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VIA EMAIL – mwalshdoucette@irac.pe.ca

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 #LA25025
Mike James and Sheldon Stewart v. Minister of Housing, Land and Communities
Our File: LS 28004**

1. We represent the Minister of Housing, Land and Communities (“Minister”) in relation to the above noted appeal filed by Sheldon Stewart and Mike James (“Appellants”) on December 9, 2025 (“Appeal”).¹ The Appeal is in relation to the denial by the Minister of the Appellants’ application to establish a 26-lot subdivision on PID 88567, accessible from the Campbellton Road and Browns Road, in the community of New London, PE (“Subject Property”). The Subject Property abuts the Southwest River. We are writing in response to the Appeal.
2. It is the Minister’s position that the denial of the application to subdivide the Subject Property is in accordance with the *Planning Act*, RSPEI 1988, Cap P-8 (“Act”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (“Regulations”).
3. In particular, the Minister submits that the proper process and procedure were followed in making this decision, and that the decision was made on the basis of sound planning principles within the field of land use planning, as well as the Act and the Regulations. Therefore, the Appeal must be dismissed.

¹ Record, Tab 2.

Background and Decision

4. On April 1, 2022, the Minister received an application for change of use of the Subject Property (“Initial Application”). The Initial Application noted that the Subject Property was currently used as agriculture land and requested to divide the parcel into two or more lots to be used as single-residential.
5. On January 27, 2023, the Minister denied the Initial Application.
6. Arising from the denial of the Initial Application, on February 15, 2023, the Appellants filed a Notice of Appeal of the Minister’s decision, being Appeal LA23-004.
7. While Appeal LA23-004 was before the Commission, the Minister decided to reconsider the Initial Application. On November 25, 2024, the Minister granted conditional approval of the Initial Application to change the use of the Subject Property from an existing resource (agriculture) use parcel to residential (single unit dwelling) use, subject to specified conditions.²
8. On November 27, 2024, the Appellants withdrew Appeal LA23-004.
9. On March 14, 2025, the Minister received the Appellants’ application for the subdivision of the Subject Property into 26 lots for residential (single unit dwelling) use (the “Subject Application”).³ The Appellants paid the required fees for the Subject Application on March 18, 2025.
10. On November 20, 2025, the Minister denied the Subject Application pursuant to the Act and subsections 3(1)(a), 3(1)(d), 13(a), 13(b) and 13(j) of the Regulations, as well as sound planning principles as identified by Chrystal Fuller, LPP, RPP, MCIP (“Ms. Fuller”) in her planning report dated September 2, 2025 (“Planning Report”) (“Decision”).⁴

Appeal

11. The Appeal is pursuant to section 28 of the Act.
12. The Appellants have sought an order from the Commission overturning the Decision of the Minister and approval of the subdivision application. In the alternative, the Appellants are requesting that the Commission issue an order for preliminary approval of the subdivision with conditions as appropriate under the Act.

² Record, Tab 4.

³ Record, Tab 3.

⁴ Record, Tab 1.

13. The Appellants' grounds of appeal are as follows:

- The Minister did not follow the proper process;
- The Minister failed to recognize the Subject Property's change of use to residential use;
- The Minister misapplied the test for sound planning; and
- The Minister incorrectly found a detrimental impact by applying government 'policies' that are neither laws nor part of the Act, nor applicable.⁵

14. The Minister is providing the Record of Decision to the Appellants and filing same with the Commission on the same date as the within submissions are dated.

15. Should the Appellants expand on their grounds of appeal, provide further explanation on their grounds of appeal or provide submissions on their grounds of appeal, the Minister reserves the right to provide a further reply once particulars have been provided by the Appellants.

