RESPONDENT'S SUBMISSIONS

Filed on behalf of the Department of Communities, Land and Environment

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RESPONDENT'S POSITION

Issues on Appeal

1. The Respondent, Minister of Agriculture and Land (formerly Communities, Land and Environment) ("Respondent"), states that the Appeal of *1909 Culinary Academy, Ltd. v Minister of Communities, Land and Environment*, LA19004 ("Appeal") raises the following issues for the Commission's consideration:

   - Issue 1 – Was the Respondent's decision that a change of use from "institutional use" to "commercial use" had occurred made in accordance with the *Planning Act* and Regulations?

   - Issue 2 – Was the Respondent's decision to deny the change of use permit under s. 5(d) of the Subdivision and Development Regulations made in accordance with the *Planning Act* and Regulations?

Issue 1 – Determination that a "Change of Use" occurred

2. The Appellant, 1909 Culinary Academy Ltd., takes the position that no change of use application is required to establish a culinary academy on the subject parcel because both uses are "institutional". The Appellant further states that the building is currently "zoned institutionally" as a church.

   Notice of Appeal, paragraph 12

3. The Respondent notes that there is no zoning in the location in question. Land use zoning only occurs in cities, towns or communities in PEI that have an official plan. There is no Official Plan in Hunter River.

4. The Respondent submits that a change of use has occurred under the Subdivision and Development Regulations for the following reasons:

i. First, the definition of "institutional use" under s. 1(1)(j.2) of the Subdivision and Development Regulations explicitly states that the use must be for **non-profit or public** purposes which include public schools, but not private schools. Therefore, the proposed use would be considered "commercial use" because there is a sale of services (the students are paying for private training in culinary arts).

ii. Second, even if the proposed use could be considered to be within the same class (institutional use), the condition on the survey plan dated Oct. 6, 2008 issued by the Respondent states,

> "A change of use permit will be required for the existing church on the remaining lands (Lot 08 – 1) if the structure is to be used for anything other than the current institutional use."
>
> Appeal Record, page 20

The inclusion of the word "current" in this condition means any use other than a church. The Respondent's intention in issuing this approval was that if the use of the structure changed from anything other than a church, a change of use permit would be required.

5. For the reasons mentioned above, it is submitted that the Respondent's decision to require a change of use application in these circumstances was made in accordance with the *Planning Act* and Regulations.

Issue 2 – Relying on s. 5(d) of the Subdivision and Development Regulations

6. Section 5(d) of the Subdivision and Development Regulations states that where an entrance way permit or approval is required, no approval shall be given until it has been obtained under the *Roads Act*.

7. In this case, the Senior Development Officer, Danny Cusack, sent the details of the application to TIE for comment about whether such approval would be permitted.

Given TIE's knowledge of this use of this parcel, its historic uses, previous applications for change of use and the survey plan and conditions, Alan Aitken, Traffic Operations Engineer, determined that a change of use had occurred and a permit would not be approved.

Appeal Record, pages 48 - 49

8. Since the portion of Route 2 where the entrance way in question is located is an arterial highway outside an area that has been designated for infilling in Schedule "A-3" of the *Roads Act*, Highway Access Regulations it is within the discretion of the Minister of TIE to change a use of an existing entrance way under s. 20 of the Highway Access Regulations.

Highway Access Regulations, s. 20 **[Tab 1]**

9. The Respondent notes that while this is not an appeal of a *Roads Act* decision under s. 12 of the Highway Access Regulations, it nevertheless submits that it was reasonable for the Senior Development Officer to rely on TIE's determination that the proposed culinary academy would constitute a change of use under s. 1(1)(a) of Highway Access Regulations which states,

> (a) "change of use" means, in respect of a parcel of land, <u>the change of use of the parcel of land from one use to another</u>, but does not include
>
> (i) the expansion of a permanent year-round single-family residence or the placement of a garden suite as defined in the Planning Act Subdivision and Development Regulations (EC693/00),
> (ii) the change of use of a parcel of land from an existing commercial operation or an existing industrial operation to residential usage where the number of average weekday vehicle trips is expected not to increase as a result of the change of use,
> (iii) non-residential expansion of a farm where, after the subject expansion, the parcel of land would continue to be a farm, or
> (iv) a home occupation;

10. Unlike the Subdivision and Development Regulations, it is submitted that a "change of use" under the Highway Access Regulations is not limited to a change from "class

to class" (see: s. 1(1)(d) of the Subdivision and Development Regulations). The Highway Access Regulations contemplate a broader interpretation of when a change of use occurs.

11. In support of this position, the Respondent points to subsections (i) to (iv) above which address situations where it has been determined by the Legislature that a change of use has not occurred. Subsection (i) and (iii) are situations where an expansion has occurred within the same type of operation. If "change of use" was meant to only include changes from one type of operation to another, subsections (i) and (iii) would be pointless. As such, it is submitted that a change of use could occur under Highway Access Regulations, even if both the former and proposed activities fell under the definition of "institutional".

12. In conclusion, it is submitted that the Senior Development Officer denied the change of use application having properly considered s. 5(d) of the Subdivision and Development Regulation given TIE's position that the required permit or approval would not be obtained.

Broader Considerations for an Application for Change of Use under Subdivision and Development Regulations

13. In considering a *Planning Act* appeal, the Commission normally relies on a two-part test:

- Whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the Planning Act and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for a development permit, including a change of use permit; and
- Whether the Minister's decisions with respect to the applications for development and the change of use have merit based on sound planning principles within the field of land use planning and as identified in the objects of the Planning Act.

Order LA17-06 *Stringer v. Minister of Communities, Land and Environment*, at paragraph 52 **[Tab 2]**

14. The Respondent submits that even if the Commission were to find that an entrance way approval was not required under the *Roads Act* – not triggering s. 5(d) of the Subdivision and Development Regulations – the Respondent would, according to its legislative mandate, have to consider an application for change of use under s. 3(2) of the Subdivision and Development Regulations and in accordance with "sound planning principles".

15. As recently stated by the Commission in Order LA17-06 *Stringer v. Minister of Communities, Land and Environment*, at paragaph 64, a professional planner must consider broader implications of a decision under the *Planning Act*:

> "Sound planning must be a common feature of development throughout Prince Edward Island and property owners located in areas of the Province for which there is no municipal government should not be subject to inferior land use planning rights and responsibilities. Sound planning principles are a guard against arbitrary decision making especially where a regulatory checklist does not address a concern. Sound planning principles require regulatory compliance but go beyond merely insuring such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. <u>In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted</u> ..." [Emphasis Added.]

16. As such, the Respondent submits that if the Commission concluded that there were procedural deficiencies with the Respondent's decision, the Commission should not substitute its own decision in the place of the Minister's without a professional land use planner having reviewed the Appellant Exhibits, making the necessary inquiries, and forming an opinion on sound planning principles. For example, in reviewing the Appellant's change of use application, the Respondent may make various inquiries:

    i. Contacting the Fire Marshal's office to determine whether the building is compliant with safety codes;

    ii. Inquiring with the municipality of Hunter River to determine whether it would be willing to host food waste generated by the academy;

    iii. Discussing the proposed use with the Department of Health;

iv. Sending letters to people within 100 meters of the academy for input; or

v. Considering traffic generation in consultation with TIE.

17. Due to the inability of the Appellant to obtain an entrance way permit under s. 5(d) of the Subdivision and Development Regulations, the Respondent did not undertake the above steps. However, having now received Appellant Exhibits A-3 to A-9, the Respondent could consider a change of use application having regard to s. 3(2) of the Subdivision and Development Regulations and "sound planning principles", if the Commission found it to be necessary.

Conclusion

18. In conclusion, it is submitted that the Respondent's decision was made in compliance with the *Planning Act* and the Regulations. Further it is submitted that the Respondent's decision was made pursuant to its legislative authority. On that basis, the Respondent requests that the Commission deny the Appeal.

19. In the alternative, if the Commission finds that the Respondent has not made its decision in compliance with the *Planning Act* and the Regulations, the Respondent requests that the Commission remit the decision back to the Respondent to reconsider the application for change of use in accordance with the aforementioned factors.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2019.

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Tab 1

PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

ROADS ACT HIGHWAY ACCESS REGULATIONS

PLEASE NOTE

This document, prepared by the ***Legislative Counsel Office***, is an office consolidation of this regulation, current to June 15, 2019. It is intended for information and reference purposes only.

