



Prince Edward Island

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VIA EMAIL – mwalshdoucette@irac.pe.ca

Michelle Walsh-Doucette
Commission Clerk
Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal #LA25008
Pasquale Amendola v. Minister of Housing, Land and Communities
Our File: 27625

1. I represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Pasquale Amendola (the “Appellant”) on June 29, 2025 (the “Appeal”). The Appeal arises from the Minister denying the January 17, 2025, development permit application for a single-family dwelling on the Appellant’s property, PID# 271742 located at 1446 Cape Bear Road, Murray Harbour (the “Subject Property”) (the “Application”).
2. After consultation with employees of the Department of Environment, Energy and Climate Action, it was determined that the entirety of the Subject Property is a wetland and thus there was not sufficient area on the Subject Property to build the proposed structure. This determination was made after a site visit was conducted. The Minister’s decision to deny the Application was in accordance with the *Planning Act*, RSPEI 1988, Cap. P-8 (the “Act”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “Regulations”).

Background and Decision

3. On January 17, 2025, the Minister received the Application from the Appellant.
4. As part of the preliminary review of the Application, the Minister looked at the soil map and determined that comments from the Department of Environment, Energy and Climate Action (“Environment”) would be required.
5. On May 29, 2025, a Watercourse Alteration Technician with Environment confirmed that the area is a wetland and recommended that the application be denied.

6. On June 5, 2025 the same individual from Environment confirmed that a site visit had been conducted and that the whole Subject Property was a wetland.
7. The *Environmental Protection Act*, RSPEI 1988, c E-9, requires a 15 metre buffer zone adjacent to the wetland. No development is permitted in a watercourse, wetland, or buffer zone without a Watercourse or Wetland Activity Permit or a Buffer Zone Activity Permit, or a combination thereof.
8. A development permit may only be granted by the Minister if the development would conform with section 3(2) of the Regulations. This includes conforming with the Regulations themselves. Section 5(a) of the Regulations requires that, where necessary, an environmental assessment or an environmental impact statement be provided.
9. On June 9, 2025, the Minister denied the application pursuant to subsections 3(2)(a) and 5(a) of the Regulations (the "Decision").

Appeal

10. The Appeal is pursuant to section 28 of the Act. The Appellant's grounds of appeal are as follows:

bought lot when I was in ontario and was told by lawyer and realtor I could build there I even have sewer available dont understand why and wanted to build my home where I would retire please help I am going to lose more then I can afford all my money is put towards building there.

11. The Appellant seeks the following relief from the Commission:

monies that I have put towards land moved myself and wife from ontario here

12. The Minister has provided the Record of the Decision to the Appellant and has filed the same with the Commission.
13. The Minister's response to the Appeal is outlined below. Should the Appellant expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal, the Minister reserves the right to provide a further reply thereto.
14. The Commission does not have the authority to provide the Appellant with any financial compensation, nor can they reverse the sale of the property. The Appellants may want to speak with their own legal counsel to discuss any possible recourse against the vendor of the property or the realtors involved in the transaction.

Legislation

15. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and its Regulations.
16. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Murray Harbour, which is an area where land use and development are not regulated by a local official plan or zoning by-law. Therefore, the land use and development of the Subject Property is regulated by the Act and Regulations.
17. Subsection 3(2) of the Regulations provides:

3(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would

(a) not conform to these regulations or any other regulations made pursuant to the Act;

(b) precipitate premature development or unnecessary public expenditure;

(c) in the opinion of the Minister, place pressure on a municipality or the province to provide services;

(d) have a detrimental impact; or

(e) result in a fire hazard to the occupants or to neighbouring buildings or structures.

[Empasis Added]

18. In other words, the Minister **must deny** an application that contravenes any one or more of these general requirements.
19. Subsections 1(b.3), 1(g), 1(x), 5(a), and 16(4) of the Regulations provide as follows:

1. Definitions

In these regulations

...

(g) "development" means

(i) site alteration, including but not limited to

(A) altering the grade of the land,

(B) removing vegetation from the land,

(C) excavating the land,

(D) depositing or stockpiling soil or other material on the land, and

- (E) establishing a parking lot,
- (ii) locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land,
- (iii) placing temporary or permanent mobile uses or structures in, under, on or over the land, or
- (iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;

...

(x) "wetland" means a wetland as defined in the Environmental Protection Act Watercourse and Wetland Protection Regulations;

...

