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August 29, 2025

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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 # LA25009
Allan Weeks v. Minister of Housing, Land and Communities
Our File: LS 27651

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1. I represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Alan Weeks (the “Appellant”) on July 10, 2025 (the “Appeal”). The Appeal arises from the Minister denying the Appellant’s application to subdivide PID# 231399 located at Rte. 13, Mayfield, Queens County (the “Subject Property”) into thirty-seven (37) single-unit residential lots (the “Application”) with access off of Rte. 13.
 2. The Minister’s position is that the new proposed lots on the Subject Property would not abide with sound planning principles. As such, 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 April 22, 2024, the Minister reactivated a previous Application from the Appellant to subdivide 37 lots.
4. Initial preliminary approval for the subdivision of 37 lots was granted on May 29, 2007¹. Subsequent extensions of that preliminary approval were granted with the third and final extension being granted on December 13, 2013².

¹ Record at Tab 3(c).

² Record at Tab 3(e).

5. The December 13, 2013, extension of the preliminary approval included a number of items that the Appellant needed to complete prior to final approval being granted.
6. The Appellant did not satisfy the terms of the December 13, 2013, extension of the preliminary approval and as such that preliminary approval expired on December 13, 2015³.
7. The Appellant agreed in 2024 that rather than submitting a new subdivision application he would rely on the previous subdivision application. The Minister relied on the previous application and preliminary approvals in assessing the subdivision application in 2024 and 2025. The Minister had the Appellant pay the \$110 fee to reactivate the previous application.
8. On completing an assessment of the Application, the Minister identified the following:
 - a. As the application was for six or more lots a plan showing the proposed storm water drainage pattern was required but was not provided;
 - b. The subdivision would precipitate premature development;
 - c. The subdivision does not align with purpose of the Act or the Statements of Provincial interests; and
 - d. The subdivision did not conform with the Regulations.
9. A site visit was completed by Alex O'Hara ("Mr. O'Hara"), Land Use and Planning Act Specialist, on May 28, 2024.
10. The Appellant requested a meeting with the Minister in August 2024 to discuss the Application. At the meeting were the Appellant, legal counsel to the Appellant, Alex O'Hara, Shawn MacFarlane and Eugene Lloyd, all on behalf of the Minister.
11. A subsequent meeting between the Appellant and senior members of the Department of Housing, Land and Communities was held on March 25, 2025.
12. On June 23, 2025, the Minister, upon the recommendation of Mr. O'Hara, denied the application pursuant to sections 2 and 2.1 of the *Act* and sections 3(1)(a) and (b) and 14(3)(a)(x) of the *Regulations* (the "Decision").

Appeal

13. The Appeal is pursuant to section 28(1)(b) of the *Act*.
14. The Appellant's grounds of appeal are as follows:

³ Record at Tab 3(e), page 30.

The Minister and Government erred in denying the application for subdivision of PID 231399 by not following the Act and Regulations; erried (sic) in failure to properly assess the subdivision under standard planning principals that would call for the approval of the subdivision; erred by failure to properly assess the class of land for potential or future agricultural purposes; erred by failure to follow and implement sound planning purpose in assessing the application and making a determination contrary to sound planning purposes.

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

To grant the approval of this subdivision plan that was previously preapproved.

16. 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 their grounds of appeal, the Minister reserves the right to provide a further reply thereto.

Legislation

17. Sections 2 and 2.1 of the Act outline the Purpose of the Act as well as the Provincial interests that outline the Minister's responsibilities in relation to planning matters and proposed developments under the Act.
18. Section 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and its Regulations.
19. Section 8(1)(d) of the Act authorizes Government to make provincial planning regulations with respect to subdivision,

The Lieutenant Governor in Council may make provincial planning regulations applicable to any area except a municipality with an official plan and bylaws

(d) with respect to the subdivision of land and in particular

(i) governing, restricting and prohibiting subdivision of land,

(ii) setting out procedures for subdivision application,

(iii) empowering and governing subdivision agreements between the Minister and subdividers and between vendors and purchasers,

(iv) requiring a subdivider to convey to the Crown or a non-profit corporation, for open space, recreation, park or other public use,

for the benefit and enjoyment of landowners and residents in the neighbourhood, up to 10 per cent of the land being subdivided or to apply the equivalent value thereof to be held in a fund for those purposes;