This document is ***not*** the official version of these regulations. The regulations and the amendments printed in the ***Royal Gazette*** should be consulted on the Prince Edward Island Government web site to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the ***Table of Regulations*** on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office
Tel: (902) 368-4292
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ROADS ACT
Chapter R-15

HIGHWAY ACCESS REGULATIONS

Pursuant to subsection 29(1) of the *Roads Act* R.S.P.E.I. 1988, Cap. R-15, Council made the following regulations:

PART I — GENERAL

1. Definitions

(1) In these regulations:

(a) "**change of use**" means, in respect of a parcel of land, the change of use of the parcel of land from one use to another, but does not include

(i) the expansion of a permanent year-round single-family residence or the placement of a garden suite as defined in the *Planning Act* Subdivision and Development Regulations (EC693/00),

(ii) the change of use of a parcel of land from an existing commercial operation or an existing industrial operation to residential usage where the number of average weekday vehicle trips is expected not to increase as a result of the change of use,

(iii) non-residential expansion of a farm where, after the subject expansion, the parcel of land would continue to be a farm, or

(iv) a home occupation;

(b) "**commercial operation**" means any activity involving the display or sale of goods and services or the use of a parcel of land for any of the following: financial services and financial institutions, business offices and other offices, studios, theatres, restaurants and clubs, health and recreation centres and facilities;

(c) "**cultivation of a natural resource**" means sowing, planting, stocking, cultivation and harvesting of a primary agricultural, forestry or fishery resource and specifically excludes any form of processing or construction of any building;

(d) "**existing**" with respect to any highway or part thereof, means existing at the time these regulations come into force;

(e) "**existing parcel of land**" means any parcel of land existing as one parcel and not subdivided, at the time these regulations come into force but where a parcel of land is divided by a highway it shall be considered as two separate parcels;

(f) "**farm**" means arable land and complimentary buildings of more than 50 acres in total, utilized for the purpose of sowing, cultivation and harvesting of crops, rearing of livestock or production of raw dairy products;

(g) "**farm corporation**" means a corporation

(i) which is primarily engaged in the business of agriculture, and

(ii) of which not less than 75 per cent of all issued and voting shares are beneficially owned by farmers;

(h) "**farmer**" means a person who owns or leases land and operates a farm or owns shares in a farm corporation that operates a farm, and who

(i) spends more than 50 per cent of his working time on the farm, and

(ii) receives annually more gross cash income from the sale of farm products than from wages received for work performed off the farm;

(i) "**farm dwelling**" means a single family year-round residential dwelling that is located on a farm or on a lot that has been subdivided from an existing farm, and is owned and occupied by a principal owner of the farm, a person whose primary occupation is to work upon the farm or a parent, son or daughter of a principal owner of the farm;

(j) "**home occupation**" means a business within a single family residential dwelling where at least fifty percent (50%) of the employees live within the dwelling on a permanent basis, the total area occupied by the business is no more than the greater of twenty-five percent (25%) of the total floor area of the dwelling or sixty-five square metres (65 m2) and the business would be consistent with any applicable zoning regulations or bylaws;

(k) "**industrial operation**" means any activity for the storage, distribution, processing, assembly or recycling of wholesale products, goods or materials or for activities relating to transportation, manufacture, construction, warehousing, assembly or general repair, but does not include a farm;

(l) "**institutional operation**" means any activity for senior citizen housing, nursing homes, hospitals, clinics, religious institutions, churches, public and private schools, colleges, cultural centres, libraries and public recreational facilities and parks;

(m) "**lower class of highway**" means a collector highway or a paved local highway;

(n) "**Minister**" means the Minister of Transportation and Public Works;

(n.1) "**right-of-way control sign**" means a stop or yield sign which indicates the right-of-way of vehicle drivers on the approach to an intersection;

(n.2) "**scenic heritage road**" means a public road designated as a scenic heritage road under section 16.1, and includes the verge, ditch and land within the road boundary;

(o) "**subdivision street**" means a street constructed or paid for by a developer, on land which has been conveyed to the Province of Prince Edward Island and accepted as a highway by the Minister, for the purpose of establishing a subdivision.

Similar activities

(2) For the avoidance of doubt, subsection (1)(b), (1)(k) and (1)(l) include activities that are like or similar in character to commercial, industrial or institutional respectively as therein defined. *(EC580/95; 472/96; 418/97; 463/01; 209/07; 356/18)*

2. No application to controlled access highways

These regulations do not apply to any highway or portion thereof designated as a controlled access highway pursuant to section 27 of the *Roads Act* R.S.P.E.I. 1988, Cap. R-15. *(EC580/95)*

3. Entrance ways

No person shall construct or cause a change of use of an entrance way opening onto an arterial highway, limited access arterial highway or a seasonal highway without first having obtained an entrance way permit from the Minister. *(EC580/95; 463/01)*

4. Entrance ways

Notwithstanding any other provision of these regulations, no entrance way permit shall be issued, no entrance way shall be established and there shall be no change of use of an existing entrance way:

(a) if the location of the entrance way would not meet the safe stopping sight distance requirements set out in Schedule G for any purpose other than the establishment of one entrance way to an existing parcel of land created prior to February 3, 1979,

(i) for single family dwelling use, or

(ii) for the purpose of cultivation of a natural resource,

subject to the entrance way being located in the safest possible location;

(b) if the location of the entrance way would be on a segment of highway having more than two (2) traffic lanes except for three-lane segments of highway where the third lane is an exclusive right-turn lane, and is outside of an area designated for infilling in Schedule "A-3" for any purpose other than:

(i) establishment of one entrance way to an existing parcel of land solely for the purpose of cultivation of a natural resource, provided that there is no existing entrance way to the parcel of land and no adjacent parcel of land is under the same ownership or control as the subject parcel of land,

(ii) establishment of one entrance way to an industrial operation where it has been determined by the Lieutenant Governor in Council that establishment of the industrial operation would be in the best interest of the province,

(iii) establishment of one entrance way to a proposed commercial development at an intersection of a highway having more than two traffic lanes, where

(A) the additional lanes are exclusive turning lanes, and

(B) the Lieutenant Governor in Council has determined that establishment of the commercial development would be in the best interest of the province,

subject to the entrance way being restricted to either a right-turn into or right-turn out of the development only, depending on the exclusive use of the lane; or

(iv) change of use of an existing entrance way to allow for the construction of a farm dwelling on the same parcel where a farm with complementary buildings exists prior to November 14, 2005. *(EC580/95; 418/97; 120/98; 720/98; 713/05)*

5. Existing entrance ways

(1) A legally created existing entrance way from an existing parcel of land onto any highway may be continued and maintained, provided that there is no change of use of the parcel of land serviced by the entrance way.

Idem

(2) Notwithstanding subsection (1) the Minister may remove and close an entrance way where a parcel of land has more entrance ways than would be permitted pursuant to these regulations. *(EC580/95)*

6. Removal of entrance ways

Any entrance way onto a highway for which there is no entrance way permit or which is not otherwise authorized under these regulations may be removed by the Minister. *(EC580/95)*

7. Application for permit

(1) An application for an entrance way permit shall be in a form prescribed by the Minister, accompanied by

(a) a record of *re*-zoning or change of use approval, if applicable;

(b) an application fee in the amount prescribed in Schedule "H";

(c) a property map, drawn to an appropriate scale, showing the entire parcel of land, the intended location of the subject entrance way, the location of any existing entrance ways and the location of existing and proposed buildings;

(d) a copy of the deed of the property; and

(e) in the case of an application for expansion of a commercial operation, a detailed floor and site plan showing the existing and proposed use.

Minister may require additional information

(2) Notwithstanding subsection (1), the Minister may request a traffic impact study or other material to aid in making a decision on any application for an entrance way permit and, where such a request is made, no entrance way permit may be issued until the Minister is satisfied that the material has been provided.

When application received

(3) An application for an entrance way permit shall be deemed to be received on the day the Minister's decision, pertaining to the application, is communicated to the applicant. *(EC580/95)*

8. Dimensions to be specified

(1) An entrance way permit shall indicate

(a) the approved use of the entrance way;

(b) the width and location of the entrance way by reference to the distances between its edges and from one edge to the nearest boundary of the parcel of land; and

(c) any other conditions imposed.

Construction

(2) The entrance way shall be constructed in accordance with the permit. *(EC580/95)*

9. Costs

(1) The fees of an entrance way permit for a new entrance way shall be not less than the amount prescribed in Schedule "H".

Minister may collect additional costs

(2) Nothing herein limits or affects the right of the Minister to impose, charge and collect the costs, or any portion of the costs of any changes to a highway that are associated with the construction or change of use of an access or entrance way pursuant to section 30 of the *Roads Act*, in lieu of or in addition to fees imposed pursuant to subsection (1). *(EC580/95; 463/01)*

10. Owner acknowledges conditions

(1) No entrance way permit shall be valid unless it has been signed by the owner of the subject parcel of land to acknowledge any conditions imposed by the permit.

Registration

(2) No entrance way permit shall be valid unless it has been registered with the Registrar of Deeds. *(EC580/95)*

10.1 Trip Generation Manual

When determining whether the number of average weekday vehicle trips is likely to change or whether a change of use is likely to result in an increase in the number of average weekday vehicle trips for a parcel of land, the Minister shall refer to the most recent edition of the Trip Generation Manual published by the Institute of Transportation Engineers. *(EC356/18)*

11. Trip generation

Revoked by EC418/97.

12. Appeal

(1) Where the Minister has discretion to issue an entrance way permit pursuant to these regulations, a decision of the Minister may be appealed to the Island Regulatory and Appeals Commission, by the applicant.

Idem

(2) For greater certainty, where the Minister makes a decision pursuant to section 4, there is no appeal to the Island Regulatory and Appeals Commission on any grounds other than an error in the determination of available safe stopping sight distance. *(EC580/95)*

PART II — HIGHWAY CLASSIFICATION

13. Arterial highways

(1) All highways or parts thereof described in Schedule "A-1" are designated as arterial highways.

