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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 #LA26013
Janice Giles and Donald Rainnie v. Minister of Land and Environment
Our File: LS 28580

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1. I represent the Minister of Land and Environment (the "Minister") in relation to the above noted appeal filed by Janice Giles and Donald Rainnie (the "Appellants") on August 5, 2026 (the "Notice of Appeal").¹
 2. The Minister takes no issue with the Appellants being aggrieved persons pursuant to the Act.
 3. The Notice of Appeal arises from the Minister granting preliminary approval for the owner of PID #1021047 (the "Developer") to subdivide 1 (one) lot for industrial use from the PID (the "Subject Property") on July 15, 2026².
 4. The Appellants also appear to raise issues regarding the processing of the application by the Minister.
 5. It is the Minister's position that the decision to approve the application is in accordance with the *Planning Act*, RSPEI 1988, Cap P-8 (the "Act"), the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the "Regulations") and sound planning principles.
 6. It is the Minister's further position that the true essence of certain matters raised by the Appellants are grounded in issues which fall outside of the Commission's statutory jurisdiction.

¹ Record of Decision Prepared by the Minister of Land and Environment ("Minister's Record"), Tab 2.

² Minister's Record, Tab 1.

7. The Appellants in the Notice of Appeal pose a number of questions which may not all be applicable to the present appeal; notwithstanding that the questions may not be applicable, the Minister is agreeable to having Department staff meeting with the Appellants to address each of those questions.

Background and Decision

8. On May 27, 2026, the Minister received the Developer's application to "subdivide a parcel of land into smaller lots" and to "change the use of an approved subdivision" (the "Application")³.
9. The Application requested that the Subject Property be subdivided into two lots and noted that the "portion being sold is an excavation pit" and that the current use of the property was "residential". The map included with the Application clearly shows the portion to be subdivided⁴.
10. On June 4, 2026, Sarah MacVarish, Senior Development Officer for the Minister ("Sarah"), sent consultation letters⁵ to surrounding landowners after completing an assessment of those landowners who were within 100m of the Subject Property⁶.
11. Responses to the consultation letters were received from Jan Giles⁷ and Rosie MacFarlane⁸.
12. Interdepartmental consultations occurred including a response from an Environmental Impact Assessment Officer wherein Sarah was advised that there could be no development within any watercourse or wetland on the Subject Property, that there was a tap drain on the southwest portion of the Subject Property, and that there were no concerns with water quality⁹.
13. After considering the responses to the consultation letters and the interdepartmental consultations, the decision was made on July 15, 2026 to grant preliminary approval subject to certain conditions¹⁰. The decision was communicated to the Developer on the same day (the "Decision")¹¹.

³ Minister's Record, Tab 3.

⁴ Minister's Record, Tab 3 at page 17.

⁵ Minister's Record, Tab 6(a).

⁶ Minister's Record, Tab 6.

⁷ Minister's Record, Tab 5(b).

⁸ Minister's Record, Tab 7(a).

⁹ Minister's Record, Tab 5(c).

¹⁰ Minister's Record, Tab 4.

¹¹ Minister's Record, Tab 1.

Notice of Appeal

Scope of Appeal

14. The Notice of Appeal is pursuant to section 28(1) of the Act, which states:

28(1) Subject to subsections (1.2) to (4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of the Minister made in respect of an application for

- (a) development permit;*
- (b) a preliminary approval of a subdivision or a resort development;*
- (c) a final approval of a subdivision;*
- (d) the approval of a change of use; or*
- (e) any other authorization that the Minister may grant or issue under the regulations.*

15. As determined by subsection 28(1) of the Act, the scope of the appeal is therefore limited to the Decision, being a decision made by the Minister in respect of an application for preliminary approval of a subdivision and the approval of a change of use. Accordingly, the Commission's jurisdiction is limited to reviewing the Decision.
16. The Appellants grounds of appeal and relief sought are as set out in the Notice of Appeal. As noted above, some of the grounds of appeal or concerns raised by the Appellants fall outside the jurisdiction of the Commission to determine.
17. The Minister is providing the Record of the Decision to the Appellants and Developer and filing same with the Commission on the same date as the within submissions are dated.
18. The Minister's response to the Notice of Appeal is outlined below. Should the Appellants expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal, including expert evidence, the Minister reserves the right to provide a further reply thereto.