5. Other approvals required

No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate:

- (a) where an environmental assessment or an environmental impact statement is required under the Environmental Protection Act, approval has been given pursuant to that Act;

20. Subsections 1(1)(gg), and 1(1)(hh), 2(1), and section 3, in part, of the Watercourse and Wetland Protection Regulations, PEI Reg EC720/08, provide as follows:

(gg) "wetland" means

- (i) an area which contains hydric soil, aquatic or water-tolerant vegetation, and may or may not contain water, and includes any water therein and everything up to and including the wetland boundary, and
- (ii) without limiting the generality of the foregoing, includes any area identified in the Prince Edward Island Wetland Inventory as open water, deep marsh, shallow marsh, salt marsh, seasonally flooded flats, brackish marsh, a shrub swamp, a wooded swamp, a bog or a meadow;

...

(hh) "wetland boundary" means where the vegetation in a wetland changes from aquatic or water-tolerant vegetation to terrestrial vegetation or water-intolerant vegetation;

...

Part II – WATERCOURSES AND WETLANDS

2. Prohibition

(1) No person shall, without a license or a Watercourse or Wetland Activity Permit, and other than in accordance with the terms and conditions thereof, alter a watercourse or a wetland, or any part thereof, or water flow therein, in any manner, or engage in any of the following activities in or on a watercourse or a wetland:

(a) drain, pump, dredge, excavate, or remove soil, water, mud, sand, gravel, stones, rubbish, rocks, aggregate or material or objects of any kind;

(b) dump or infill, or deposit soil, water, mud, sand, gravel, stones, rubbish, litter, rocks, aggregate or material or objects of any kind;

(c) construct or place, repair or replace, demolish or remove, buildings or structures or obstructions of any kind, including but not limited to bridges, culverts, breakwaters, dams, wharves, docks, slipways, decks, or flood or erosion protection works;

...

(f) disturb, remove, alter, disrupt or destroy the ground in any manner;

(g) disturb, remove, alter, disrupt or destroy vegetation in any manner, including but not

limited to the cutting of live trees or live shrubs;

(h) carry out any type of watercourse or wetland enhancement activity, including but not

limited to debris removal, habitat development, or placement of structures.

[Empasis Added]

Test

21. In Order LA17-06 ("*Stringer*")¹, the Commission established the applicable test for Ministerial decisions made under the *Act* and *Regulations*, this test was further clarified in Order LA25-02 ("*Aftab*") being described as a two-part guideline in exercising appellate authority:
- i. Whether the Minister followed the proper procedure as required by the Planning Act, the Regulations and the law in general, including the duty of procedural fairness, in making the decision; and
 - ii. Whether the Minister's decision was made in accordance with the Planning Act, the Regulations and was based on sound planning principles in the field of land use planning.²
22. In *Aftab*, the Commission reiterated previous decisions in stating that it "does not lightly interfere with decisions made by a planning authority."³

¹ *Stringer (Re), Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 ("*Stringer*") at para 52

² *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, Order LA25-02 ("*Aftab*") para 27.

³ *Aftab* para 28.

Analysis

23. In this matter, the Minister followed the proper process as set out by law, applied sound planning principles, and, therefore, the Decision requires deference.
24. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, and the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
25. Subsection 5(a) of the Regulations requires that, where necessary, approval be given pursuant to the *Environmental Protection Act*.
26. Section 2(1) *Environmental Protection Act Watercourse and Wetland Protection Regulations* limits construction within a wetland.
27. In this matter, Senior Development Officer, Dean Lewis, sent the details of the Application to Environment for confirmation that the Subject Property could accommodate development.
28. Environment recommended that the Application be denied as the entire property is a wetland.
29. It was reasonable for the Senior Development Officer to rely on Environment's determination that the Subject Property did not appear to have sufficient space outside of the wetland for the proposed dwelling and corresponding recommendation to deny the Application.
30. The Minister notes that the Appellant has not obtained a Watercourse or Wetland Activity Permit or a Buffer Zone Activity Permit, or a permit pertaining to a combination thereof, pursuant to Part VI of the *Watercourse and Wetland Protection Regulations*.
31. The Minister also met the second part of the test as the Decision is supported by objective and reliable evidence, and is based on the Act, the Regulations, and sound planning principles. The Commission states in *Stringer* that "*sound planning principles require regulatory compliance*".⁴
32. Given the Application's lack of regulatory compliance, the Decision satisfies both steps of the test.

⁴ *Stringer* at para 64.

Conclusion

33. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
34. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact the undersigned.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



Mitchell O'Shea
Lawyer for the Minister of Housing, Land and Communities