12 trails and fields.*

[49] The Commission notes that a rejection of Hanmac's rezoning application maintains the open space zoning of the Subject Property and as such, the permitted uses applicable to a private landowner would be rather limited. The Commission finds that the Subject Property is privately owned, underutilized, and, according to the evidence presented to the Commission, it is of little benefit to the operations of its present owner.

[50] The Commission finds that Hanmac's application for rezoning promotes compact urban form, while offering a medium-density development that is more compatible with the existing residential neighbourhood than a high-density residential development. The subject parcel is well within existing water and service lines and is adjacent to Kensington Road, a major street within the City. Hanmac's application also assists in providing some visual buffer between the commercial and residential portions of the immediate neighbourhood. As a limited scale development using under-utilized golf course land, it does not negatively impact upon the adjacent developed green space occupied by the golf course. As a medium density development located adjacent to a golf course and a commercial area, it does not negatively impact upon the existing neighbourhood. It provides housing variety within the neighbourhood which will allow residents in transition, or those undergoing "economic and social transformation" to remain within their neighbourhood, a factor of considerable importance referred to in

the Official Plan. Hanmac's development is rational, efficient, orderly and addresses the needs for housing diversity.

[51] Counsel for the City submits that the application for rezoning would result in what is referred to as spot zoning. This assertion is contrary to the determination of the City's own Planning Department and the opinion of the City's own planners as noted in the Planning Department's report to Planning Board for its consideration of this application. This Commission finds that based on the evidence before it this application for rezoning is not spot zoning.

[52] In Charlottetown (City) the Island Reg. & Appeals Com. 2013 PEICA 10, Chief Justice Jenkins of the Court of Appeal stated:

40... However, where, as here, Council fails to decide an application for development on its merits in accordance with the applicable municipal law, which is enabled by the Planning Act, and decides the application based on irrelevant considerations, then there is no basis for deference. That is because there is no decision upon which to defer. In the Commission's words, deference to a decision maker is earned when the decision maker follows the process set out by the bylaw and is fair to all parties. Where, as here, the process was not so followed, the Commission was unable to show deference to Council's decision.

[53] In the present appeal, the Commission finds that the Council failed to decide the application for the development on its merits in accordance with the applicable municipal law and finds that Hanmac's proposal for development of the Subject Property demonstrates clearly superior planning compared with the current use of the property.

[54] The appeal is allowed, and the City's July 14, 2014 decision to deny Hanmac's rezoning application is hereby reversed. The Commission orders the City to approve an amendment to Appendix "A"- Future Land Use Map of the Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" - Zoning Map of the City of Charlottetown Zoning and Development By-law from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091).

4. Disposition

[55] An Order allowing the appeal and requiring the rezoning of the Subject Property and related amendment to the Future Land Use Map follows.

IN THE MATTER of an appeal by Hanmac Inc.
of a decision of the City of Charlottetown, dated July
14, 2014.

Order

WHEREAS the Appellant Hanmac Inc. has appealed a decision of the City of Charlottetown dated July 14, 2014;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on October 22, 2014 and November 18, 2014 after due public notice and suitable scheduling for the parties;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. The appeal is allowed.
2. The July 14, 2014 decision of the City of Charlottetown pertaining to this matter is hereby reversed.
3. The City of Charlottetown is hereby ordered to approve an amendment to Appendix "A"- Future Land Use Map of the

Official Plan from Recreational to Medium Density Residential and an amendment to Appendix "H" - Zoning Map of the City of Charlottetown Zoning and Development Bylaw from Open Space (OS) Zone to Medium Density Residential (R-3) Zone in order to rezone a portion of the property at 1 Greensview Drive (PID# 279091).

DATED at Charlottetown, Prince Edward Island, this 18th day of December, 2015.

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd.) Douglas Clow

Douglas Clow, Vice-Chair

(sgd.) John Broderick

John Broderick, 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.*

NOTICE: IRAC File Retention

In accordance with the Commission'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.

IRAC141AA(2009/11)