Test

16. In Order LA17-06 ("Stringer")⁶, the Commission established the applicable test for Ministerial decisions made under the Act and the Regulations. This test was recently clarified in Order LA25-02 ("Aftab"), being described by the Commission as a two-part guideline in exercising appellate authority:

- i. whether the Minister followed the proper procedure as required by the Act, the 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 Act, the Regulations and was based on sound planning principles in the field of land use planning.⁷

17. The Commission has commented that it does not lightly interfere with reviewable decisions.⁸ In Order LA12-02, the Commission wrote:

[9] In previous appeals, the Commission has found that it does have the power to substitute its decision for that of the municipal or

⁵ Record, Tab 2.

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

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

⁸ *Landfest v Town of Stratford*, Order LA22-07 at para 32.

ministerial decision maker. Such discretion should be exercised carefully. The Commission ought not to interfere with a decision merely because it disagrees with the end result. However, if the decision maker did not follow the proper procedures or apply sound planning principles in considering an application made under a bylaw made pursuant to the powers conferred by the Planning Act, then the Commission must proceed to review the evidence before it to determine whether or not the application should succeed.⁹

[emphasis added]

18. In *Aftab*, the Commission reiterated previous decisions in finding that it “does not lightly interfere with decisions made by a planning authority.” The Commission continued stating:

[28] The Commission will typically be deferential toward planning decisions that are properly made, and will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the applicable official plan and bylaw, and sound planning principles.¹⁰

[emphasis added]

Minister’s Position

19. In this case, the Minister did follow the proper process as set out by law and did apply sound planning principles from a land use planning professional, and, therefore, deference is owed.

Step 1: Processing of the Application

20. The Minister met the first part of the test.

21. The Minister submits that a review of the Decision and the Record of Decision demonstrates that the statutory requirements and principles set out in the Act and Regulations were considered and applied during the Minister’s assessment of the Subject Application. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.

⁹ *Atlantis Health Spa Ltd v City of Charlottetown*, Order LA12-02 (“*Atlantis Health Spa*”) at para 9.

¹⁰ *Aftab* at para 28.

22. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws.¹¹

23. The Subject Property is located in New London, 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.

24. Part III – B of the Regulations sets out the standards specific to subdivision of land.

25. Subsection 12(1) provides that no person shall subdivide land without first obtaining final approval of the subdivision from the Minister.

26. Further, subsection 3(1) of the Regulations provides that 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]

27. In other words, the Minister must deny an application that contravenes any one (or more) of these general requirements.

28. During the assessment of the Subject Application, the Minister sought comments from the Department of Environment, Energy and Climate Action, the Department of Transportation and Infrastructure and an independent registered professional planner, namely Ms. Fuller.

29. Based on the Act, the Regulations and the Planning Report prepared by Ms. Fuller, the Minister found that the Appellants' proposed subdivision of the Subject Property would not conform to the Regulations and would have a detrimental impact.

30. The Minister therefore submits that the first part of the test is satisfied. The Decision and attached Planning Report demonstrate that the Minister followed the proper process and

¹¹ Regulations, s 2(1).

procedure in rendering the Decision in respect of the Subject Application, including complying with the Act and the Regulations, as well as seeking and considering advice from a land use planning professional.

31. The Minister notes that the Appellants generally state in the Appeal that the “Minister did not follow the proper process”. Should the Appellants provide further particulars with respect to this ground of appeal, the Minister reserves the right to provide a further reply thereto.

Step 2: Sound Planning Principles

32. The Decision also meets the second part of the test in that it is supported by objective and reliable evidence from a land use planner ensuring that the Decision was made in accordance with the Act, the Regulations as well as has merit based on sound planning principles.

Sound Planning Principles

33. The Minister, again, highlights the Commission’s findings in *Stringer* that sound planning principles are a guard against arbitrary decision making. The Commission stated:

[64] Sound planning principles require regulatory compliance but go beyond merely insuring such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted.¹²

34. The Commission has previously commented that sound planning must be a common feature of development throughout Prince Edward Island.¹³ In determining whether a subdivision proposal should go forward, the Minister must make an examination “beyond the strict conformity with the Regulations and must consider sound planning principles”.¹⁴

35. The Minister acknowledges that the consideration of sound planning principles, beyond strict conformity with the Act and Regulations, is an inherently discretionary exercise, which in applications such as this must be exercised by a well-trained professional.¹⁵

¹² *Stringer* at para 64.