Arterial Class II highways

(2) All highways or parts thereof described in Schedule "A-4" are designated as arterial Class II highways. *(EC580/95; 449/99)*

14. Collector highways

All highways or parts thereof described in Schedule "B" are designated as collector highways. *(EC580/95)*

15. Local highways

All paved highways or parts thereof, not otherwise designated as arterial highways or collector highways, including, but not limited to, those paved highways described in Schedules "C-1" and "C-2" and all unpaved highways, or parts thereof, described in Schedule "C-3" are designated as local highways. *(EC580/95)*

16. Seasonal highways

All unpaved highways or parts thereof described in Schedule "D" are designated as seasonal highways. *(EC580/95)*

16.1 Scenic heritage roads

All unpaved highways or parts thereof described in Schedule "E" are designated as scenic heritage roads. *(EC209/07)*

17. Non-essential highways

All unpaved highways or parts thereof not designated as local highways, scenic heritage roads or seasonal highways are designated as non-essential highways. *(EC580/95; 209/07)*

PART III — ARTERIAL HIGHWAYS

18. Application

(1) This Part applies to arterial highways.

No application to limited access arterial highways

(2) Notwithstanding subsection (1), this Part does not apply to any arterial highway or portion thereof that is designated as a limited access arterial highway. *(EC580/95)*

19. Closure

When a municipal council or the Minister of Community and Cultural Affairs gives permission for a change of use of an existing entrance way, for which no entrance way permit has been issued, the existing entrance way or entrance ways to the parcel shall be closed and shall not be reopened unless and until an entrance way permit has been issued by the Minister. *(EC580/95; EC699/00)*

20. Issue of permit outside an infilling area

(1) The Minister may issue an entrance way permit to authorize placement of a new entrance way or a change of use of an existing entrance way, to a portion of an arterial highway outside of an area that has been designated for infilling in Schedule "A-3", except no entrance way permit shall be issued

(a) to establish a commercial operation, other than a home occupation, or an institutional operation on a parcel of land where there is no existing commercial operation or institutional operation respectively;

(b) to enable the change of use of an existing commercial operation from one type of commercial operation to another, unless there will be no increase in the number of average weekday vehicle trips resulting from the change of use;

(b.1) to enable the change of use of an existing commercial operation to an industrial operation or from an existing industrial operation to a commercial operation, unless

(i) the number of average weekday trips is expected not to increase as a result of the change of use, and

(ii) the change of use meets the requirements of the Subdivision and Development Regulations (EC693/00) or the applicable municipal bylaws, as the case may be;

(b.2) to enable an existing commercial operation to expand, unless the expansion of the commercial operation is limited to

(i) a maximum of 100 square metres, or

(ii) 100% of the total of the existing floor and ground area occupied by the operation,

subject to any conditions relating to traffic safety that the Minister may determine and the recovery by the Minister of the costs associated with the construction, improvement or intensification of use of the access;

(c) to establish an industrial or commercial operation on a parcel of land where there is no existing industrial or commercial operation and it has not been determined by the Lieutenant Governor in Council that establishment of the industrial or commercial operation along an arterial highway is in the best interest of the province;

(c.1) to establish an institutional operation on a parcel of land where there is no existing institutional operation and it has not been determined by the Lieutenant Governor in Council that establishment of the institutional operation along an arterial highway that lies west of the intersection of Route 2 and Route 124 in Prince County, or east of the intersections of Route 1 and Route 3 or Route 2 and Route 6 in Queens County, is in the best interest of the province;

(d) to allow placement of a new entrance way where a parcel of land, created prior to the date that the adjacent arterial highway was designated as an arterial highway:

(i) that is not a farm, has one or more existing entrance ways;

(ii) that is a farm and does not include a farm dwelling, has one or more existing entrance ways; or

(iii) that is a farm and includes a farm dwelling, has two or more existing entrance ways;

(e) to provide an entrance way to a parcel of land created after March 22, 1992 or the date upon which the adjacent highway was designated as an arterial highway, whichever is later, other than to enable

(i) the creation of a new farm;

(ii) the creation of a new parcel of land subdivided from a farm for the purpose of establishing one new single-family dwelling or the creation of a separate parcel of land that includes a single-family dwelling to allow the farmer to retain the dwelling and sell the remainder of the farm, provided that the existing entrance way to the farm is used for access to the new or separate

parcel of land and any other entrance way to the new or separate parcel of land is removed, or

(iii) cultivation of a natural resource;

but where the existing parcel of land is served by more than one existing entrance way, no additional entrance way may be established to serve the new parcel of land; or

(f) to establish any change of use on a parcel of land created between February 3, 1979 and the coming into force of these regulations, where the adjacent segment of highway was designated as an "arterial" highway in regulations proclaimed under the *Planning Act* on February 3, 1979 and is continued as an arterial highway pursuant to these regulations, other than to enable

(i) the creation of a new farm;

(ii) the establishment of one (1) single family year-round residence, on a parcel of land where all required approvals would have been granted prior to the coming into force of these regulations and there has been no previous change of use since the parcel of land was created; or

(iii) cultivation of a natural resource.

Issue of permit inside an infilling area

(2) The Minister may issue an entrance way permit to authorize placement of a new entrance way or a change of use of an existing entrance way to a portion of an arterial highway, in an area that has been designated for infilling in Schedule "A-3".

Entrance way permit

(3) The Minister may issue an entrance way permit authorizing a new entrance way or changing the use of an existing entrance way to a portion of arterial highway for the purpose of allowing access to an excavation pit.

Validity of permit

(4) An entrance way permit issued pursuant to subsection (3)

(a) shall only be valid for one 30-day period in a calendar year as specified on the permit; and

(b) shall not be valid during the months of July and August, except in the case of excavation pits used for Highway Capital Construction Projects. *(EC580/95; 367/97; 418/97; 595/99; 167/09; 356/18)*

21. Access to lower class of highway

Notwithstanding any other provision of this Part, where a parcel of land is adjacent to an arterial highway and a lower class of highway, the Minister may determine that no entrance way permit shall be issued to allow access to the arterial highway. *(EC580/95)*

PART III.1 — ARTERIAL CLASS II HIGHWAYS

21.1 Applies to arterial Class II highways

(1) This Part applies to arterial Class II highways as described in Schedule "A-4".

Not applicable where limited access

(2) Notwithstanding subsection (1), this Part does not apply to any highway or portion thereof that is designated as a limited access arterial highway pursuant to Part IV of these regulations. *(EC449/99)*

21.2 Change of use requires closure until permit

Where a municipality or the Minister of Community and Cultural Affairs gives permission for a change of use of an existing entrance way, for which no entrance way permit has been issued, the existing entrance way or entrance ways to the parcel of land shall be closed and shall not be reopened until an entrance way permit has been issued by the Minister. *(EC449/99; EC699/00)*

21.3 Reasons for permit

(1) Subject to section 21.4, the Minister may issue an entrance way permit to authorize placement of a new entrance way to a portion of an arterial Class II highway for the purposes of

(a) the establishment of a single family dwelling, commercial operation or a home occupation on an existing parcel of land where there is not an existing commercial operation;

(b) enabling a change of use from one type of commercial operation to another;

(c) enabling the creation of not more than one new parcel of land, subdivided from an existing parcel of land for the establishment of a new commercial operation or home occupation; or

(d) enabling the creation of a summer cottage subdivision.

Restrictions

(1.1) No entrance way permit shall be issued under subsection (1) to authorize the placement of a new entrance way to a portion of an arterial Class II highway for the purpose of enabling the creation of a summer cottage subdivision where the property to be subdivided is adjacent to

(a) a lower class of highway; or

(b) a private road of an approved cottage subdivision or subdivisions, when a right-of-way over that private road has been granted to the summer cottage lot owners on connecting properties that would include the lot owners of the proposed summer cottage subdivision.

Idem

(2) Notwithstanding any other provision of these regulations, no entrance way permit shall be issued under subsection (1) to enable the creation of a summer cottage subdivision if the location of the entrance way would be on a segment of highway having more than two traffic lanes, unless the location of the entrance way is at a segment of highway that has three lanes and

(a) the location is on the same side of the highway with two lanes travelling in the same direction; and

(b) one of the two lanes is an exclusive right-turn lane and is outside of an area designated for infilling in Schedule A-3.

Conditions for permit

(3) A permit issued pursuant to subsection (1) may be subject to

(a) such conditions respecting traffic safety as the Minister may deem necessary; and

(b) the recovery by the Minister of the costs associated with the construction or improvement of the access. *(EC449/99; 627/05)*

21.4 Access

(1) The Minister may issue an entrance way permit for a portion of an arterial Class II highway if the entrance way meets the criteria for a permit issued pursuant to Part III.

Where access limited to right turn

(2) Notwithstanding any other provision in this Part, a permit issued under subsection (1) for the entrance way to a commercial operation or a home occupation on an arterial Class II highway

(a) shall permit full access where the entrance way is located

(i) on a three-lane section of the highway, and

(ii) on the side of the highway that has two lanes travelling in the same direction; or

(b) shall be restricted to a right lane only for ingress and egress where

(i) the entrance way is located on a four-lane section of a highway, or

(ii) the entrance way is located

(A) on a three-lane section of a highway, and

(B) on the side of the highway that does not have two lanes travelling in the same direction.

