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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 Docket #LA25010
Daniel and Dorothy Gaudet v. Minister of Housing, Land and Communities
Our File: LS 27664

1. We represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Daniel and Dorothy Gaudet (the “Appellants”) on July 16, 2025 (the “Appeal”). The Appeal arises from the Minister denying the Appellants’ development permit application to construct an addition to the pre-existing cottage located on PID# 416701 located at 1225 McInnis Point Road, Earnscliffe, Queens County (the “Subject Property”) (the “Application”). The Subject Property abuts the Orwell Bay.
2. The Minister’s position is that the proposed addition to the cottage is located within the buffer zone on the Subject Property. Given the location of the addition being within the buffer zone, 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 May 16, 2025, the Minister received the Application.
4. On completing a preliminary review of the Application, the Minister identified that the Subject Property abuts a watercourse and, as a result, requested further information from the Department of Environment, Energy and Climate Action (“Department of EECA”).
5. On June 23, 2025, Dale Thompson, Environmental Assessment Officer, Environmental Land Management Section, Department of EECA (“Mr. Thompson”), confirmed that the proposed addition would be located within the 15 metre buffer zone adjacent to the watercourse. As no development is permitted in a watercourse, wetland or buffer zone

without a Watercourse, Wetland and Buffer Zone Activity Permit, the Department of EECA recommended that the Application be denied.

6. Pursuant to subsection 16(4) of the Regulations, the requested development permit cannot be granted. Subsection 16(4) states “No person shall undertake any development, including a sewage disposal system, within a required buffer.”
7. On June 26, 2025, the Minister denied the application pursuant to subsections 3(2)(a), 3(2)(d), 16(4) and 39(5)(c) of the Regulations (the “Decision”). As outlined in the Decision, the denial was issued as the proposed addition to the structure would be located within the buffer zone on the Subject Property, and therefore the Minister had no alternative but to deny the Application.

Appeal

8. The Appeal is pursuant to section 28 of the Act.
9. The Appellants’ grounds of appeal are as follows:

The basis of our appeal is that a holding tank, which is already present, is situated closer to the wetland than the proposed cottage extension. Given this existing condition, we are seek a grandfather clause that would allow us to proceed with our construction plans.

10. The Appellants seek the following relief from the Commission:

If the decision does not allow us to continue building the full bedroom, bathroom extension, we would like to propose an alternative. Given the screw piles are already in place and the foundation is almost complete, we would be content with putting down a floor and using the space as a patio.

11. The Minister is providing the Record of the Decision to the Appellants and filing same with the Commission on the same date as the within submissions are dated.
12. The Minister’s response to the Appellants’ appeal is outlined below. Should the Appellants 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.

Legislation

13. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.
14. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Earnscliffe, 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 the Regulations.

15. Subsections 1(b.3) and 1(g) of the Regulations defines buffer and development, respectively, as follows:

1. Definitions

In these regulations

...

(b.3) "buffer" means an area of land which serves to separate two or more different types of land use;

...

(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;

[emphasis added]

16. 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.

[emphasis added]

17. In other words, the Minister **must deny** an application that contravenes any one or more of these general requirements.

18. The Application contravenes sections 16(4) and 39(5)(c), which provide:

16.

...

Development prohibited in buffer

(4) No person shall undertake any development, including a sewage disposal system, within a required buffer.

...

39.

...

Setback from beach, sand dune, wetland or watercourse

(5) The nearest exterior portion of a building or structure shall be located no closer than

(a) 75 feet (22.9 metres), or 60 times the annual rate of erosion, whichever is greater, to a beach, measured from the top of the bank;

(b) 100 feet (30.5 metres) to a migrating primary or secondary sand dune, measured from the inland boundary of the dune;

(c) 75 feet (22.9 metres) to the inland boundary of a wetland or watercourse.

[emphasis added]

19. The *Watercourse and Wetland Protection Regulations*, PEI Reg EC720/08, also apply to the Application. Subsections 1(1)(e), 1(1)(ee), 1(1)(ff), 1(1)(gg), 1(1)(hh) and section 3, in part, of the *Watercourse and Wetland Protection Regulations*, *supra*, provide as follows:

1(1)(e) “buffer zone” means the 15-metre-wide area referred to in section 3;

...

1(1)(ee) “watercourse” means an area which has a sediment bed and may or may not contain water, and without limiting the generality of the foregoing, includes the full length and width of the sediment bed, bank and shore of any stream, spring, creek, brook, river, lake, pond, bay, estuary or coastal body, any water therein, and any part thereof, up to and including the watercourse boundary;

...