Aggrieved Persons

19. As held by the Commission at paragraph 23 of Order LA26-09¹², the Commission must be satisfied that the Appellants meet the standard of an "aggrieved person" and demonstrate that they, in good faith, believe the Decision will adversely affect the reasonable enjoyment of their property.
20. In light of the Appellants' property being adjacent to the Subject Property, and subject to the Commission's determination of the issue, the Minister does not take issue with the Appellants being aggrieved persons in accordance with subsection 27.1(d) of the Act.

¹² *Judy Shaw v Rural Municipality of West River*, Order LA 26-09 at para 23.

Legislation

21. Sections 2 and 2.1 of the Act outline the Purpose of the Act, as well as the Provincial Interests that outline the Minister's responsibilities in relation to planning matters and proposed developments under the Act.
22. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and the Regulations.
23. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Desable, 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. The following definitions set forth in the Regulations are relevant to the Appeal:

1 Definitions

In these regulations

(d) "change of use" means

(i) altering the class of use of a parcel of land from one class to another, recognizing as standard classes residential, commercial, industrial, resource (including agriculture, forestry and fisheries), recreational and institutional uses, or

(ii) a material increase in the intensity of the use of a building, within a specific class of use as described in subclause (i), including an increase in the number of dwelling units within a building;

(j.1) "industrial use" means the use of a building or lot for the storage, distribution, processing, assembly or recycling of wholesale products, goods or materials, or for activities relating to transportation, extraction, manufacturing, construction, warehousing, assembly or general repair;

(k.2) "lot" means a measured parcel of land having fixed boundaries;

(v.1) "subdivide" means

(i) to divide a parcel of land to create two or more new parcels of land,

(ii) to consolidate two or more contiguous parcels of land to create a new parcel of land, or

(iii) to attach a part of a parcel of land to another parcel of land contiguous to that part to create a new parcel of land,

by means of a plan of subdivision, a plan of survey, an agreement, a deed or any other instrument, including a caveat, that transfers or creates an estate or

interest in the new parcels of land created by the division, or in the new parcel of land created by the consolidation or the attachment, as the case may be;

[emphasis added]

25. Subsection 3(1) of the Regulations outlines situations where subdivision is not permitted:

3(1) 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.

26. The Minister is authorized to issue a subdivision approval with conditions pursuant to subsections 4(1) and 4(2) of the Regulations:

4(1) An approved subdivision or development permit may be made subject to any conditions necessary to ensure compliance with these regulations, other regulations made pursuant to the Act, or any relevant sections of the Environmental Protection Act, Roads Act, Provincial Building Code Act RSPEI 1988, Cap. P-24 , or the Fire Prevention Act RSPEI 1988, Cap F-11.

(2) Where a person is granted an approved subdivision or development permit subject to conditions in accordance with subsection (1), that person shall ensure that the subdivision or development complies with the conditions.

27. The Minister, however, is not authorized to issue an approval until other approvals have been obtained as appropriate pursuant to section 5 of the Regulations:

5 No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate:

(a) where an environmental assessment or an environmental impact statement is required under the Environmental Protection Act, approval has been given pursuant to that Act;

(b) where the Fire Marshal's approval is required pursuant to the Fire Prevention Act, approval has been given pursuant to that Act;

(c) where approval is required pursuant to the Lands Protection Act RSPEI 1988, Cap L-5 or regulations made pursuant to that Act,

approval has been given pursuant to that Act and any applicable regulations made pursuant to that Act;

(d) where, pursuant to the Roads Act, an entrance way permit or approval is required, the required permit or approval has been obtained; and

(e) revoked by EC222/22.