Single family dwelling

(3) Notwithstanding any other provision of this Part, if an entrance way for single family dwelling use only is on a segment of arterial Class II highway having more than two lanes, full access may be permitted. *(EC449/99; 627/05)*

PART IV — LIMITED ACCESS ARTERIAL HIGHWAYS

22. Application

This Part applies to arterial highways or parts thereof that are designated as limited access arterial highways. *(EC580/95)*

23. Designation

The arterial highways or parts thereof described in Schedule "A-2" are designated as limited access arterial highways. *(EC580/95)*

24. Restriction

No entrance way permit shall be issued for the construction of an entrance way opening onto a limited access arterial highway, unless

(a) the application for the entrance way permit is in respect of the relocation of an existing entrance way; and

(b) the Minister has determined that the issuance of the entrance way permit would be in the best interest of the province. *(EC463/01)*

25. Change of use

No person shall cause a change of use of a parcel of land having access onto a limited access arterial highway. *(EC580/95)*

26. Existing entrance ways

All legally created entrance ways onto a limited access arterial highway may be continued and maintained, provided there is no change of use of the parcel of land serviced by the entrance way. *(EC580/95)*

27. Closure

Where a municipal council or the Minister of Community and Cultural Affairs gives permission for the change of use of a parcel of land, any entrance way onto a limited access arterial highway shall be closed and the Minister shall take such steps as are reasonable to prevent further use of the entrance way. *(EC580/95; EC699/00)*

PART V — COLLECTOR HIGHWAYS

28. Application

This Part applies to collector highways. *(EC580/95)*

29. Minister may authorize entrance way

(1) The Minister may authorize placement of a new entrance way to a collector highway or the change of use of an existing entrance way to a collector highway.

Idem

(2) The Minister may authorize the placement of a new entrance way to a collector highway, or the change of use of an existing entrance way to a portion of a collector highway, in an area that has been designated for infilling in Schedule B-2. *(EC580/95; 373/05)*

PART VI — LOCAL HIGHWAYS

30. Application

This Part applies to local highways. *(EC580/95)*

31. Minister may authorize entrance way

The Minister may authorize placement of a new entrance way to a local highway or the change of use of an existing entrance way along a local highway. *(EC580/95)*

PART VII — SEASONAL HIGHWAYS

32. Application

This Part applies to seasonal highways. *(EC580/95)*

33. Issue of permit

The Minister may issue an entrance way permit to authorize placement of a new entrance way to a seasonal highway or to change the use of an existing entrance way along a seasonal highway. *(EC580/95)*

34. No change of designation

(1) Issuance of an entrance way permit pursuant to this Part shall not change the designation of a seasonal highway.

Designation to be stated

(2) An entrance way permit issued pursuant to this Part shall indicate that the entrance way is to a seasonal highway. *(EC580/95)*

PART VIII — NON-ESSENTIAL HIGHWAYS

35. Application

This Part applies to non-essential highways. *(EC580/95)*

36. No permits to be issued

The Minister shall not issue an entrance way permit to authorize placement of a new entrance way or a change of use of an existing entrance way to a non-essential highway. *(EC580/95)*

PART IX — SCENIC HERITAGE ROADS

37. Entranceway prohibitions

(1) Subject to subsection (2), no person shall place a new entrance way or change the use of an entrance way to a scenic heritage road.

Permit

(2) The Minister, in exceptional circumstances and on the application of a person with an interest, may issue a permit to the applicant in respect of a scenic heritage road, for the placement of a new entrance way or to change the use of an existing entrance way to a scenic heritage road, if

(a) the new entrance way or change of use of an existing entrance way is for a temporary period not exceeding six months;

(b) the new entrance way would be the only means of access to the property; or

(c) the Minister determines that it is appropriate to issue a permit based on circumstances specific to the site of the entrance way.

Conditions

(3) Where the Minister issues a permit under subsection (2), the Minister shall place conditions on the permit in respect of

(a) expiry of the permit; and

(b) restoration activities at the entrance way site to be carried out on or before the expiry of the permit.

38. No easement

(1) Subject to subsection (2), no person shall grant an easement for any public or private utility to have access to a scenic heritage road for the purpose of placing any utilities on or along the highway right-of-way.

Exception

(2) The Minister may approve the granting of an easement by an owner to provide for access to a scenic heritage road for the subsurface placement of utilities.

Offence

(3) Any person who, without the written permission of the Minister,

(a) cuts or removes trees, shrubbery or plant life from a scenic heritage road; or

(b) alters the landscape of a scenic heritage road,

commits an offence and is liable on summary conviction to a fine not exceeding one thousand dollars and, in default of payment thereof, to imprisonment of a term not exceeding ten days. *(EC580/95; 209/07)*

SCHEDULE A-1

ARTERIAL HIGHWAYS

1. The following highways and portions thereof designated as "arterial" highways in regulations proclaimed under the *Planning Act*, on February 3, 1979, are continued as arterial highways pursuant to these regulations, with effect from February 3, 1979:

(1) Route 1, the Trans Canada Highway, from the eastern boundary of the property owned by the Government of Canada connecting to the Confederation Bridge in the Community of Borden-Carleton to the intersection of the Upton Road in the City of Charlottetown and from the intersection of Grafton Street in the City of Charlottetown to the intersection of Route 210 in the settlement of Orwell.

(2) Route 1A, from the intersection of Route 1 in the settlement of Albany, to the intersection of Route 2 in the settlement of Travellers Rest.

(3) Route 2:

(a) commencing at the intersection of Route 305 in the Town of Souris to the intersection of the Charlottetown Perimeter Highway in the City of Charlottetown (formerly in the Community of Sherwood); and

(b) re-commencing at the intersection of the Charlottetown Perimeter Highway in the City of Charlottetown (formerly in the Community of West Royalty) to the intersection of Route 153 in the Community of Tignish.

(4) Route 3, from the intersection of Route 1 in the settlement of Cherry Valley to the intersection with Route 4 in the settlement of Roseneath.

(5) Route 4, from the intersection of Route 2 in the settlement of Dingwell's Mills to the intersection with Route 17 in the Town of Montague.

(6) Route 142, from the intersection of Route 2 in the settlement of Woodstock to the existing eastern boundary of the Community of O'Leary.

(7) Revoked by EC478/12.

2. The following highways and parts thereof are designated as arterial highways with effect from March 22, 1992:

(1) Revoked by EC390/97.

(2) The Charlottetown Perimeter Highway from the intersection of the Upton Road in the City of Charlottetown to the intersection of Route 2 (at St. Peters Road) in the City of Charlottetown.

3. The following highways and parts thereof are designated as arterial highways with effect from August 4, 1994:

(1) Route 3, from the intersection of Route 4 in the settlement of Roseneath to the western boundary of the Town of Georgetown.

(2) Revoked by EC390/97.

(3) Revoked by EC433/03.

4. The following highways and parts thereof are designated as arterial highways with effect from the date these regulations come into force.

(1) Upton Road, in the City of Charlottetown, from the intersection of Route 1 to the intersection of the Hurry Road. *(EC390/97;449/99;336/00;433/03; 324/05; 478/12).*

SCHEDULE A-3

INFILLING AREAS

1. The following portions of arterial highways are designated for infilling pursuant to subsection 20(2) of these regulations:

(1) On Route 1, the Trans Canada Highway:

(a) revoked by EC433/03;

(b) in the Community of Crapaud, that segment of highway that lies between the existing southern boundary of Parcel Number 423798 and the intersection with Route 13;

(c) in the Town of Cornwall,

(i) that segment of highway that lies between the western boundary of the Town and the intersection with John Street and Kellow Drive; and

(ii) that segment of highway that lies between Route 248, the York Point Road/Bedeque Road and the western bank of the North River.

(d) revoked by EC433/03.

(2) On Route 1A:

(a) in the City of Summerside, that segment of highway that lies between 0.25 km south of the intersection of MacQuarrie Drive and the intersection of Route 11.

(3) On Route 2:

(a) in the Community of Tignish, that segment of highway that lies between Route 153 and Route 158;

(b) in the Community of Richmond, that segment of highway that lies between the boundary line of property number 52274 and property number 52639, said boundary being eight hundred and ten metres (810 m) west of the western boundary of Route number 127(Aldous Road) and a stream that crosses Route 2 at a point seven hundred and thirty metres (730 m) east of the eastern boundary of Route 127 (Aldous Road);

(c) in the Community of Miscouche, that segment of highway that lies between the intersection of Route 12 and Monaghan Street;

(d) in the Town of Kensington, that segment of highway that lies between Sunset Drive and Industrial Park Drive;

(e) in the Community of Hunter River, that segment of highway that lies between the lot line separating Lot 22 and Lot 23 and the intersection of Route 13;

(f) in the City of Charlottetown, that segment of highway that lies between Melody Lane and the existing western boundary of the City of Charlottetown.

(g) in the City of Charlottetown, that segment of highway that lies between Wrights Creek and the intersection of the Robertson Road;

(g.1) in the City of Charlottetown, that segment of highway that lies between Greenwood Drive and Heartz Road;

(h) in the Community of Morell, that segment of highway that lies between the existing western boundary of the Community and the Morell River Bridge;

Tab 2

Monday, June 17, 2019

SITE MENU
Home

REGULATION
Auto Insurance
Electricity
Lands Protection
Municipal
Petroleum
Waste Management
Water & Sewer

APPEALS
Environmental
Planning
Rental
Tax

RENTAL
Residential
Rental Property

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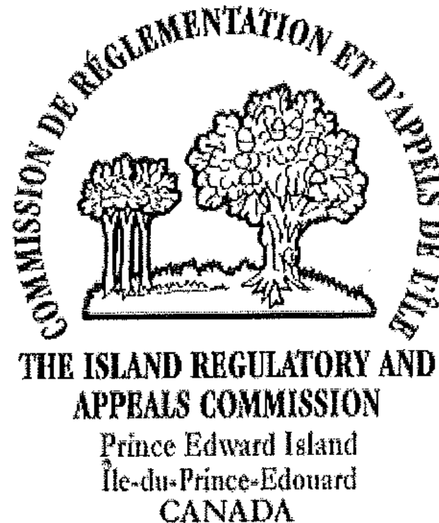

THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Edouard
CANADA

Docket LA15010
Order LA17-06

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

BEFORE THE COMMISSION

on Thursday, the 10th day of August, 2017.

