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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 #LA25017
Lorna and Gerald Stewart v. Minister of Housing, Land and Communities
Our File: LS 27875

1. We represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Lorna and Gerald Stewart (the “Appellants”) on September 26, 2025 (the “Appeal”). The Appeal arises from the Minister approving an application of Alex and Ashley Davidson (the “Developers”) to locate an Industrial (equipment repair and storage) Home Based Business structure on an existing Residential (Single Unit Dwelling) use lot, being PID# 280370, located at 893 Darlington Road, Brookfield, Queens County (the “Subject Property”).
2. It is the Minister’s position that the Decision approving the Subject Application is 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”). In particular, the Decision is in accordance with section 31 of the Regulations.
3. Further, it is the Minister’s position that the true essence of the Appeal and the issues raised by the Appellants are grounded in nuisance and, thus, the issues fall outside of the Commission’s statutory jurisdiction.

Background and Decision

4. On July 17, 2025, the Minister received the Developers’ initial development permit application (the “Initial Application”). The Developers paid the required fees for the Initial Application on August 6, 2025.

5. The Initial Application sought a change of use of the Subject Property from Residential (Single Unit Dwelling) to Residential/Industrial (Commercial) with the construction a proposed single-storey structure measuring 40 feet by 50 feet. The Initial Application outlined the operations to be undertaken on the Subject Property as (i) storage of overhead door material; (ii) storage of equipment; and (iii) minor repairs and maintenance of equipment.
6. Senior Development Officer, Sarah MacVarish (“Ms. MacVarish”), sought comments on the Initial Application from the Department of Environment, Energy and Climate Action; the Department of Transportation and Infrastructure; and the Chief Building Standards Officer. The Department’s respective comments may be summarized as follows:
 - (i) Department of Environment, Energy and Climate Action confirmed no concerns with the Initial Application as (i) there did not appear to be any protected environmental features on the Subject Property; and (ii) an on-site well may service the proposed structure with daily water usage above 25 m3/day requiring a Water Withdrawal Permit;
 - (ii) Department of Transportation and Infrastructure confirmed the Subject Property had an existing access; and
 - (iii) Chief Building Standards Officer confirmed the Developers must apply for a building permit and follow the process in place to receive same.
7. On September 10, 2025, the Developers amended the Initial Application. The amended application sought a development permit for a home-based business with the construction a new detached structure measuring 26 feet by 40 feet (the “Subject Application”). The Subject Application outlined the use of the proposed structure to be to store materials and equipment and do repairs on equipment. Developer, Mr. Davidson, also signed the Declaration contained in the Subject Application certifying that all statements contained within the application are complete and true.
8. On September 12, 2025, the Minister approved the Subject Application to locate an Industrial (equipment repair and storage) Home Based Business structure on an existing Residential (Single Unit Dwelling) use lot, subject to the following conditions:
 - (i) Structure being erected in accordance with the approved application sketch and must meet the minimum development setback requirements of the Regulations.
 - (ii) All requirements of the Home-Based Business regulations as laid out in Section 31 of the Regulations, subsections 2 through 7.
 - (iii) Any surface water or storm water from this development must be properly addressed to ensure minimal detrimental impacts on adjacent lots, roadways, and environmentally sensitive areas.
 - (iv) Use of existing highway access driveway only, unless otherwise approved by the Minister responsible for administering the *Roads Act*.

- (v) All truck maneuvering shall occur on site; there shall be no utilization of the public road for backing into the site.
 - (vi) Any intensity of use or use contrary to the land use outlined in this approval will require additional approval from this department (the "Decision").
9. For greater certainty, the Minister's decision subject to the Appeal is the issuance of a development permit to locate an Industrial (equipment repair and storage) Home Based Business structure on an existing Residential (Single Unit Dwelling) use lot.