28. Standards dealing with the subdivision of land are set out at Part III of the Regulations. Subsection 12(1) and section 29 of the Regulations, respectively, outline when subdivision approval and change of use approval are required:

12(1) Subdivision approval

Subject to sections 2.1 and 2.2, no person shall subdivide land without first obtaining final approval of the subdivision from the Minister.

...

29 Change of Use

(1) No person shall deviate from an existing land use or an approved plan of subdivision, including changing the use of a lot from the approved use, unless a revised plan of subdivision, where applicable, and an application for a change of use has been submitted to, and has been approved by, the Minister.

Idem

(2) Where a change of use application has been made, the Minister, in reviewing the application for a change of use, 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.

29. Section 11 of the Regulations also provides that the Minister *may* hold a public meeting regarding any subdivision or development proposed under the Regulations. A public meeting is not required.

30. Section 13 of the Regulations enumerates the principles applicable to subdivision design:

13 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;*
- (c) surface drainage on the site and its impact on adjacent parcels of land;*
- (d) traffic generation onto adjacent highways;*
- (e) availability, adequacy and the economical provision of utilities and services;*

- (f) the ability to further subdivide the land or adjoining land;
- (g) the provision of lots suitable for the intended use;
- (h) waste water management;
- (i) water supply; and
- (j) natural features.

Test

31. In Order LA17-06 ("*Stringer*")¹³, 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.*¹⁴
32. In *Aftab*, the Commission reiterated previous decisions in stating that it "does not lightly interfere with decisions made by a planning authority."¹⁵
33. Deference is therefore owed to the Minister in properly made planning decisions. A decision is properly made where it is consistent with sound planning principles and is supported by objective and reliable evidence.¹⁶
34. In relation to this matter, 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.

Test Application

Step 1: Processing of the Application

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

¹³ *Stringer (Re)*, *Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 ("*Stringer*") at para 52.

¹⁴ *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, Order LA25-02 ("*Aftab*") at para 27.

¹⁵ *Aftab* at para 28.

¹⁶ *Ibid.*

36. 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 and sound planning principles were considered and applied during the Minister's assessment of the Applications.
37. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
38. Consultation on the change of use occurred with lot owners within 100m of the Subject Property pursuant to section 29(2) of the Regulations and the Minister properly consulted with other Departments to ensure compliance with the Act and Regulations.
39. A full public meeting was not required pursuant to the applicable legislation and "all community members of Desable"¹⁷ were not required to be notified. Notwithstanding the Appellants submissions at paragraph 6 of the concerns section in the Notice of Appeal, the Minister did fully consider the submissions received.

The Application

40. The Application was made on the form prescribed by the Minister and included the information listed in section 14 of the Regulations. Pursuant to subsection 27(2) of the Regulations, a plan of subdivision drawn accurately to scale was submitted in lieu of a certified survey plan.
41. The Decision requires that the lot have the specified minimum frontage and minimum area and the Developer have the Subject Property surveyed with at least eight (8) copies of the survey plan be submitted prior to final approval being granted.

Interdepartmental Consultations

42. Pursuant to section 5 of the Regulations, Sarah engaged in substantial correspondence with other Government Departments and Sections to ensure that all necessary approvals relating to the Subject Properties had been obtained, as appropriate, prior to rendering the Decision. In doing so, it was appropriate for Sarah to rely upon the regulatory determinations of those Government Departments and Sections within their respective areas of responsibility.

Notice to Surrounding Property Owners

43. Pursuant to the Regulations, it is within the Minister's discretion to hold a public meeting regarding a proposed subdivision and to consider written submissions from owners of a lot within 100 metres of the lot to which the application applies. The Minister exercised

¹⁷ Minister's Record, Tab 2 page 8.

their discretion in not holding a public meeting. The Minister did, however, take into consideration written submissions of surrounding landowners, including the Appellants.

