

December 12, 2025

VIA EMAIL

The Island Regulatory & Appeals Commission
Attention: Michelle Walsh-Doucette, Commission Clerk
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PEI
C1A 7L1

Dear Ms. Walsh-Doucette:

RE: Muddy Creek Developments Ltd. – Notice of Appeal

Please find enclosed Amended Grounds of Appeal on behalf of Muddy Creek Developments Ltd. with one attachment.

Yours very truly,



Melanie McKenna
MM/

Enclosures.

cc. Curtis Doyle, Counsel for Rural Municipality of West River

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AMENDED NOTICE OF APPEAL

Muddy Creek Developments Ltd. v Rural Municipality of West River – LA24010

TAKE NOTICE that Muddy Creek Developments Ltd. hereby appeals the decision of the Rural Municipality of West River (“West River”) Municipal Council on the 24th day of September, 2025 denying the Subdivision Application for subdivision of four (4) lots from PID 203000 (the “Property”) (the “Application”)

AND FURTHER TAKE NOTICE that in accordance with section 28(5) of the *Planning Act*, the grounds for this appeal are as follows:

1. West River improperly applied section 13.5.1 of West River’s 2022 Land Use Bylaw

Section 13.5.1 of the 2022 Land Use Bylaw permits subdivision of up to four (4) lots in a Rural Area Zone. West River improperly applied section 13.5.1 in concluding that PID 203000 had surpassed the permissible number of subdivided lots when they concluded that final subdivision approval occurred on March 12, 2023 under their jurisdiction. The 19-lot subdivision was approved by Order of the Island Regulatory and Appeals Commission dated May 12, 2023 (Order LA23-04), which Order overturned a decision of the Minister of Agriculture and Land dated September 17, 2021.

2. West River failed to provide adequate or sufficient reasons for its decision and failed to demonstrate that sound planning principles informed its decision to vote contrary to the decision of West River’s staff and Planning Board

West River staff recommended approval of the Application, following consideration of the Application in combination with the Bylaw and Official Plan (Tab 8, pg. 59). Planning Board, which is comprised of members of Council, recommended approval of the Application. Council, on September 24, 2025, voted contrary to the recommendation of staff and Planning Board and failed to provide sufficient reasons rooted in sound planning principles for their vote.

3. West River failed to properly consult a professional-land use planner

In Order LA23-04, the Commission reiterated the principle applied in *Stringer*, that a decision-making authority must consult a professional land-use planner as decisions respecting subdivision applications must be grounded in sound planning principles. The Record makes clear that a professional land-use planner was not consulted for purposes of consideration of sound planning principles.

4. West River acted arbitrarily and violated its common law duty of procedural fairness and principles of natural justice.

West River was not free from bias when they made the decision to deny the Application. Councillor Daniel Sud, who participated in the vote and discussion on the Application, owns

a home directly across from the Property, at 113 Hennebury Road (PID 856161) and has previously publicly declared his opinion in opposition of the existing subdivision, as shown in the CBC Article dated September 13, 2024, annexed hereto.

The Record further indicates that Councillor Steve Pollard abstained from voting but failed to declare a conflict of interest and remove himself from discussion on the Application.

5. Council misinterpreted or failed to apply the Official Plan.

6. Such further and other grounds as may be revealed.

AND FURTHER TAKE NOTICE that in accordance with section 28(5) of the *Planning Act*, the Appellants seeks the following relief:

- the Appellant requests that the Commission allow this appeal, set aside the decision of West River and order approval of the Subdivision Application submitted by Muddy Creek Developments Ltd. to subdivide four (4) lots from PID 20300

DATED this 12th day of December, 2025.

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PEI

Homeowners on P.E.I.'s South Shore push back against new subdivision development

Subdivision application denied by P.E.I. government later OK'd after appeal to IRAC

[Steve Bruce](#) · CBC News · Posted: Sep 13, 2024 6:00 AM ADT | Last Updated: September 13, 2024

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Dan Sud, who lives near the new subdivision in Rice Point, looks out at some of the initial site work that's happened. (Steve Bruce/CBC)

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Some homeowners in Rice Point along P.E.I.'s southern coast say they've been blindsided by plans for a new waterfront subdivision, which they worry will alter the rural landscape and put a strain on community infrastructure.

They say they only became aware the project was forging ahead last week, when construction started to convert 44 acres of farmland into a new 19-lot subdivision.