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

Order

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Appearances & Witnesses

1. For the Appellant Donna Stringer

   Counsel:
   John D. Stringer, Q.C.

   Witnesses:
   Donna Stringer
   Leland Wood

2. For the Respondent Minister of Communities, Land and Environment

   Counsel:
   Robert MacNevin

   Witness:
   Jay Carr

3. For the Developers Betty Ann Bryanton and Gareth Llewelleyn

   Counsel:
   Steven Forbes

   Witness:
   Betty Ann Bryanton

Reasons for Order

1. Introduction

[1] On August 19, 2015, the Appellant Donna Stringer (the "Appellant") 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"***).

[2] The Appellant appealed an August 12, 2015 decision of the Respondent Minister of Communities, Land and Environment (the "Minister") granting Development Permit No. M-2015-0087 ("Permit 87") and Development Permit No. M-2015-0088 ("Permit 88") to the Developers Betty Ann Bryanton and Gareth Llewelleyn (the "Developers") to change the permitted use of an existing non-commercial storage building to a summer cottage (Permit 87) and to relocate three non-commercial storage buildings (Permit 88) on Provincial Parcel Number 931741, located on the south side of 158 Paradise Drive, in the Community of Little Pond (the "subject property").

[3] The Commission forwarded letters to the Minister and the Respondents advising of the Appeal and requesting that the Minister provide a copy of the development application file. On September 4, 2015, a copy of the application file was received and forwarded via email to the Appellant and the Developers.

[4] On September 15, 2015, Commission received a letter submission from Robert MacNevin, legal counsel for the Minister. Mr. MacNevin acknowledged that "Evidently the non-commercial storage buildings are used, from time to time, to accommodate people who use them to sleep at night during the summer months". Mr. MacNevin further advised that as these "non-commercial storage buildings are not hooked up to water or sewer systems, they are not considered to be "dwellings". He further submitted that "There was nothing in the ***Planning Act Subdivision and Development Regulations*** that regulate either the number or use of non-commercial storage buildings". Mr. MacNevin submitted that "There was no basis for the appeal to be successful".

[5] On September 18, 2015, the Commission's Appeals Administrator emailed the parties to facilitate the filing of written submissions and noting that the Commission was prepared to hear the appeal as early as November 2015.

[6] Submissions from Appellant's Counsel were received by the Commission on October 13, 2015. Submissions were received from the Developers on November 2, 2015.

[7] On December 9, 2015, counsel for the Minister provided a further submission by letter, departing from the original position taken in his September 15, 2015 letter, now stating that "It is the Department's position that non-commercial storage buildings, which is what Permit No. N-2015-0088 allows, <u>are not intended to be used as sleeping quarters, or "bunkies"</u>." [emphasis added] He further submitted that there was a gap in the *Subdivision and Development Regulations* that has been recognized by the Department and he advised that the Department "Will be creating Regulations to specifically address this issue in the near future, and he noted that the regulatory changes will be made in the new year, and as such I suggest that this appeal be put on hold until the new Regulations come into force. At that time the Department officials will be in a position to determine if Ms. Bryanton's units are in compliance with the new Regulations." In response to this submission the Appellant's Counsel responded noting that statutes and Regulations are not to be construed as having retrospective operation unless they are expressly or by necessary implication required in the language of the regulation. He noted that "It is the view of the Appellant that any retroactive or retrospective future legislation would be prejudicial to the rights of the Appellant, thereby giving rise to a presumption against retroactivity." He requested that the appeal proceed to a public hearing to have the matter adjudicated.

[8] On January 15, 2016, the Commission advised the parties that the appeal would proceed to a hearing and invited the parties to indicate their available dates. After consulting with the parties, the Commission scheduled the appeal to be heard on June 9 and 10, 2016.

[9] On March 15, 2016, Steven Forbes advised the Commission that he would be representing the Developers. On March 18, 2016, the Commission received a letter from Mr. Forbes requesting a change in the hearing date to July 2016. Mr. Forbes also requested the opportunity to file written submissions. On March 22, 2016, John D. Stringer, Q.C., Counsel for the Appellant, advised the Commission that he did not object to a July or August hearing. On March 22, 2016, the Commission's Appeals Administrator contacted counsel for the three parties to encourage the parties to reflect on the possibility of alternative dispute resolution ("ADR") and offer the Commission's assistance in providing ADR services. Subsequently all parties and the Commission agreed to hearing dates of July 21 and 22, 2016. Dates for filing written submissions and rebuttal submissions were also agreed to.

[10] Following the receipt of the various written submissions, Counsel for the Appellant canvassed counsel for the other parties inquiring whether there was interest in pursuing ADR. By June 3, 2016, all counsel had expressed a willingness to participate in ADR.

[11] With the agreement of all parties and their legal counsel, ADR was held on the morning of July 21, 2016 with the Commission's Appeals Administrator as mediator. The parties were unable to reach a mediated solution and requested that the appeal be heard by the Commission.

[12] The Commission heard the appeal commencing on the afternoon of July 21, 2016. Legal counsel for all three parties filed an Agreed Book of Documents which was entered as Exhibit E-1. The hearing concluded on the morning of July 22, 2016.

2. Discussion

Appellant's Testimony and Submissions

[13] The Appellant Donna Stringer ("Mrs. Stringer") testified that she purchased her property in the autumn of 2007. Mrs. Stringer's property is located adjacent to the subject property. At the time Mrs. Stringer purchased her property, the Developers had a shed on their property and also placed a tent and a dining tent on the property for two to three weeks each year. In poor weather, the Developers slept in the shed.

[14] Mrs. Stringer testified that her cottage contains seven rooms including four bedrooms. The Appellant provided an aerial photo of the cottages on Paradise Drive (Tab 27 of Exhibit E-1). The aerial photo has been annotated to insert descriptions of the ownership of the cottages and the placement of the "bunkies". The photo shows a total of five cottages, three of which are the size of the Appellant's, one which is somewhat smaller and the Developer's converted shed cottage which is substantially smaller than the others.

[15] Mrs. Stringer testified that on July 20, 2015 a port-a-pottie or free standing portable outdoor toilet enclosure was delivered to the subject property. The next day a number of workers arrived with one shed and started putting in stakes where the shed was to be placed. The second shed arrived the next day. The sheds were put in place and windows were installed in the sheds to allow for a view of the water. Mrs. Stringer testified that the Developers informed her that they were just sheds. However, Mrs. Stringer could view the workers trying to put queen size air mattresses into the sheds. She stated that when she questioned the Developers on what permits they had obtained to be allowed to put the sheds on the property, the Developers responded that they did not need permits. The Appellant checked with Leland Wood of the Department of Communities, Land and Environment and he advised that no permits had been issued. Mrs. Stringer advised that a few days later after the initial installation the shed that was closest to the water was moved and the workmen began setting in pegs for the placement of a third shed. Pegs for a third shed were later removed.

[16] Mrs. Stringer testified that when she spoke to Leland Wood at a later time he advised her that the permits were in fact granted, directed her to the Planning website and told her that in order to get information on the permits issued to the Developers, she would have to launch an appeal to the Commission under the ***Planning Act***. When she received the file as part of the appeal process, she was surprised to learn that the original shed that had been on the property was now approved through Permit 87 as a cottage. Mrs. Stringer indicated that she has a concern over the number of accessory buildings being placed on this property and was concerned that more sheds were going to be placed on the property. She also noted that to her knowledge no septic system was ever installed on the Developers' property.

[17] Under cross-examination, Mrs. Stringer acknowledged that the sheds did not impede her view of the water and that, to date, her safety and security were not compromised by the presence of the sheds. However, Mrs. Stringer did note that in her view the Developers and the Developers' guests did compromise safety and security as there were no sanitary facilities on the property and she questioned the cooking and other sanitary facilities where there was no proper disposal. Under cross-examination when she was questioned about her concerns about more sheds, she testified that originally there was pegging put in the ground for four sheds, but in the end only two sheds were actually put on the property.

[18] Leland Wood ("Mr. Wood"), is a safety standards officer employed by the Minister. Mr. Wood was called to testify by Appellant's Counsel. Mr. Wood testified that he has worked for the Minister first as a property development officer and then as a safety standards officer, for the past 13 years. He is licensed as a septic inspector. Mr. Wood is not a land use planner. He testified a summer student working at his office had taken a building permit application for two "bunkies" from Betty Ann Bryanton ("Ms. Bryanton") who is one of the Developers. Mr. Wood testified that he spoke with Ms. Bryanton who

confirmed that she was seeking a permit for "bunkies". Mr. Wood testified that the original application for the "bunkies" was refused for the reason that there was no dwelling or cottage on the property at the time of the application.

[19] Mr. Wood testified that he informed Ms. Bryanton that unless the first storage shed on the property was subject to a change of use to a dwelling, there could not be any other accessory buildings placed on her property. Mr. Wood informed Ms. Bryanton that there could only be one dwelling per lot. Mr. Wood testified that he informed her that a septic permit would be required in order to change the original shed to a cottage. He noted that it was a paper application and he did not visit the subject property. He testified that without the original shed being approved through a change of use to a cottage the two additional sheds could not be approved as the "bunkies" were considered to be accessory buildings. He noted that the term "bunkies" was used in the Developer's application.