¹³ *Ibid.*

¹⁴ *Ibid* at para 58.

¹⁵ See: *Pine Cone Developments Inc v City of Charlottetown*, Order LA17-08 at para 48; *New Homes Plus Inc v City of Charlottetown*, Order No LA23-03 (“*New Homes*”) at para 60; *Aftab* at para 42.

36. As such, the Minister retained Ms. Fuller in order to ensure that the Decision had merit based on sound planning principles and any discretion was exercised in a principled and informed manner. The Minister submits that Ms. Fuller completed a thorough review of the Subject Application and provided a comprehensive and objective Planning Report.

37. Based on the planning conclusions and recommendations contained in the Planning Report, the Minister denied the Subject Application. The Minister would have made a substantive error had he based his decision on considerations other than sound planning principles.

38. In Order LA23-03, the City of Charlottetown (“City”) decided to reject a rezoning request by the Appellant, New Homes Plus Inc., contrary to the City’s planning staff’s professional recommendation. The Commission reiterated the need for objective decision-making with reliance on assessments, opinions and reports of trained professionals. Ultimately, the Commission was satisfied that the City’s Council made “a substantive error when it based its decision on considerations other than sound planning principles.”¹⁶

39. The Regulations likewise require the application of sound planning principles when considering subdivision applications. Section 13 provides that subdivision designs shall be based on sound planning principles and shall demonstrate that the proposed subdivision is suited to the intended use, having due regard for ten separate factors, including compatibility with surrounding uses, the topography of the site and natural features:

13 Principles

Subdivision designs shall be based on sound planning, engineering, and environmental principles, and shall demonstrate that the proposed subdivision is suited to the intended use, having due regard for

- (a) compatibility with surrounding uses;
- (b) the topography of the site;
- ...
- (j) natural features.

40. While section 13 is not a list of codified sound planning principles for the Minister to consider when assessing a subdivision application, this section does mandate that subdivision designs (1) shall be based on sound planning, engineering and environmental principles; **and** (2) shall demonstrate intended use suitability having due regard for clauses (a) to (j).¹⁷

¹⁶ *New Homes* at paras 60 and 62.

¹⁷ *Moerike, Doherty and Doherty v Minister of Communities, Land and Environment*, Order LA-17-07, at paras 50-51.

41. The Minister submits that section 13 provides decision-makers with relevant, consistent and objective criteria to consider when making determinations about subdivision applications.
42. When considering the Subject Application, the Minister, in relying on the Planning Report, found that the proposed subdivision design does not comply with sound planning principles and is not suited to the intended use having due regard for the compatibility with surrounding uses, the topography of the site and natural features.
43. The objects and provincial interests identified in the Act also guide the decision-making process in relation to sound planning principles, as well as detrimental impact.
44. At the time of the Subject Application being received by the Minister and the Decision being rendered, the following purposes and provincial interests were in effect:

2 Purposes

The purposes of this Act are

- (a) to provide for efficient planning at the provincial and municipal level;
- (b) to promote sustainable and planned development;
- (c) to protect the natural and built environment of the province;
- (d) to encourage co-operation and co-ordination among stakeholders;
- (e) to address potential conflicts regarding land use;
- (f) to provide the opportunity for public participation in the planning process; and
- (g) to ensure compatibility between land uses.

