

27 November 2025

**VIA EMAIL: [mwalshdoucette@irac.pe.ca](mailto:mwalshdoucette@irac.pe.ca)**

Prince Edward Island Regulatory and Appeals Commission  
c/o Michelle Walsh-Doucette  
Commission Clerk

Our File: 41236-001im

Dear Ms. Walsh-Doucette:

**Re: Appeal No. LA25-017**

**Lorna and Gerald Stewart v. Minister of Housing, Land and Communities**

Please accept this letter in response to your November 7, 2025, request for the Appellants to respond to the Record filed by the Minister, reply to the Submission of the Minister, and to particularize and clarify the Appellants' grounds of appeal.

**Submission on Jurisdiction / Detrimental Impact**

The Appellants reject the Minister's contention 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.*"<sup>1</sup> The Appellants acknowledge that the Commission is a statutory tribunal and has no authority to award damages or grant an injunction under the tort of nuisance.

However, as the Minister notes, the Commission is required to determine whether the Minister's decision was made in accordance with the Regulations.<sup>2</sup>

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<sup>1</sup> Minister's Preliminary Submissions dated November 7, 2025 at para 3.

<sup>2</sup> Minister's Preliminary Submissions dated November 7, 2025 at para 22, citing *Stringer* and *Aftab*.

Section 3(2)(d) of the Regulations provides that no development permit will be issued where the proposed development will have a “*detrimental impact*”.<sup>3</sup> The term “*detrimental impact*” is defined to include “*any loss or harm suffered in person or property in matters related to [...] surrounding land uses [...]*”.<sup>4</sup>

Prior to the Minister’s approval, the Appellants provided evidence to support their contention that a detrimental impact would result from the proposed development.<sup>5</sup> What appears to be missing in the Record is any analysis by which the Minister determined that the proposed development would not have a detrimental impact on the neighbouring lands owned by the Appellants.

The Minister asserts at para 47 of their Preliminary Submissions that home-based businesses, by their “*very nature are designed to have limited detrimental impact on surrounding land use [...]*”. It appears that the Minister is suggesting that the mere fact of the Developer changing its application from a “change of use” to an application for a “home-based business” ended the necessity for the Minister to assess whether the proposed development would have a detrimental impact. This contention is supported by the fact that the Minister approved the Amended Application within two days of receiving it.<sup>6</sup>

The only substantive change between the Initial Application for a “change of use” and the Amended Application to a “home-based business” was that the proposed building had a smaller floor area.<sup>7</sup> The intended use of the property once developed did not change.

The Appellants did not assert a detrimental impact on the basis that the proposed building was too large. Rather, the Appellants raised concerns that the use to which the Developers sought to put to their property would result in loss or harm to the Appellants as surrounding landowners, thus having a “detrimental impact” as defined in the Regulations.

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<sup>3</sup> *Subdivision and Development Regulations*, PEI Reg EC693/00, at s. 3(2)(d).

<sup>4</sup> *Subdivision and Development Regulations*, PEI Reg EC693/00 at s. 1(f.3).

<sup>5</sup> Record filed by the Minister dated November 7, 2025, at TAB 7D.

<sup>6</sup> Record filed by the Minister dated November 7, 2025, at TABs 1 and 4.

<sup>7</sup> The Initial Application (Record TAB 3) reflected a 2000 sq foot building. The Amended Application (Record TAB 4) reflects a 1040 sq foot building.

The Minister has provided no evidence to support its contention that no detrimental impact would result from the development. One of the purposes of the ***Planning Act*** is to “*ensure compatibility between land uses*”.<sup>8</sup> The approved development is not compatible and results in a detrimental impact. Thus, the approval was contrary to the Regulations.

### **Criteria for Home Based Business**

Subsection 31(4)(a) of the Regulations provides that the business use for a home-based business must be secondary to the residential occupancy.<sup>9</sup> In community planning law, a secondary use must be subordinate and incidental to the principal use. A secondary use must not become the main use of the property.