[20] When asked if 20 "bunkies" would be permitted on the subject property, Mr. Wood replied that approving that many would be questionable as that would be a large number for one building lot. He acknowledged that the Regulations do not specify how many would be permissible and noted that the number allowed is "discretionary". He stated that "lots of people have four storage sheds". Mr. Wood testified that "bunkies' are not permitted to be used as accommodations because there is no septic system connected to the "bunkies". When asked whether you could live in a "bunkie" he replied "No". Mr. Wood testified that the original application was for "bunkies" and he told the applicant that they could not have "bunkies" and he suggested that the application be changed to a request for two non-commercial storage buildings instead.

[21] Mr. Wood testified that a building may be approved as a cottage if there is a septic permit, that there is no time limit on septic approval, no system is first required and no occupancy permit is required. He stated that with regard to a septic system, staff do not know if its installed as the building is not inspected and the Department does not follow-up to determine whether a septic system has been installed. He stated that the Regulations do not specify a minimum size for a cottage.

[22] Under cross-examination from Counsel for the Minister, Mr. Wood clarified that site inspections are not performed for every development permit as resources are not sufficient to do so.

[23] Under cross-examination from Counsel for the Developers, Mr. Wood clarified that Jay Carr directed him to approve the "bunkies" as non-commercial storage buildings with the condition attached to Permit 88 that they were not to be connected to water or sewer.

[24] Counsel for the Appellant submitted that the appeal is against the Minister's decision to issue Permit 87 and Permit 88. He submitted that there is little disagreement with respect to the facts. He submitted that where the parties do differ is on the interpretation of the ***Planning Act*** and the ***Planning Act Subdivision and Development Regulations*** (the "Regulations"). He submitted that the Regulations do not support the issuance of either permit. Highlights of his oral submissions include the following:

- The June 26, 2006 permit application for the original storage shed had the annotation "future cottage many years from now". Exhibit E-1, Tab 19, page 4 contains a reference to "*bona fide* cottage" which suggests that the Developers do not consider the original shed to be a true cottage. The change of use application which resulted in the issuance of Permit 87 identified the original shed which was changed to a cottage as being 12 by 14 feet for a square footage of 168 square feet.

- The original shed, now deemed to be a cottage, does not have a sewage disposal system. All that was required was approval of a septic permit form. That paper approval was issued about one year ago yet no system has been installed and the Developer has no present intention of installing a septic system. However, such a system is the underpinning for the change of use application.

- Exhibit E-1, Tab 18, provides photographs of four structures: the original shed or "cottage", a small plastic storage shed, a shed used as a "bunkie" and another shed used as a "bunkie".

- No site inspection occurred for either the change of use Permit 87 or the approval of the "bunkies" Permit 88.
- Past decisions of the Commission have emphasized a need for clear wording, objective criteria and the avoidance of arbitrary discretion.
- The definition of "dwelling" under the Regulations is relevant while the definition of dwelling unit is not.
- Granting the permit after locating the structures on the property is a contravention of Sec. 31 of the *Act*.
- The government did not proceed properly, there is no current septic system on the property, there was no site inspection done to determine whether the structures met the cottage requirements, that both the Developers and government personnel seemed to take the position that, with septic systems, all that is required is a permit, not the installation of the system itself.
- The sewage disposal system to be installed must be the system that was approved and for which a permit was issued as this is the basis for granting a change of use to a cottage under Permit 87.
- Sec. 42(1) of the ***Planning Act*** states that there cannot be more than one building used as a dwelling on a lot and that these terms are defined in the *Act*. This provision limits the ability to construct multiple buildings and dwellings and have one lot sprinkled with numerous "bunkies".
- "Bunkies" meet the definition of dwelling as set out in the *Act*.

[25] Counsel for the Appellant requested that the Commission revoke both Permit 87 and Permit 88 and require the two "bunkies" to be removed.

Testimony and Submissions on behalf of the Minister

[26] Jay Carr ("Mr. Carr") is the Safety Standards Chief for the Minister. Mr. Carr is not a land use planner. Mr. Carr testified that he deals with the more "out of the ordinary" files. He testified that the Department will not issue permits for "bunkies", they can't, as they are not provided for in the Regulations. The Regulations do provide for permits for non-commercial storage buildings, that are not dwelling units. The Regulations do not state what non-commercial storage buildings may be used for and nothing in the Regulations prevent sleeping in a non-commercial storage building. Mr. Carr noted that the Minister's staff now has one or two inquiries per year about "bunkies" and the matter is now on the Minister's "radar" and it is expected that in the future the Regulations will be amended to address "bunkies".

[27] Mr. Carr noted that the present matter involves three sheds on the subject property, which is a relatively large lot, and in his opinion at the time it would not have been referred to Planning for consideration for detrimental impact. He advised that as of two months prior to the date of giving his testimony the Department now has the safety standards officers under the Planning Division and that the Department was recently instructed after a decision of this Commission in another matter to have their personnel consult more with land use planners in the Department. He stated that previously it was the environmental aspects that were the focus of the Department in approving such permit applications, but now land use planners are also brought in and the planning aspect to an application needs to be considered. He stated that having three sheds on one lot was, in hindsight, not properly based on sound planning principles and if the application were received today land use planners in the Department would be consulted.

[28] Mr. Carr testified that the Regulations do not set out minimum size standards for a cottage. He noted that to constitute a dwelling unit a kitchen and bathroom is typically required.

[29] Mr. Carr explained that licensed septic contractors design a system, buy registered documents, fill the documents out, send the documents back to the Minister's staff and are required to notify the minister's staff when the system is going to be installed. The Minister's staff does not inspect every system but do random inspection audits. He testified that if an audit is done and they find a system that has not been installed then they proceed to enforce the septic tank permit.

[30] Under cross-examination from Counsel for the Appellant, Mr. Carr testified that the application filed by the Developers was for "bunkies" but the permit issued was for non-commercial storage buildings. Mr. Carr stated that non-commercial storage buildings are accessory buildings and must be accessory to a main use. Mr. Carr also reiterated that there is no minimum size requirement for a building to be approved as a cottage. When asked what the Department would do if they determined that no septic system was installed as in accordance with the permit, Mr. Carr testified that a letter would be provided providing one month to install the system and that if nothing was done then the Department would issue an order providing one month to install the system. Further enforcement steps could be taken including pulling septic tank permit if the work was not conducted.

[31] Under cross-examination from Counsel for the Developers, Mr. Carr stated that the definitions of a "dwelling" and a "dwelling unit" are considered by the Minister's staff to be essentially the same but they are technically separate definitions.

[32] Under questioning from the Commission's Chair, Mr. Carr stated that internal policy now requires planners to be consulted in these type of circumstances. Mr. Carr acknowledged that sound planning principles apply to the *Planning Act* and the Regulations. Mr. Carr testified that previously sound planning principles were far down on the list of considerations with applications such as these. As of the date of the hearing he confirmed that sound planning principles are now on the top of the list of considerations that must be dealt with. With respect to the consideration of premature development, Mr. Carr stated that premature development mostly applies to subdivision matters but could also apply with respect to the building of rental cottages.

[33] Counsel for the Minister, departing again from the previous written submission of December 9, 2015 where it was clearly stated that commercial storage buildings were not intended to be used as sleeping quarters or "bunkies", submitted that the use of non-commercial storage buildings as "bunkies" was not prohibited and as such there was no basis to allow the appeal and rescind the permits. Counsel for the Minister presented further oral submissions in support of the Minister's decisions, highlights of which include the following:

- There is nothing in the *Planning Act* or the Regulations to prohibit the storage of people in non-commercial storage buildings.
- These bunkies might only be used a handful of times per twelve-month period.
- The bunkies were unfinished inside and provided protection from the rain.
- It would be absurd to consider these structures to be dwellings. By way of example, if someone fell asleep in a gazebo, would that fact make the gazebo a dwelling?
- It was not warranted to send the matter to the Minister's planners.
- "Bunkies" are a new phenomenon in Prince Edward Island and new Regulations are being considered to address them.
- Sound planning principles are now, as of the date of this hearing, being used in development applications by the Department.
- Having this number of storage sheds on a property is not unusual, twenty such sheds would be unusual, but here the number involved was not enough to

trigger any kind of a planning review.

- "Bunkies" cannot be considered to be dwellings as defined in the *Act*.
- Sec. 9 of the *Act* is a saving provision that allows permits to be issued where development occurs and it is then determined that an application should have been applied for.

[34] Counsel for the Minister submitted that Permit 87 and Permit 88 should be upheld and the appeal denied.

Developers' Testimony and Submissions

[35] Betty Ann Bryanton ("Ms. Bryanton") is the co-owner of the subject property. She purchased the property in 2003-2004. Ms. Bryanton told the Commission that she resides in Ontario. Ms. Bryanton testified that she was born and raised on Prince Edward Island and wanted a summer cottage "spot". She visits the subject property a minimum of a week per year to a maximum of five weeks per year, with the average visit being two to three weeks.