2.1 Provincial interests

- (1) The Minister in carrying out the Minister's responsibilities in relation to planning matters and the effects of proposed development under this Act shall have regard but not be limited to matters of provincial interest, such as
 - (a) the protection, conservation and management of resource lands;
 - (b) the protection, conservation and management of coastal areas;
 - (c) the protection, conservation and management of ecological systems;
 - (d) the prevention of fragmentation of land and of loss of natural habitat connectivity and biodiversity;
 - (e) the supply, efficient use and conservation of water;
 - (f) the supply, efficient use and conservation of energy;
 - (g) the adequate provision and efficient use of communication, transportation, sewage and water services, storm water management systems, waste management systems and other

public services in relation to planning development, and the effect of planning development on those services;

- (h) the effect of proposed planning development on, and measures for the protection of, public health and safety;
- (i) the protection of features of significant archaeological, cultural, architectural, historical or scientific interest;
- (j) the protection of viewscapes that contribute to the unique character of Prince Edward Island;
- (k) the direction of development to areas designed to support servicing;
- (l) the orderly and sustainable development of safe and healthy communities;
- (m) the adequate provision of a full range of housing options;
- (n) the promotion of a built environment that supports public transit and active transportation;
- (o) the promotion of a built environment that incorporates the principles of conservation design;
- (p) the adaptation of the built and natural environment to address the effects of climate change;
- (q) the mitigation of greenhouse gas emissions; and
- (r) adaptation to a changing climate.

[emphasis added]

45. In the opinion of Ms. Fuller, the subdivision of the Subject Property into 26 residential (single unit dwelling) use lots would not be in line with various purposes and provincial interests contained in the Act.

46. Based on the foregoing, the Decision was grounded in sound planning principles and in being consistent with the purposes and provincial interests as set out in the Act. The Minister submits that the Decision furthers the purposes of efficient planning, promoting sustainable and planned development, protecting the province's natural environment, including its sensitive coastline, and addressing potential land conflicts. In addition, the Decision is supported by recognized sound planning principles within the field of land use planning.

3(1)(b) – Detrimental Impact

47. The Regulations provide that no person shall be permitted to subdivide land where the proposed subdivision would have a detrimental impact.¹⁸ The Regulations define “detrimental impact” as:

¹⁸ Regulations, s 3(1)(d).

(f.3) “**detrimental impact**” means 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) viewscapes; or
- (iv) development approved pursuant to subsection 9(1) of the *Environmental Protection Act*;

48. In the opinion of Ms. Fuller, “this subdivision would create a detrimental impact as defined in the Regulations. It would increase coastal and flood risk, reduce and break up good farmland, raise land-use conflicts, and erode rural and tourism values. It does not align with provincial goals to protect farmland and sensitive coasts.”
49. In her detrimental impact assessment, Ms. Fuller considered coastal, agricultural and socio-economic implications.
50. With respect to coastal implications, the Subject Property is located within a coastal area as defined by the Regulations¹⁹ and thereby requires a buffer zone in accordance with the Regulations and the *Watercourse and Wetland Protection Regulations*, PEI Reg EC720/08. The Subject Property comprises approximately 2,882 feet of shoreline along the Southwest River, a portion of which consists of saltmarsh. As sea levels rise, the saltmarsh will migrate inland, reducing developable land and reshaping coastal processes.
51. Notwithstanding that the proposed subdivision includes the legislated buffer zone, in applying best planning practices, Ms. Fuller opined that the proposed subdivision would add impervious surfaces and septic systems increasing runoff towards streams and wetlands thereby undermining the buffer designed to absorb pollutants and wave energy.
52. Further, the proposed subdivision would heighten pressure for armoring or shoreline protection in future decades which accelerates erosion of beaches and adjacent properties, while narrowing shorelines and diminishing coastal ecosystems.
53. In Order LEV23-01, the property at issue was fronted by a saltmarsh wetland. The Minister of Environment, Energy and Climate Action (“Minster of EECA”) denied the Appellant’s shoreline protection permit as the placement of cement barriers on the saltmarsh or buffer zone would destroy the saltmarsh. In holding that the Minister of

¹⁹ Regulations, s 1(d.3).