Appeal

10. The Appeal is pursuant to section 28 of the Act.
11. In light of the Appellants' family home sharing a common boundary with the Subject Property, the Minister does not take issue with the Appellants being aggrieved persons in accordance with subsection 27.1(d) of the Act.
12. The Appellants seek the following relief from the Commission:
- The Appellant requests that the Commission allow this appeal and quash the issuance of the Permit.*
13. 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.
14. 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

15. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the 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 Brookfield, 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.
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.*

18. Subsections 31(1) and 31(3) of the Regulations outline when a development permit is required:

31(1) Where development permit required

No person shall, without first obtaining a development permit from the Minister,

- (a) commence the construction of any building or structure;*
- (b) locate any building or structure, or change the location of any building or structure on a lot;*
- (c) make any structural alterations that will change the exterior dimensions of any building or structure;*
- (d) change the use of a building, structure or land or part of any of them;*
- (e) intensify any non-conforming use;*
- (f) locate a travel trailer on any lot as the main or accessory use, other than in a travel trailer park where utility services are provided;*
- (g) create a mobile home park.*

31(3) Development permit required

No person shall, without first obtaining a development permit from the Minister,

- (a) renovate an existing dwelling unit for the purpose of accommodating a home-based business;*
- (b) change the use of an existing dwelling unit to a home-based business; or*
- (c) use an accessory structure for the home-based business.*

19. Subsection 31(4) of the Regulations continues by specifying the information required for an application for a development permit for a home-based business:

31(4) Information required for application

An application for a development permit for a home-based business shall provide the development officer the information required in order to determine whether the proposed home-based business, the change of use

to a home-based business or the accessory structure to be used for the home-based business will meet all of the following criteria:

(a) the business use of the dwelling unit or an accessory structure to the dwelling unit is secondary to the residential occupancy use of the dwelling unit;

(b) at least one full-time resident of the dwelling unit where the home-based business will be located operates or will operate the business;

(c) the home-based business, if within the dwelling unit, uses less than 50 per cent of the total floor area of the dwelling unit;

(d) the home-based business, if located in an accessory structure, has a total floor area of less than 100 square metres.

20. Pursuant to subsection 31(5) of the Regulations, where a development offer is satisfied that the applicant's proposed home-based business will meet the criteria specified in subsection 31(4), as was the case for the Subject Application, the development officer may issue a permit to the applicant that authorizes the proposed development or change of use.
21. For reference, subsection 1(j.01) of the Regulations defines "home-based business" as a business or service use that is located in a dwelling unit that is used or occupied as a home, or an accessory structure to the dwelling unit.

Test

22. 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

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*") at para 27.

23. In *Aftab*, the Commission reiterated previous decisions in stating that it “does not lightly interfere with decisions made by a planning authority.”³

Test Application

24. In this matter, the Minister followed the proper process as set out by law and, therefore, the Decision requires deference.

Step 1: Processing of the Application

25. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, as well as the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
26. Pursuant to section 31 of the Regulations, the Developers, in the Subject Application, applied for a development permit to locate an Industrial (equipment repair and storage) Home-Based Business structure on an existing Residential (Single Unit Dwelling) use lot.
27. The Developers provided Ms. MacVarish with the information required in order to determine if the accessory structure to be used for the home-based business will meet the criteria outlined at subsection 31(4) of the Regulations.
28. Based on the information provided and in accordance with subsection 31(4) of the Regulations, Ms. MacVarish determined that (i) the business use of the accessory structure to the dwelling unit is secondary to the residential occupancy use of the dwelling unit; (ii) at least one-full time resident of the dwelling unit where the home-based business will be located will operate the business; and (iii) the home-based business, if located in an accessory structure, has a total floor area of less than 100 square metres.
29. In light of Ms. MacVarish being satisfied that the Developers’ home-based business development met said criteria, the development permit was granted to authorize the accessory home-based business structure.
30. The Department also notes that as the Developers’ home-based business did not require new access to a highway. Therefore, the Developers were not required to obtain a permit in accordance with the *Highway Access Regulations*, PEI Reg EC580/95, prior to making the Subject Application.
31. In direct response to the Appellants’ grounds of appeal set forth in the Appeal as they relate to the procedure of processing the Subject Application, the Minister responds as follows.

³ *Aftab* at para 28.