[36] Ms. Bryanton told the Commission that at first she had a tent on the property and went to Sally's Beach to use the washroom facilities there. Ms. Bryanton stated that she needed a well and a building for the well. In 2006 storage shed #1 was placed on the property and she tented next to the building, with the building itself being used to store "our stuff" (e.g. camping gear). There is now a full kitchen in shed #1. One year prior to the application for Permit 87 and Permit 88 an eight foot by eight-foot shed was put up. Prior to receiving the septic permit a portable chemical toilet was used.

[37] Ms. Bryanton testified that Leland Wood helped her with the applications and that she met him to ensure that they complied with all of the set-back requirements and placements. After consulting him she ended up moving one of the placements of the "bunkie" further back up on the property as she was advised that it was not placed properly. Draft applications were prepared and they were then reviewed by Mr. Wood and that was when Mr. Wood told her to correct the placement for the lower "bunkie". She testified that she had told Mr. Wood that she bought sheds hoping that people would be able to stay in them. Mr. Wood, however, advised her that there are no "bunkies" permitted in PEI. She was told that only non-commercial accessory buildings could be used and that fit best for her as their plan was to use the "bunkies" as storage as well. She testified that when it came to the placement of the shed, she placed them on the left side of her property away from the Stringer's property and out of view of their cottage so that there would be privacy for anyone who stayed in the "bunkies". She testified that she never intended to have four "bunkies" on the property, only two "bunkies".

[38] Ms. Bryanton testified that the "bunkies" are small pre-built sheds that were placed on the subject property and were then upgraded with vinyl siding and windows. The "bunkies" would allow her guests to sleep in them rather than in tents when it was raining. The "bunkies" do not have running water or electricity. An air mattress is used for sleeping. The original shed has a kitchen and waste is taken care of. The change of use for the original shed is representative of what it is. In the summer of 2015 there were more people at the subject property due to the activity of placing and upgrading the sheds and an outside portable toilet was used. The "bunkies" are not presently rented out and she testified that she has no intention to rent out the "bunkies". When questioned Ms. Bryanton testified that she did not anticipate putting anymore "bunkies" on the lot.

[39] Under cross-examination by Counsel for the Appellant, Ms. Bryanton testified that she would consider using an outside portable toilet again as she had discovered that it was much more convenient than using the chemical toilet located in the original shed, now the cottage. She has not ordered an outside portable toilet so far this year. Ms. Bryanton testified that the cost of installing a septic system would

exceed the benefit of such a system. She maintained that a septic system was not required; rather only a permit for such system. She stated that composting toilets were something she was looking into. Waste water from washing dishes, known as "greywater", goes through a trough and is drained underneath into gravel and goes into the ground.

[40] Ms. Bryanton testified that the change of use for the original shed was filed at Mr. Wood's behest. When not used for sleeping, the bunkies are also used for seasonal storage of items such as a picnic table, wheel barrow, shovels, rakes, chairs etc.

[41] Under re-direct examination from Counsel for the Developers, Ms. Bryanton testified that she is willing to investigate alternate waste disposal methods with the Minister's staff.

[42] In response to questions from the Commission panel, Ms. Bryanton testified that she never had any intention of installing a septic system for two weeks per year use. She then added that she would install such a system if she had to, but she would prefer to utilize a composting toilet. Ms. Bryanton confirmed that the "bunkies" were unfinished on the inside and had standard shed type doors.

[43] Counsel for the Developers presented oral submissions in favour of upholding Permit 87 and Permit 88. These oral submissions include the following points:

- With respect to Permit 87, the change of use permit for the original shed now a cottage, a change of use represents an authorization to do rather than a certification of what has been done. Ms. Bryanton has testified that she will consult with the Minister's staff to deal with alternative options to deal with waste and if necessary, she is open to installing a septic system.

- Both Permit 87 and Permit 88 exist for a period of twenty-four months from the date of issue. As that time period has not passed yet, there is no issue of non-compliance today.

- With respect to Permit 88, that permit is for three non-commercial storage buildings. Of these three buildings, two are used as "bunkies" for at most ten days per year. At all other times, they are used for storage. The mere fact that an air mattress is placed on the floor for a few days per year does not turn a shed into a dwelling.

- In this matter there are only two small buildings being considered as bunkies and this would not be of a sufficient degree to constitute a detrimental impact. Therefore, there is no need to have the application evaluated by the Minister's planning staff.

- Bunkies are not a prohibited use and there would need to be clear and express wording to prohibit using non-commercial storage buildings as bunkies. A right to restrict should be interpreted narrowly while a right to permit should be interpreted broadly. There is no clear wording to prohibit the use of these buildings as bunkies.

- With respect to the definitions of dwelling and dwelling unit: a dwelling is a home, apartment building, a duplex etc. while a dwelling unit is a base unit such as an apartment in an apartment building. Thus, the definition of dwelling and dwelling unit, which are found in the same section of the Regulations, should be applied in the same way.

- The Developers contend that both Permit 87 and Permit 88 were validly granted. However, in the event that the appeal was successful, what would be an appropriate remedy? Permit 87 is a matter of compliance only. As for Permit 88, if the two non-commercial storage buildings used as bunkies were considered to be dwellings, then the only proper remedy would be to prohibit their use for sleeping as there would be no reason not to use them for non-commercial storage.

[44] Counsel for the Minister submitted that Permit 87 and Permit 88 should be upheld and the appeal denied.

3. Findings

[45] After a careful review of all documents in evidence, the oral testimony of the witnesses, the written and oral submissions of counsel for the parties and the applicable law, it is the decision of the Commission to allow the appeal.

[46] Subsection 28.(1) of the ***Planning Act*** sets out the Commission's jurisdiction to hear this appeal of both Permit 87 as a change of use permit and Permit 88 as a development permit:

> *28. (1) Subject to subsections (1.2) to (4), any person who is dissatisfied by a decision of the Minister that is made in respect of an application by the person, or any other person, pursuant to the Regulations for*
>
> *(a) a development permit;*
> *(b) a preliminary approval of a subdivision or a resort development;*
> *(c) a final approval of a subdivision;*
> *(d) the approval of a change of use; or*
> *(e) any other authorization or approval that the Minister may grant or issue under the Regulations,*
>
> *may appeal the decision to the Commission by filing with the Commission a notice of appeal.*
>
> Emphasis added.

[47] The objects of the ***Planning Act*** are set out in section 2:

> *2. The objects of this Act are*
>
> *(a) to provide for efficient planning at the provincial and municipal level;*
> *(b) to encourage the orderly and efficient development of public services;*
> *(c) to protect the unique environment of the province;*
> *(d) to provide effective means for resolving conflicts respecting land use;*
> *(e) to provide the opportunity for public participation in the planning process. 1988,c.4,s.2.*

[48] The following definitions found within section 1 of the Regulations are noteworthy:

> *(a) "accessory building" means a building whose use is incidental and subordinate to, and consistent with, the main or approved use of the lot upon which the building is located;*
>
> ...
>
> *(c) "building" means any structure having a roof supported by columns or walls intended for the shelter, housing or enclosure of any person, animal, or chattel, and includes a mini home or mobile home;*
>
> ...
>
> *(d) "change of use" means*
>
> > *(i) altering the class of use of a parcel of land from one class to another, recognizing as standard classes residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional uses, or*
> > *(ii) a material increase in the intensity of the use of a building, within a specific class of use as described in subclause (i), including an increase in the number of dwelling units within a building;*

...

(f.3) "detrimental impact" means any loss or harm suffered in person or property in matters related to public health, public safety, protection of the natural environment and surrounding land uses, but does not include potential effects of new subdivisions, buildings or developments with regard to

> *(i) real property value;*
> *(ii) competition with existing businesses;*
> *(iii) viewscapes; or*
> *(iv) development approved pursuant to subsection 9(1) of the Environmental Protection Act;*

...

(g.1) "dwelling" means a building or portion thereof designed, arranged or intended for residential occupancy, and

> *(i) "dwelling unit" means one or more rooms used or intended for domestic use of one or more individuals living as a single housekeeping unit with cooking and toilet facilities,*
> *(ii) "single unit dwelling" means a building containing one dwelling unit and does not include mobile homes, but does include mini homes,*

...

(v.2) "summer cottage" means a single unit dwelling that is intended to be occupied primarily during the summer months;

[49] At the hearing, Counsel for the Minister took the position that the Minister was correct in issuing both Permit 87 and Permit 88. However, Counsel for the Minister had taken a different position in his December 9, 2015 letter to the Commission, as he stated that it was the Department's position that non-commercial storage buildings are not intended to be used as sleeping quarters or bunkies. He advised that Regulations to address the issue would be prepared in the near future and requested that the appeal be put "on hold" until the new Regulations come into force.

[50] For the record, the appeal was not held in abeyance and there is no evidence before the Commission that such regulatory additions have been made.

[51] From a review of the file and the testimony of Mr. Carr, it is clear that the Minister did not consult with a professional land use planner prior to issuing either Permit 87 or Permit 88. This causes the Commission concern, especially where there are compelling reasons to seek the expertise of a professional planner. The testimony of Mr. Carr also indicates that the Minister's internal policy now provides for staff planning professionals to be consulted on applications such as those filed by the Developers. The Commission commends the Minister for this change in policy to now use land use planners on these types of applications.

[52] In the context of municipal planning decisions, the Commission has often utilized a two-part test to guide its consideration of an appeal. The Commission is of the view that the same test should be applied to appealable Ministerial decisions made under the *Planning Act* and the Regulations. In the context of Ministerial decisions, that test is:

- Whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the *Planning Act* and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for a development permit, including a change of use permit; and

- Whether the Minister's decisions with respect to the applications for development and the change of use have merit based on sound planning

principles within the field of land use planning and as identified in the objects of the *Planning Act*.

