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VIA EMAIL – pjrafuse@irac.pe.ca

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

Re: Appeal LA23020 – Environmental Coalition of PEI v. Minister of Housing, Land and Communities
Our File: LS 25716

This reply is provided on behalf of the Minister of Housing, Land and Communities (“Minister”) in relation to the above noted appeal filed by the Environmental Coalition of PEI (“Appellant”) on August 11, 2023.

The Appeal is in relation to the approval of a conditional development permit (file C-2023-0273) issued by the Minister in for a residential (single unit dwelling) development located at PID 943241, Ocean Court, Greenwich, Kings County, PEI (“the Subject Property”).

The Minister provided an Initial Record of Decision on September 15, 2023. A Supplementary Record will be provided by October 13, 2023.

Background and Decision

The Appellant has appealed a decision of the Minister dated July 24, 2023, approving a request by the Developer, Tim Banks (the “Developer”), for issuance of a Conditional Development Permit as it relates to the development for Lot #2 within the resort development of St. Peters Estates Ltd. (“Conditional Permit”) [Tab 1, Initial Record]. The application is for a “single family home” structure [Tab 3, Initial Record].

The Appellant has appealed the Conditional Permit on the following grounds:

1. The Appellant is “questioning if the conditions the subdivision have been met (operational water system) to warrant development of a lot”;

2. The Appellant is questioning *"if conditions of the 'Resort Development Use' survey have been met"*; and
3. The Appellant is questioning *"Why this development has been approved after 18+ years of other development permit requests in the subdivision have been denied (including an active appeal)"*

The Minister's response to said grounds of appeal are set out below.

Generally

It is not clear what errors or omissions in the decision-making process prescribed by the *Planning Act* or its Regulations were made by the Minister in the Notice of Appeal [Tab 2, Initial Record]. The Minister acknowledges that the Appellant may require an opportunity to review the complete Record before it can provide additional particulars of any alleged deficiencies in the Minister's process. The Minister requests that the Appellant provide further particulars of each alleged contravention of the *Planning Act* or its Regulations so it has sufficient information to provide an informed response to these grounds.

Should the Appellant expand on its grounds of appeal, provide further explanation on its grounds of appeal, or provide submissions on its grounds of appeal, the Minister reserves the right to provide a further reply once particulars have been provided by the Appellant.

Grounds 1 and 2

On December 8, 2004, there was an approved subdivision for Resort Development use in the Greenwich area. The subdivision included 70 lots, known as the St. Peters Estates Ltd. The resort development use subdivision approval was subject to several conditions including [Tab 5c, Initial Record]:

- a. That all lots be serviced by a central water system that was designed and constructed in accordance with the requirements of the then Department of Environment, Energy and Forestry; and
- b. That the subdivision was to be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan and Human Use Management Plan also to be approved by the then Department of Environment, Energy and Forestry.

The Minister understands that the Developer continues to work on fulfilling the above conditions, which have been incorporated into the Conditional Permit. To date, the Developer has not fulfilled the requirement for connection to a central water system that has been designed, constructed and approved by the Department of Environment, Energy and Climate Action, formerly, the Department of Environment, Energy and Forestry (see: clause 1 of the Conditional Permit).

Further, to date, no approvals have been granted for the Environmental Management Plan or the Human Use Management Plan (see: clause 3 of the Conditional Permit).

Ground 3

The Conditional Permit of July 24, 2023 was issued by the Minister after considering the application submitted by the Developer on July 18, 2023.

Pursuant to Subsections 4(1) and (2) of the Regulations, a development permit may be made subject to conditions to ensure regulatory compliance:

4. (1) An approved subdivision or development permit may be made subject to any conditions necessary to ensure compliance with these regulations, other regulations made pursuant to the Act, or any relevant sections to the Environmental Protection Act, Roads Act, Provincial Building Code Act R.S.P.E.I. 1988, Cap. P-24, or the Fire Prevention Act R.S.P.E.I. 1988, Cap. F-11.

(2) Where an approved subdivision or development permit is granted subject to conditions in accordance with subsection (1), the owner shall ensure that the subdivision or development complies with the conditions.

When an application for a development permit has been approved subject to conditions, development cannot commence unless and until any conditions of approval have been fulfilled. Further, paragraph 1 of the Conditional Permit states that the permit is,

"... subject to compliance with the conditions below as well as all applicable legislation governing and affecting this development including the Planning Act and the Planning Act Subdivision and Development Regulations."

The wording of the approval, being subject to specific conditions, complies with planning requirements. The approval does not become complete without the necessary *Environmental Protection Act* compliance, *Water Act*, RSPEI 1988, c W-1.1 requirements for the water system (which have come into effect since the subdivision approval was granted), among other approvals. If the Developer were to commence construction in a manner contrary to the Conditional Permit, the permit can be revoked under subsection 33(2) of the Regulations.

Finally, as a point of clarification, the Minister has not officially denied other development permit applications within the resort development of St. Peters Estates Ltd. The Developer's application was the first to be processed by the Minister in this subdivision. The Minister's staff have received informal inquiries from other landowners; however, no other permit applications have been filed.

Conclusion

In the Notice of Appeal, the Appellant seeks the following relief: that the development permit for PID 943241 (file C-202300273) be quashed, with the recent approval overturned/reversed.”

The Minister submits that in issuing the Conditional Permit, the relevant sections of the *Planning Act* and its Subdivision and Development Regulations were considered and applied in making the Decision. Further, the Minister submits that the proper process and procedure was followed in assessing the development permit application.

In order to provide a more informed response to the Notice of Appeal, the Minister requests that the Appellant provide further particulars of each alleged contravention of the *Planning Act* or its Regulations, as the case may be.

Signed,



Meaghan Hughes
Legal Counsel to the Respondent,
Minister of Housing, Land and Communities