EECA's decision to deny the permit to protect the saltmarsh was reasonable in the circumstances, the Commission accepted the evidence of the Minister of EECA that the saltmarsh will migrate inland as sea level rises, which will bring along with it increased flooding.²⁰

54. With respect to agricultural implications, Ms. Fuller recognized that the Subject Property has most recently been used as resource (agricultural), despite being approved for residential (single unit dwelling).
55. Ms. Fuller opined that the proposed subdivision, if approved, would break or fragment the Subject Property into smaller lots reducing the efficiency of mechanized farm operations and making the remaining land less attractive for crop production.
56. The Planning Report also speaks to land use conflicts and the "urban shadow effect" which sees adjacent residential uses reducing farm viability through complaints surrounding routine farming activities (for example: odours, noise and night harvests) and higher land values.
57. With respect to socio-economic implications, Ms. Fuller referred to the importance of agriculture as a key pillar of Prince Edward Island's tourism economy with the two being inextricably interlinked.
58. From a sound planning principles perspective, the proposed subdivision would reduce visual appeal along scenic roads, threaten cohesive pastoral landscapes, erode the economic base for tourism, drive infrastructure costs, disrupt farm viability and long-term land stewardship. Although Ms. Fuller recognized that some rural development, such as farm stays or visitor accommodations, may support both agriculture and tourism, scattered subdivisions would erode visual continuity and increase infrastructure costs.
59. Notwithstanding the foregoing, the Minister did not rely on the effect of viewscapes in finding that the proposed subdivision would have a detrimental impact as the definition of detrimental impact found in the Regulations specifically excludes viewscapes as a consideration. The protection of viewscapes that contribute to the unique character of Prince Edward Island, however, is a matter of provincial interest, which was considered by the Minister.
60. The Minister relied upon this objective and reliable evidence of Ms. Fuller in concluding that the Subject Application would have a detrimental impact. This confirms that the Decision was made in accordance with the Regulations and that any discretion exercised by the Minister adhered to sound planning principles.

²⁰ *Mark Keizer v Minister of Environment, Energy and Climate Action*, Order No LEV23-01 at paras 58-59.

Response to the Appeal

61. In direct response to the Appellants' grounds of appeal set forth in the Appeal, the Minister responds as follows.
62. With respect to the Appellants' allegation that the Minister failed to recognize the Subject Property's change of use to residential (single unit dwelling), the Minister was well aware that the approved use of the Subject Property is residential (single unit dwelling) having approved the change of use on November 25, 2024.
63. Despite the approved use being residential (single unit dwelling), to the best of the Minister's knowledge, the Subject Property continues to be used for agricultural purposes. To date, the Minister has not received a development permit application for the development of one single unit dwelling which would be in line with the Subject Property's currently permitted use.
64. For greater certainty, the Subject Application and the Minister's resulting decision pertained to the subdivision of the Subject Property from one residential (single unit dwelling) use lot into 26 residential (single unit dwelling) use lots.
65. With respect to the Appellants' allegation that the Minister incorrectly found a detrimental impact by applying government 'policies' that are neither laws nor part of the Act, nor applicable, the Minister recognizes that Ms. Fuller performed necessary research to inform the sound planning principles used to interpret discretionary provisions of the legislation. However, as is made clear from the Decision, the Minister's decision was rooted in and made in accordance with the legislation.
66. In this case, unlike in Order LA23-04, the Minister did not rely on any additional "papers, recommendations or policies" in rendering the Decision.²¹

²¹ *Lucas Arsenault, Jennie Arsenault and L&J Holdings Inc v Minister of Agriculture and Land*, Order No LA23-04 at para 19.

Conclusion

67. For the reasons outlined above, the Minister therefore submits that this appeal must be dismissed.
68. 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

The image shows two handwritten signatures in blue ink. The signature on the left appears to be 'Mitch O'Shea' and the signature on the right appears to be 'Christiana Tweedy'.

Mitch O'Shea and Christiana Tweedy

CC: Andrew G. MacDonald