1(1)(ff) "watercourse boundary" means

- (i) in a non-tidal watercourse, the edge of the sediment bed, and
- (ii) in a tidal watercourse, the top of the bank of the watercourse, and where there is no discernible bank, means the mean high water mark of the watercourse;

...

(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 III – BUFFER ZONES

...

3 (3) No person shall, without a license or a Buffer Zone Activity Permit, and other than in accordance with the conditions thereof, alter or disturb the ground or soil within 15 metres of a watercourse boundary or a wetland boundary, or cause or permit the alteration or disturbance of the ground or soil, therein, in any manner.

(4) No person shall, without a license or a Buffer Zone Activity Permit, and other than in accordance with the conditions thereof, engage in or cause or permit the engaging in any of the following activities within 15 metres of a watercourse boundary or a wetland boundary:

- (a) drain, pump, dredge, excavate, or remove soil, water, mud, sand, gravel, stones, rocks, or aggregate;
- (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;**
- (d) operate heavy equipment or a motor vehicle, other than
 - (i) upon a highway,
 - (ii) upon a private road, right-of-way, or driveway which was approved prior to the enactment of these regulations by the

provincial government or a municipal government in a building permit or a subdivision plan, or

(iii) for the conduct of activities directly related to the legal harvesting of a fishery resource, the legal removal of beach material, or the cultivating of an agricultural crop;

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

(f) cut down live trees or live shrubs;

(g) cultivate an agricultural crop;

(h) spray or apply pesticides in any manner.

(5) The land within 15 metres of a watercourse boundary or a wetland boundary referred to in subsections (3) and (4) shall be known as a buffer zone.

[emphasis added]

Test

20. In Order LA17-06 ("*Stringer*")¹, the Commission outlines the applicable test for Ministerial decisions made under the Act and Regulations, namely:
- a. whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the 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
 - b. 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 Act.

Test Application

21. In this matter, the Minister followed the proper process as set out by law, applied sound planning principles, and, therefore, the Decision requires deference.

Step 1: Processing of the Application

22. 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

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

applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.

23. Subsection 16(4) of the Regulations prohibits development within a required buffer. Subsection 1(b.3) of the Regulations defines buffer as an area of land which serves to separate two or more different types of land use. Subsection 1(g) of the Regulations defines development to include locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land.
24. Section 3 of the *Watercourse and Wetland Protection Regulations* also prohibits, unless with a license or a Buffer Zone Activity Permit, altering or disturbing the ground or soil, or constructing or placing, repairing or replacing, demolishing or removing, buildings or structures or obstructions of any kind within 15 metres of a watercourse boundary or a wetland boundary.
25. In this matter, Property Development Officer, Gerald McMillan ("Mr. McMillan"), sent the details of the Application to two Sections of the Department of EECA, namely Environmental Land Management and Coastal Property. Mr. McMillan sought (i) confirmation of the buffer zone on the Subject Property, (ii) the Environmental Land Management Section's comments on the Application, and (iii) the rate of erosion for the Subject Property.
26. On June 23, 2025, Mr. Thompson confirmed that the Application should be denied as the proposed addition is located within the 15 metre buffer zone of the watercourse on the Subject Property.
27. It was reasonable for the Property Development Officer to rely on the Department of EECA's determination that the addition to the cottage would be located within the buffer zone and corresponding recommendation to deny the Application.
28. The Minister notes that the Appellants have not obtained a license or Buffer Zone Activity Permit under the *Watercourse and Wetland Protection Regulations, supra*.
29. The Minister submits that a minimum building or structure setback of 75 feet (22.9 metres) is also required from the inland boundary of a wetland or watercourse in accordance with subsection 39(5) of the Regulations. The proposed development would not meet this setback requirement.
30. In direct response to the grounds and relief requested by the Appellants set forth in the Appeal, the Minister states the following:
 - a. The screw piles and foundation were erected on the Subject Property without the necessary development permit. The Minister is unaware of the exact date on which the Appellants completed this work on the Subject Property; and

- b. The Drinking Water and Wastewater Management Section of the Department of EECA has no records of a holding tank being approved on the Subject Property.

Step 2: Sound Planning Principles

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*”.²
32. Given the Application’s lack of regulatory compliance, the Decision satisfies both steps in the test.

Conclusion

33. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
34. The Minister encourages the Appellants to contact the Department of EECA to discuss and obtain more information as to where development may be suitable on the Subject Property or apply for necessary permits/approvals.
35. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact us.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Christiana Tweedy
Lawyer for the Minister of
Housing, Land and Communities

² *Stringer* at para 64.