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Via Electronic Mail (mwalshdoucette@irac.pe.ca)

Michelle Walsh-Doucette
Island Regulatory and Appeals Commission
134 Kent Street
Charlottetown, PE C1A 7L1

Dear Ms. Walsh-Doucette:

Re: LA25-019 - Muddy Creek Developments Ltd. v. Rural Municipality of West River
Response to amended notice of appeal

Please accept this correspondence as the Rural Municipality's response to the amended notice of appeal dated 12 December 2025.

I. Procedural background

On 16 September 2024, the Rural Municipality received the underlying application for subdivision. The application fee was not included with the application. See the appeal record at page 1.

On 16 September 2024, the Rural Municipality wrote to the applicant to acknowledge receipt of the subdivision application. The Rural Municipality specified that the application would not be processed until the application fee was received. See the appeal record at page 137.

On 26 March 2025, the Rural Municipality emailed the applicant to note that the application fee remained unpaid. See the appeal record at page 138.

On 27 March 2025, an agent for the applicant emailed the Rural Municipality to advise that he would soon provide a cheque "to complete the application." See the appeal record at page 140.

On 28 March 2025, the applicant paid the application fee. See the appeal record at page 1.

On 12 June 2025, the Rural Municipality's Planning Board considered the application. Planning Board recommended that council approve the application. See the appeal record at page 50.

On 26 June 2025, the Rural Municipality's Council considered the application. Council discussed comments made by the public. Council directed the CAO to obtain a professional planner's review regarding the application. Council then deferred its decision, pending receipt of the professional planner's review. See the appeal record at page 77.

On 8 July 2025, a professional planner provided advice on the application. The professional planner stated that the key question was "which version of the consolidated PID 203000 and 808154 counts as the 'existing lot' under the Bylaw – the property as of the date of Order LA23-04 or the June 10, 2024 date of the implementation order." The professional planner

recommended that the Rural Municipality obtain legal advice on this question. See the appeal record at pages 182 to 183.

On 24 September 2025, Council considered the application. Council discussed a legal opinion that the Rural Municipality had obtained on the application. Council voted to deny the subdivision application. See the appeal record at pages 105 to 109.

On 10 October 2025, the applicant appealed Council's decision to deny the application.

II. Nature of the appeal

Form of appeal hearing

The Island Regulatory and Appeals Commission does not act as a tribunal of error correction when it conducts a *Planning Act* appeal. In other words, the Commission's role is not simply to determine whether the Rural Municipality erred in denying the subdivision application. Instead, the Commission's statutory mandate is to conduct a hearing *de novo*.[1] The Commission is required to hear, consider and decide the underlying application, in accordance with the requirements and objects of the *Planning Act* and the relevant municipal planning instruments.[2]

Role of underlying decision

In conducting the hearing *de novo*, the Commission may accord weight or deference to the underlying decision of the Rural Municipality. The Commission typically applies a two-step test to determine whether to defer to an underlying decision. At the first step, the Commission reviews the decision for procedural fairness. At the second step, the Commission determines whether the decision has merit based on sound planning principles.[3]

In this type of hearing *de novo*, deference is flexible rather than all-or-nothing. After applying its two-part test, the Commission can give the underlying decision no deference, some deference, or substantial deference.[4]

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[1] *Section 14(1) of the Island Regulatory and Appeals Commission Act (Re)*, 1997 CanLII 4578 (PE SCAD) at paras 9-10.

[2] *Section 14(1) of the Island Regulatory and Appeals Commission Act (Re)*, 1997 CanLII 4578 (PE SCAD) at para 10.

[3] *Charlottetown (City) v Island Reg. & Appeals Com.*, 2013 PECA 10 at paras 39-40, *per* Jenkins CJ.

[4] See, for example, *Tuplin v. Indian & Northern Affairs Canada*, 2001 PESCTD 89 at para 15.

Role of the grounds of appeal

To fulfill their purpose, the grounds of appeal must alert the Commission and the parties to the nature of the appellant's complaint with the decision.[5]

III. Response to grounds of appeal

First ground of appeal

The appellant's first ground of appeal is that the Rural Municipality improperly applied section 13.5.1 of its Land Use Bylaw. This ground of appeal should be dismissed. The Rural Municipality's application of its bylaw reveals no reversible error.

Second ground of appeal

The appellant's second ground of appeal asserts that the Rural Municipality failed to provide adequate or sufficient reasons for its decision and failed to demonstrate that sound planning principles informed its decision. This ground of appeal should be dismissed. Council's discussion, as contained in the meeting minutes, reveals why Council voted as it did. Council discussed the very issue that the professional planner had identified as "key."

Third ground of appeal

The third ground of appeal asserts that the Rural Municipality failed to consult a professional planner "for purposes of consideration of sound planning principles." According to the appellant, Order LA23-04 reiterates "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."

This ground of appeal should be dismissed for at least three reasons.

First, the Rural Municipality did consult a professional planner.

Second, and alternatively, Order LA23-04 and *Stringer* – properly interpreted – do not provide that a decision-maker must consult a professional planner respecting every subdivision application that it receives.

Third, and further in the alternative, if Order LA23-04 and *Stringer* do provide that a decision-maker must consult a professional planner respecting every subdivision application that it receives, then Order LA23-04 and *Stringer* are wrong and should not be followed on this point.

Fourth ground of appeal

The fourth ground of appeal alleges that the Rural Municipality "was not free from bias" when it made the decision to deny the subdivision application. In support of this allegation of bias, the

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[5] *Section 14(1) of the Island Regulatory and Appeals Commission Act (Re)*, 1997 CanLII 4578 (PE SCAD) at para 10.

appellant raised two points. First, the appellant states that Councillor Daniel Sud owns a "home directly across" from the property and has "previously publicly declared his opinion in opposition of the existing subdivision, as shown in a CBC Article dated September 13, 2024." Second, the appellant states that Councillor Steve Pollard abstained from voting but failed to declare a conflict of interest and remove himself from discussion of the application.

This ground of appeal should be dismissed for at least two reasons.

First, the appellant failed to put these allegations directly to Councillors Sud and Pollard in the first instance. This is fatal to this ground of appeal. These allegations of bias cannot be made for the first time on appeal.

Second, in the municipal context, the test for a disqualifying bias is the closed-mind test. See *Smooth-Coat Drywall Ltd. (Re)*, 2019 CanLII 151596 (PE IRAC) and *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, 1990 CanLII 31 (SCC). The evidentiary threshold is high and the burden rests on the appellant. In the present case, the record does not support a finding that either Councillor Sud or Councillor Pollard had a closed mind when assessing the application for subdivision.

Fifth ground of appeal

The fifth ground of appeal alleges that the Rural Municipality misapplied its Official Plan. This ground of appeal should be struck because it fails to alert the Commission or the Rural Municipality to the actual nature of the appellant's complaint.

Sixth ground of appeal

The sixth ground of appeal is not a ground of appeal but rather an indication that there are further grounds of appeal to come. The Rural Municipality will respond to a further amended notice of appeal if one is filed.

IV. Conclusion

The grounds of appeal lack merit.

Yours truly,

Stewart McKelvey

Curtis Doyle

c. Jessica Gillis (jgillis@irac.pe.ca)
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