In its Amended Application, the Developer proposed that the business use would be operational “*Mon-Sun 7am-7pm*”.<sup>10</sup> Thus, the proposed industrial business use located next to the Appellants’ residence was proposed to operate effectively all day, every day. It remains unclear on what basis the Minister determined that this proposed industrial use would be secondary to the residential use, rather than the other way around, especially considering the Initial Application for a change of use.

### **Procedural Grounds**

The Appellants challenge the Minister’s interpretation of the notice provision at subsection 29(2) of the Regulations. In its Preliminary Submissions, the Minister emphasized that it “***may take into consideration***” [Bold emphasis in original] written submissions received, and that it “*may or may not*” have taken such public input into consideration in rendering a decision on the Initial Application.<sup>11</sup>

A similar sentiment is contained in the Record, when Ms. MacVarish wrote to the Appellants on August 29<sup>th</sup>, 2025, and emphasized the word “*may*” in subsection 29(2) of the Regulations to determine that notice of change of use applications is “best practice”

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<sup>8</sup> *Planning Act*, RSPEI 1988, c P-8 at s. 2(g).

<sup>9</sup> *Subdivision and Development Regulations*, PEI Reg EC693/00 at s. 31(4)(a).

<sup>10</sup> Record filed by the Minister dated November 7, 2025, at TAB 4.

<sup>11</sup> Minister’s Preliminary Submissions dated November 7, 2025 at para 32.

but is not “required”. It is unclear what guides the Minister’s discretion in deciding whether to act in accordance with best practice, or not.

By sending out letters and requesting public input, the Minister has created a legitimate expectation that it will review and consider the public input it receives. The Minister cannot invite public input merely for appearance; once requested, the Minister must engage with public input in good faith.

Here, the Minister solicited submissions and received detailed concerns.<sup>12</sup> There is no indication on the Record that these submissions were considered, forwarded for comment, or discussed. Once the Minister requested input, the Minister was obligated, under the principles of procedural fairness, proper statutory interpretation, and the legitimate expectations created, to meaningfully consider those submissions. The failure to do so constitutes a deficiency in process and procedure under the *Planning Act*, the *Regulations*, and the common law of procedural fairness.

### **Documents Missing in Record**

There appear to be some documents missing from the Record. Notably, this includes a copy of the letter sent by the Minister to neighbouring landowners. We have enclosed a scan of the letter received by our clients dated August 25, 2025. Additionally, documentation related to a site visit conducted by the Minister referenced in Ms. MacVarish’s email dated September 9<sup>th</sup>, 2025, is not included in the Record.<sup>13</sup> There is good reason to believe that the information learned by the Minister from that site visit would be relevant to the critical issue in this appeal of whether the Minister approved a development which would have a detrimental impact on the surrounding land uses. These documents ought to be disclosed.

### **Conclusion**

Thank you for the opportunity to provide these submissions and clarify the Appellants’ grounds. We reserve the right to amend our Grounds of Appeal and to file additional evidence in accordance with the Commission’s *Rules of Practice and Procedure*.

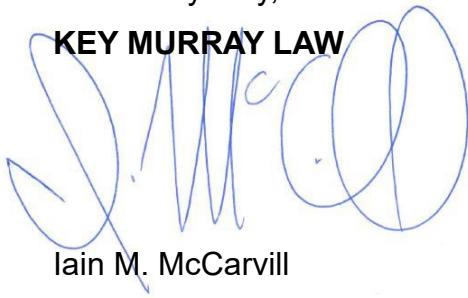
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<sup>12</sup> Record filed by the Minister dated November 7, 2025, at TAB 7D.

<sup>13</sup> Record filed by the Minister dated November 7, 2025, at TAB 7G.

Yours very truly,

**KEY MURRAY LAW**

A handwritten signature in blue ink, appearing to read 'Iain M. McCarvill', is written over the 'KEY MURRAY LAW' text.

Iain M. McCarvill