32. In the case of the Initial Application, the Developers applied for a change of use and the Minister notified the Appellants by letter dated August 25, 2025. The Minister notified the Appellants in accordance with subsection 29(2) of the Regulations, which states that the Minister **may** take into consideration any written submissions received from the owners of lots within 330 feet (100 metres) of the lot to which the application applies. The Appellants then provided a letter of objection dated September 5, 2025 (the “Appellants’ Letter of Objection”), which may or may not have been taken into consideration in Minister rendering a decision on the Initial Application.
33. Notwithstanding the sections of the Regulations applicable to a change of use application and the process followed by the Minister in considering the Initial Application, neither the Act nor the Regulations contemplate notice being provided to neighbouring property owners when processing development permit applications for a home-based business. Further, it is not the Minister’s practice to notify neighbouring property owners of development permit applications for home-based businesses.
34. However, in accordance with the common law duty of procedural fairness, on September 12, 2025, Ms. MacVarish contacted the Appellants via email to advise of the change from the Initial Application to the Subject Application and to notify them of their right to appeal the Decision.
35. The Appellants also refer to complaints made to the Minister arising from the Developers allegedly undertaking development on the Subject Property in the absence of a permit and utilizing the Subject Property for a variety of industrial/commercial uses during the summer of 2025.
36. In Order LA 22-03 (“*MacKay*”), the appellant filed a notice of appeal seeking to challenge a decision by the Minister of Agriculture and Land, as it then was, to approve a change of use. The appellant owned a home that was located approximately 150 feet away from the property in question.
37. In *MacKay*, the record before the Commission raised the preliminary legal issue as to the scope of the Commission’s jurisdiction. The Commission acknowledged in this decision that it does not have inherent jurisdiction, rather its jurisdiction is statutory. The Commission therefore examined the record to ascertain the true nature of the appellant’s complaints and to determine whether the complaints fell within the statutory authority of the Commission.
38. While the question of the Commission’s jurisdiction on this Appeal will be expanded on in more detail below, the Commission, in relying on previous decisions, upheld that it does not have jurisdiction over matters of enforcement with enforcement falling within the discretion of the Minister.⁴

⁴ *Brian R. MacKay v. Minister of Agriculture and Land*, Order LA22-03 (“*MacKay*”) at para 12.

39. As a result, it is the position of the Minister that enforcement of land use matters falls squarely within the discretion of the Minister and is not appealable to the Commission.

Step 2: Planning Principles

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.

Regulatory Compliance

40. The Commission states in *Stringer* that “*sound planning principles require regulatory compliance*”.⁵
41. As set out herein, the Subject Application and resulting Decision were in accordance with the Act and the Regulations. The Decision thus satisfies the requirement of regulatory compliance.
42. In the Appeal, the Minister notes that the Appellants generally state that the “proposed development does not conform with the Regulations regarding the criteria for a home-based business”. Should the Appellants provide further particulars with respect to this ground of appeal, the Minister reserves the right to provide a further reply thereto.

Detrimental Impact

43. Beyond regulatory compliance, the Commission has found that sound planning principles must also require discretion to be exercised in a principled and informed manner.⁶ At paragraph 28 of Order LA22-09 (“*Fagan*”), the Commission provided the following summary:

*28. In short, sound planning principles include compliance with the requirements found in official plans and bylaws. However, strict compliance with prescribed requirements does not end the inquiry. The Commission must also be satisfied that sound planning principles were considered and applied during the decision-making process as a whole. This type of evidence is most commonly provided by a development officer, a land use planner, or evident from the record before the Commission.*⁷

44. In reviewing the Subject Application, Ms. MacVarish considered whether this development and home-based business would have a detrimental impact as is required by the Regulations.

⁵ *Stringer* at para 64.

⁶ *Stringer* at para 64.

⁷ *Clare Fagan v. City of Summerside*, Order LA22-09 (“*Fagan*”) at para 28.