44. The consultation letter was received by the Appellants on June 9, 2026. The Appellants were advised that they could provide their submissions beyond the two-week timeline noted in the consultation letter. The Appellants provided their submissions on June 28, 2026.
45. The other submission from Rosie MacFarlane was dated July 5, 2026.
46. Any issues concerning the timing of receipt of submissions did not result in procedural unfairness or prejudice to the Appellants. The Appellants were provided an opportunity to provide their submissions, and did so.
47. The submissions received were considered by Sarah before her the Decision was made on July 15, 2026. Accordingly, the Appellants were able to meaningfully participate in the process, and no prejudice arose.¹⁸

The Decision

48. The Decision also satisfied the requirements of procedural fairness by clearly identifying the decision, the reasons for the decision and the conditions attaching to the approval.
49. The Minister therefore submits that the first part of the test is satisfied. The Decision demonstrates that the Minister discharged the duty of fairness in rendering the Decision in respect of the Application, including complying with the Act and the Regulations, as well as seeking and applying advice from a land use planning professional.

Step 2: Planning Principles

50. 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

51. 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

¹⁸ *Dorgan et al v Town of Tignish*, Order LA25-07 at para 27 ("Dorgan").

*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.*¹⁹

52. The Commission has previously commented that sound planning must be a common feature of development throughout Prince Edward Island.²⁰ 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”.²¹
53. 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.²²
54. As such, 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 requested that Taylor Craig, Planner II for the Minister (“Taylor”) review the Application.
55. Taylor recommended the approval of the Application following completing research, conducting a site visit, reviewing the information contained within the Application and considering the submissions from surrounding property owners²³.
56. In reliance on the planning conclusions and recommendations provided by Taylor, the Minister approved the Subject Application. The Minister would have made a substantive error had they based the Decision on considerations other than sound planning principles.
57. At paragraph 42 of Order LA18-02, the Commission found:

*[w]hen it comes to developments, assertions or speculations from neighbours are not sufficient to overcome objective and reliable evidence. While consultation with – and input from – the public is an important element of the planning process it cannot be construed as a veto on the development of properties owned by others.*²⁴

58. In Order LA23-03, the City of Charlottetown (“City”) decided to reject a rezoning request by the appellant contrary to the City’s planning staff’s professional recommendation. The Commission reiterated the need for objective decision-making with reliance on

¹⁹ Stringer at para 64.

²⁰ Ibid.

²¹ Ibid at para 58.

²² 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.

²³ Minister’s Record, Tabs 5(a) and 5(b).

²⁴ *Queens County Condominium Corporation No 40 v City of Charlottetown*, Order LA18-02 at para 42.

assessments, opinions and reports of trained professionals, as opposed to the hue and cry of neighbours or politicians. 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."²⁵

59. More recently in Order LA25-07, the Commission denied the appellants' appeal as the decision was supported by objective and reliable evidence from a land use planning professional, notwithstanding the Commission also appreciated and understood the appellants' expressed concerns in relation to the subject development.²⁶

Jurisdiction

60. 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.
61. Pursuant to subsection 28(1)(c) and (d) 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 subdivision permit or approval of a change of use.
62. The Commission's jurisdiction to hear and decide issues on an appeal of a subdivision and/or change of use approval 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. As set out herein, the Minister submits that it properly issued the permit subject to the Appeal.
63. The Commission does not have jurisdiction to provide some of the relief that the Appellants are seeking including: to require that "all community members of Desable are notified of the intended use of the property"; that "buffer zones are in place on all property fronts"; fencing be put around the property lines; hazard signage be put in place and be clearly visible; that a detailed road maintenance place be put in place for Todd Road; that access to Todd Road be limited; and that there be limits on the hours of operation.

²⁵ *New Homes* at paras 60 and 62.

²⁶ *Dorgan* at para 51.

Conclusion

64. For the reasons outlined above, the Minister therefore submits that this appeal must be dismissed.
65. 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,



Mitchell O'Shea and Christiana Tweedy
Lawyers for the Minister of Land and Environment