20. The *Regulations* apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Mayfield, aforesaid, 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*.
21. No person may subdivide land without obtaining final approval from the Minister⁴ and all subdivision designs are required to be based on sound planning, engineering, and environmental principles⁵. In particular, a proposed subdivision must give due regard to,
- (a) *compatibility with surrounding uses;*
 - (b) *the topography of the site;*
 - (c) *surface drainage on the site and its impact on adjacent parcels of land;*
 - (d) *traffic generation onto adjacent highways;*
 - (e) *availability, adequacy and the economical provision of utilities and services;*
 - (f) *the ability to further subdivide the land or adjoining land;*
 - (g) *the provision of lots suitable for the intended use;*
 - (h) *waste water management;*
 - (i) *water supply; and*
 - (j) *natural features.*
22. Subsection 3(1) of the *Regulations* provides,
- 3. *General requirements - subdivisions*
 - (1) ***No person shall be permitted to subdivide land where the proposed subdivision 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; or*
 - (d) ***have a detrimental impact. [Emphasis Added]***
23. In other words, the Minister **must deny** an application that contravenes any one or more of these general requirements.

⁴ *Regulations* at s. 12(1).

⁵ *Regulations* at s. 13.

24. Section 14(3) of the Regulations applies to subdivisions of six or more lots and stipulates that an application must be accompanied by:

(a) a plan or plans showing

(i) the true shape and dimensions of the property to be subdivided, the proposed lots and uses, and all roads or rights-of-way proposed to provide access to the lots from a public highway,

(ii) a key plan indicating the general location of the land to be subdivided,

(iii) the north point,

(iv) the scale,

(v) the location and current use of all existing buildings or structures on the site and within 100 feet (30.4 metres) of the site,

(vi) existing and proposed services, including central or municipal waste treatment systems, and central or municipal water supply systems,

(vii) all land proposed as open space, park, recreation or other common area,

(viii) watercourses, wetlands, beaches, sand dunes, forested areas, designated natural areas or conservation zones on, or adjacent to, the proposed subdivision,

(ix) existing and proposed private rights-of-way or easements,

(x) elevation contours and the proposed storm water drainage pattern within the subdivision and within 300 feet (91.4 metres) of the boundaries of the subdivision,

(xi) any special planning areas affecting the site;

(b) any additional information the Minister considers necessary

Test

25. In Order LA17-06 ("*Stringer*")⁶, 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*

⁶ *Stringer (Re), Donna Stringer v Minster of Communities, Land and Environment*, Order LA17-06 ("*Stringer*") at para 52

- 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.*⁷

26. In *Aftab*, the Commission reiterated previous decisions in stating that it “does not lightly interfere with decisions made by a planning authority.”⁸

Test Application

27. Deference is owed in properly made planning decisions. A decision is properly made where it is consistent with sound planning principles and is supported by objective and reliable evidence⁹.
28. In this case, the Minister worked with the Appellant to revive the initial subdivision application rather than requiring a new subdivision application. While a bit out the ordinary in terms of process, this was the process that the Appellant agreed to.
29. From there, the proper process as set out by law was followed, the Minister applied sound planning principles, and, therefore, the Decision requires deference.
30. 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, in assessing the application for subdivision. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
31. Section 3(1)(a) of the *Regulations* prohibits subdivision where the subdivision would not conform with the Regulations and section 3(1)(b) prohibits subdivision where it would precipitate premature development. This Application did not conform with the purposes of the Act nor adhere to the Provincial interests as outlines at sections 2 and 2.1 of the Act.
32. In this matter, Mr. O'Hara conducted a site visit and compiled other research and information in coming to the recommendation that the Application be denied.
33. It was reasonable for Sarah MacVarish, Senior Development Officer, to rely on Mr. O'Hara's recommendation that the Application be denied.
34. 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

⁷ *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, Order LA25-02 (“*Aftab*”) para 27.

⁸ *Aftab* para 28.

⁹ *Ibid.*

principles. The Commission states in *Stringer* that “*sound planning principles require regulatory compliance*”.¹⁰

35. Given the Application’s lack of regulatory compliance, the Decision meets both steps in the test.

Conclusion

36. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
37. 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.



Mitchell O’Shea

¹⁰ *Stringer* at para. 64