"The diggers showed up one day. That's when I found out this was happening," said Daniel Theriault, who lives across the road from the new subdivision.

"We certainly haven't gotten any notices about development or anything like that... And the talk in the community was that it would never go through."

- [**P.E.I. has plenty of work to do on coastal protections, climate researchers say**](#)
- [**Climate change simulator tool draws gasps, even tears from P.E.I. residents**](#)

Initially, the subdivision application didn't go through.

Back in 2021, landowners Lucas and Jennie Arsenault had their application to create a subdivision denied by what was then called the P.E.I. Department of Agriculture and Land.



This screen shot taken from a Coldwell Banker Parker Realty advertising video shows some of the 44 acres of farmland in Rice Point that IRAC has approved for conversion into a subdivision. (Coldwell Banker Parker Realty)

In its decision, the department said:

- The Island already had thousands of vacant residential lots,
- The proposed development would remove "prime agricultural farmland from P.E.I.'s land base," and
- Coastal development had "caused serious issues, particularly with regards to coastal erosion and scenic viewscapes."

However, the Arsenaults appealed that decision in front of the Island Regulatory and Appeals Commission (IRAC). In May 2023, after a three-day hearing, IRAC overturned the department's decision and approved the subdivision.

The ruling was posted online. In it, the commission said concerns over removing farmland and affecting viewscapes were not sufficient reasons to reject a subdivision under the P.E.I. Planning Act. It also said the department's arguments were "not without significant flaws."



Helen Smith-MacPhail, mayor of the Rural Municipality of West River, said there's little the municipality can do to address residents' concerns or stop the project. (Kirk Pennell/CBC)

Dan Sud, who lives near the new subdivision, said he and his neighbours weren't aware of IRAC's ruling.

"It was quietly overturned in May 2023, without us having any kind of information, visibility, consultation, or otherwise into the matter," he said. "We thought [that] the preservation of agricultural land was something the province valued and that this would be upheld, even in an appeal process."

"Had we known one took place, we would've wanted to participate."

“Community consultation and/or public input is not part of the appeal process.”

— Island Regulatory and Appeals Commission

IRAC posted notice of the appeal on its website, and ran ads about plans for the public hearing online and in the newspaper.

However, as the commission said in an email to CBC News: "Community consultation and/or public input is not part of the appeal process... If a member of the public wishes to be involved in the appeal process, they are required to apply for intervener status and the commission must approve this application."

'It's out of our hands': Rural municipality's mayor

After site work on the new subdivision started, several people in the area reached out to the Rural Municipality of West River to see whether it has any power to stop the project. Some raised their concerns at a planning meeting Thursday night.

However, the mayor told them there's little the municipality can do.

"We are required to follow the ruling that is put out by IRAC. So it's out of our hands, really. It's out of our jurisdiction as a municipality," said Mayor Helen Smith-MacPhail.



People living nearby say initial work to develop a road through the new subdivision started last week. (Steve Bruce/CBC)

The rural municipality was formed through amalgamation in 2020. However, it didn't adopt an official plan and land use bylaws until July 2023 — two months after IRAC's ruling on the Rice Point subdivision.

According to the mayor, had a bylaw been in place earlier, the landowners would have been required to apply to the rural municipality to rezone the land from "rural area" to "rural residential." That would have prompted a public meeting.

"Because the IRAC decision was made in May, this land really changed use then," Smith-MacPhail said. "Those lots will be treated as rural residential lots."

"I do wish our land use bylaw had been in place at the time, because then we'd be having a different discussion."

Development permit likely to be approved

Before any actual buildings can go up on the lots, the mayor said the landowners will need to apply to the municipality for a development permit. However, she said that is likely to be approved given how the land is now zoned.

“This is going to significantly alter the landscape and the amount of transportation on this road.”

— Neighbour Dan Sud

A handful of homeowners in the area have written to the Arsenaults urging them to reconsider their plans, Sud said.

- [**A controversial P.E.I. development includes a stony seawall. Critics say it threatens the shoreline**](#)
- [**P.E.I. commits to protecting public access to beaches as climate change shifts shoreline**](#)

"This is going to significantly alter the landscape and the amount of transportation on this road," he said.

"How can the project evolve to take into account the concerns of citizens? I hear there's 19 lots planned. If it's a low-density neighborhood, could there be fewer lots?"

CBC News reached out to Lucas and Jennie Arsenault and to the P.E.I. government for comment, but didn't hear back.

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