The Commission's Consideration of Permit 87

[53] Permit 87 grants permission to the Developers to change the use of a non-commercial storage building previously permitted by permit K-095-2006 to a summer cottage on parcel number 931741 located on the south side of 158 Paradise Drive in the Community of Little Pond. The permit is dated August 12, 2015 and expires twenty-four (24) months from the date of issue. The permit is subject to the structure being erected in accordance with the approved application sketch and compliance with the *Environmental Protection Act*'s 15 metre watercourse/wetland buffer zone.

[54] Permit 87 is issued under the authority of the Regulations and purports to change an existing non-commercial storage building to a summer cottage. While a summer cottage is a defined term under the Regulations, a non-commercial storage building is not defined in the Regulations. The definition of a summer cottage references the meaning of a single unit dwelling which in turn references a dwelling unit. The definition of dwelling unit specifies a single housekeeping unit with cooking and toilet facilities. The testimony of Ms. Bryanton indicates that there is a kitchen, with wastewater from washing dishes going through a trough into a gravelled area and into the ground. There is also a chemical toilet and Ms. Bryanton has considered using an outside portable toilet in the future as having used it in the summer of 2015 proved more convenient than using a chemical toilet.

[55] The evidence given at the hearing was that although a septic system is required for a dwelling unit to be considered a cottage, such a system did not have to be installed, but that all that is required is that a septic permit be obtained. This is an absurdity. While possession of such a permit may facilitate proceeding with the construction of a cottage, mere possession of a septic system permit, without installing the septic system itself, does not legitimately allow for the use of a cottage. The septic system must be installed, inspected and approved before the landowners may occupy their cottage. The presence of an approved septic system is necessary to protect the environment. The absence of the installation of an approved septic system places the environment at risk.

[56] The Commission does not endorse the actions of a property owner taking it upon themselves to install a greywater drainage system that has not been inspected and approved by the Minister's environment experts. It should be the Minister's environmental experts, not the property owner, who decides what is acceptable. The septic system, which is a condition required under Permit 87, must be used for greywater disposal as well.

[57] The Minister's staff did not perform a site inspection of the original 12 by 14-foot building prior to issuing Permit 87. In the absence of such an inspection, and given the testimony of Ms. Bryanton, the Commission finds that the 12 by 14-foot converted shed does not meet the definition of a "cottage" or a "dwelling unit" as set out in the Regulations without the installation of toilet facilities in the unit itself and without the installation of an approved septic system. The Commission, therefore, finds that the Minister did not follow an acceptable proper process of procedure as required in the Regulations in ensuring that the building that was to be subject to a change of use, complied with and met the Regulations. The Minister therefore contravened the first part of the two-part test as enumerated in paragraph 52.

[58] The second part of the two-part test enumerated in paragraph 52 requires that the Minister's decision for this change of use have merit based on sound planning principles within the field of land use planning as identified in the objects of the *Planning Act*. The evidence of the Minister's staff is that at the time this application was dealt with sound planning principles were far down on the list of considerations. As of the date of the hearing, the staff confirmed that sound planning principles are now on the top of the list of considerations that must be dealt with. This Commission has found, in numerous past decisions, that there must be evidence that a proposed

development or change of use is consistent with sound planning principles (*Biovectra v. City of Charlottetown*, Order LA12-06). In determining whether or not a development proposal should go forward, the Minister must make an examination beyond the strict conformity with the Regulations and must consider sound planning principles including, but not limited to, the quality of architectural design, compatibility with architectural character of adjacent development, site development principles for the placement of structures and a thorough assessment of whether the development is consistent with sound planning principles (*Atlantis Health Spa Ltd. V. City of Charlottetown*, Order LA12-02). The alteration of the character and appearance of the neighbourhood must also not be contrary to sound planning principles (*Compton v. Town of Stratford*, Order LA07-05).

[59] The evidence is irrefutable and the Commission finds that the Minister did not consider whether sound planning principles supported a decision to approve the change of use of the 12 by 14-foot building from "non-commercial storage building" to a summer cottage. As such, the Minister failed to demonstrate adherence to a key object of the ***Planning Act***, namely efficient planning based on sound planning principles at the provincial level, and accordingly, the Commission hereby quashes Permit No. M-2015-0087.

The Commission's Consideration of Permit 88

[60] Permit 88 grants permission to the Developer Betty Ann Bryanton to relocate three non-commercial storage buildings located on parcel number 931741 located on the south side of 158 Paradise Drive in the Community of Little Pond. The permit is dated August 12, 2015 and expires twenty-four (24) months from the date of issue. The permit is subject to the structure being erected in accordance with the approved application sketch, compliance with the *Environmental Protection Act*'s 15 metre watercourse/wetland buffer zone, and that none of the non-commercial storage buildings are to be serviced with sewer or water.

[61] Once again, the terminology of "non-commercial storage buildings" is neither defined nor referred to in the Regulations, although the term "accessory building" is both defined and referred to in the Regulations. It is not apparent from the face of Permit 88 that the non-commercial storage buildings are approved as sleeping quarters or "bunkies". It was clear from the evidence that the Minister's staff were well aware that these sheds were bought for and intended to be used so that people could stay in them. It was the Minister's staff that advised that this was not permissible, but that the shed could fall within the Regulations and be permitted to be placed on the property as a "non-commercial storage building". By accepting an application, knowing full well that the intended use is not what is stated on the application, the Minister therefore breached the first part of the two-part test and did not follow proper process and handling of the application.

[62] The evidence before the Commission is that at no time did anyone in the Department seek the opinion of a professional land use planner with respect to the application which resulted in Permit 88.

[63] The objects of the ***Planning Act*** require: efficient planning, protection of the Province's unique environment, an effective means for resolving land use conflict and to provide the opportunity for public participation in the planning process. The Commission expects decisions made under the ***Planning Act*** and the Regulations to not only follow the legislative requirements but also be in accordance with sound planning principles. Adherence to sound planning principles is especially important where, as here, the legislation has not addressed a particular type of development. Sound planning principles could consider not only whether "bunkies" would or would not be permitted, but also, if deemed to be permissible, determine the number permitted on a parcel, size, location, appearance, consultation with adjacent property owners and other such factors.

[64] The Commission reiterates, as set out in paragraph 58 herein, that this type of development must have merit based on sound planning principles. Adherence to sound

planning principles is especially important where there are applications to place a number of buildings on a single lot all of which, for the most part, would be used as "bunkies". Sound planning principles would determine whether it is appropriate to have a sprinkling of sheds over a cottage lot property and, if so, what number, size and location, appearance would be permitted on the parcel, after consultation with adjacent property owners and consideration of other factors. (*Atlantis Health Spa Ltd. v. City of Charlottetown*, Order LA12-02). The ***Planning Act*** addresses not only municipalities with Official Plans and land use bylaws but also areas of the Province which do not have Official Plans and land use bylaws. Sound planning must be a common feature of development throughout Prince Edward Island and property owners located in areas of the Province for which there is no municipal government should not be subject to inferior land use planning rights and responsibilities. Sound planning principles are a guard against arbitrary decision making especially where a regulatory checklist does not address a concern. Sound planning principles require regulatory compliance but go beyond merely insuring such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted. The Minister's staff admitted that, in hindsight, the decision to grant the permits for these applications allowing the placement of three sheds on one lot was not based on sound planning principles. The Minister's staff further acknowledged that the applications, if they were now received, would not have been processed without land use planners being consulted.

[65] The Commission notes that when the Appellant contacted the Minister's department to get information on the building permits that were issued she was advised that she would have to launch an appeal with this Commission in order to get that information. The Commission recommends that the Minister change this policy when dealing with inquiries with respect to applications or permits under the ***Planning Act***. No one should be forced to launch a quasi-judicial appeal simply to obtain information with respect to a permit issued by the Minister. As the Commission has seen in the past this results in numerous appeals being filed, only to be withdrawn after there is full disclosure to the Appellant with respect to the permit. The Commission recommends that the Minister develop an internal procedure to allow for the efficient dissemination of information on permits issued so that interested parties can then make a determination as to whether or not an appeal should be filed.

[66] The Developers' applications to designate a small storage shed a cottage and receive approval for "bunkies" were not contemplated by the Regulations and thus required consultation with a professional land use planner. As the Minister's staff did not consult with a professional planner, the Commission finds that the Minister failed to consider sound planning principles. Accordingly, the second part of the two-part test has not been met and the Commission hereby quashes Permit No. M-2015-0088.

4. Disposition

[67] An Order allowing the appeal and quashing Permit No. M-2015-0087 and Permit No. M-2015-0088 follows.

Order

WHEREAS the Appellant Donna Stringer appealed the decision of the Minister of Communities, Land and Environment to issue two permits, both dated August 12, 2015;

AND WHEREASthe Commission heard the appeal at public hearings conducted in Charlottetown on July 21 and 22, 2016 after due public notice and suitable scheduling for the parties and their legal counsel;

AND WHEREASthe 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. **Permit No. M-2015-0087 and Permit No. M-2015-0088 issued by the Minister on August 12, 2015 are hereby quashed.**

DATED at Charlottetown, Prince Edward Island, this 10th day of August, 2017.

BY THE COMMISSION:

J. Scott MacKenzie, Q.C., Chair

M. Douglas Clow, Vice-Chair

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.