45. Pursuant to subsection 3(2)(d) of the Regulations, no development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would have a detrimental impact.
46. Detrimental impact is defined at subsection 1(f.3) of the Regulations as meaning:
- 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) *viewscales; or*
(iv) *development approved pursuant to subsection 9(1) of the Environmental Protection Act;*
47. Notwithstanding the discretionary nature of “detrimental impact”, the Minister submits that home-based businesses by their very nature are designed to have limited detrimental impacts on surrounding land use, natural environment and public health and safety. Therefore, it is the Minister’s position that any discretion exercised by the Minister in this assessment was made in accordance with the legislation.
48. To this end, the limited detrimental impact of home-based businesses is regulated by the statutory requirements integrated into section 31 of the Regulations. These requirements include (i) the business must be located within an accessory structure or in the primary dwelling; (ii) the proprietor must live in said dwelling; and (iii) the size of accessory structure must not surpass 100 square metres. In addition, the Department limits home-based businesses to one full-time or two part-time non-resident employees.
49. A home-based business is thus a secondary use to an existing residential use and generally small in scale with a limited number of employees. In comparison, a commercial business requires the property on which it operates to be designated as industrial or commercial use and may range from small to large in scale with no limit on the number of employees.
50. Should the Minister determine that an application for a development permit for a home-based business does not conform to the nature of home-based businesses, then a change of use application and subsequent approval may be required.
51. In relation to the Subject Application, it was determined that the development of an Industrial (equipment repair and storage) Home Based Business structure on an existing Residential (Single Unit Dwelling) would not create 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.

52. With respect to loss or harm in matters related to surrounding land uses, the approved use of the Subject Property continues to be Residential (Single Unit Dwelling), which is congruent with neighbouring properties immediately to the east and west, being the property owned by the Appellants (PID 794529). Further, to the northwest of the Subject Property is a property approved for Industrial Use with a commercial business being operated on said property. As a result, it is the Minister's position that a home-based business on the Subject Property is compatible with surrounding land uses.
53. In the Notice of Appeal, the Minister notes that the Appellants generally state that the "proposed development does not conform with the and will have a detrimental impact on the Appellants". Should the Appellants provide further particulars with respect to this ground of appeal, the Minister reserves the right to provide a further reply thereto.

Jurisdiction

54. The Commission is an administrative tribunal, which is a creature of statute and without inherent jurisdiction. It cannot expand its jurisdiction beyond what the legislation provides.
55. Pursuant to subsection 28(1)(a) of the Act, the Minister readily acknowledges that the Commission has jurisdiction to hear an appeal of a decision of the Minister made in respect of an application for a development permit. The Commission's jurisdiction to hear and decide issues on an appeal of a development permit include: (i) the consideration of whether the Minister followed the proper process and procedure as required by the Act and the Regulations; and (ii) the consideration of whether the decision made by the Minister is based on sound planning principles having regard to the principles of land use planning, the Act, and the Regulations.⁸ As set out herein, the Minister submits that it properly issued the development permit subject to the Appeal.
56. The Minister, however, raises the question of whether the Commission has the jurisdiction to hear and determine the issues raised by the Appellants, as well as grant the requested relief, as the Minister submits the issues raised by the Appellants are grounded in nuisance.
57. On review of the record as a whole, including the Appellants' Letter of Objection, the true nature of the Appeal are issues grounded in nuisance, including noise, dust, traffic and hours of operation. At page 6 of the Appellants' Letter of Objection, their counsel writes "The present issues of noise, dust, and other nuisances experienced by our clients have become untenable and cannot be condoned."
58. In similar circumstances, the Commission has held that nuisance, including dust, odour, vibration, traffic, and hours of operation, and the relief from it are matters that must be pursued in the Supreme Court of Prince Edward Island with the Commission not being

⁸ See for example: *MacKay* at para 12.

assigned the statutory jurisdiction to hear and decide these issues. Otherwise, an abuse of process may result.⁹

Conclusion

59. For the reasons outlined above, the Minister therefore submits that this appeal must be dismissed.
60. 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

⁹ See: *MacKay* at paras 11 to 16; *Fagan* at paras 10 and 31.