TAB A

000631

MIKE JAMES & SHELDON STEWART
P.O. BOX 700
KENSINGTON, PE C0B 1M0

MALPEQUE BAY CREDIT UNION LTD.
1 COMMERCIAL ST., P.O. BOX 428 836-3030
KENSINGTON, P.E.I. C0B 1M0

Shield

03/30/2022

PAY twenty one hundred ninety five —— 00 $ 2195 00

TO THE ORDER OF Minister of Finance

MIKE JAMES & SHELDON STEWART

PER _____

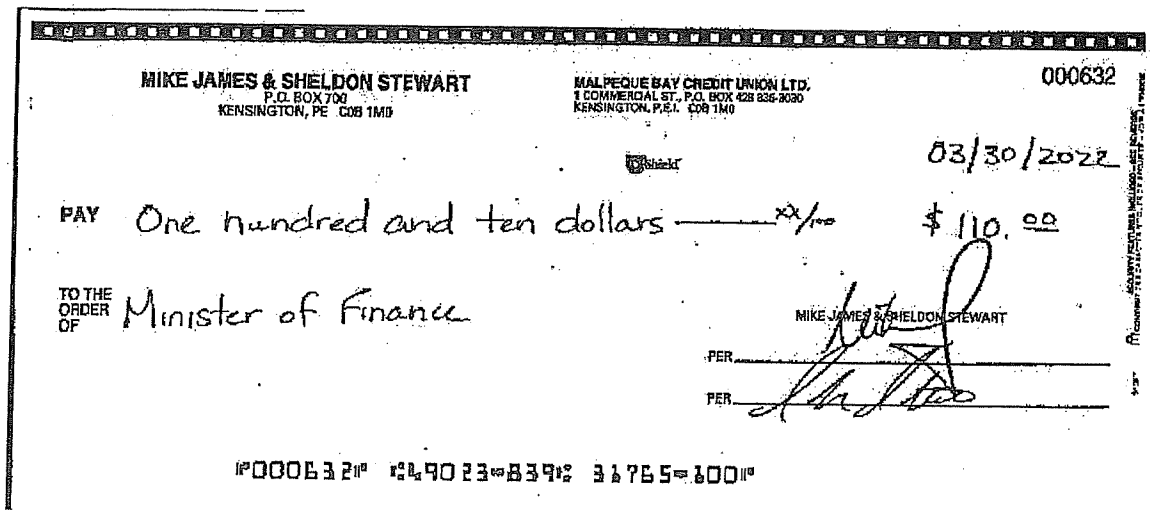
PER _____

⑈000631⑈ ⑆490233839⑆ 31765 100⑈

TAB B

Cheque Image

Cheque front:



MIKE JAMES & SHELDON STEWART
P.O. BOX 700
KENSINGTON, PE C0B 1M0

MALPEQUE BAY CREDIT UNION LTD.
1 COMMERCIAL ST., P.O. BOX 428 836-3030
KENSINGTON, P.E.I. C0B 1M0

000632

03/30/2022

PAY One hundred and ten dollars ——— xx/100 $ 110. 00

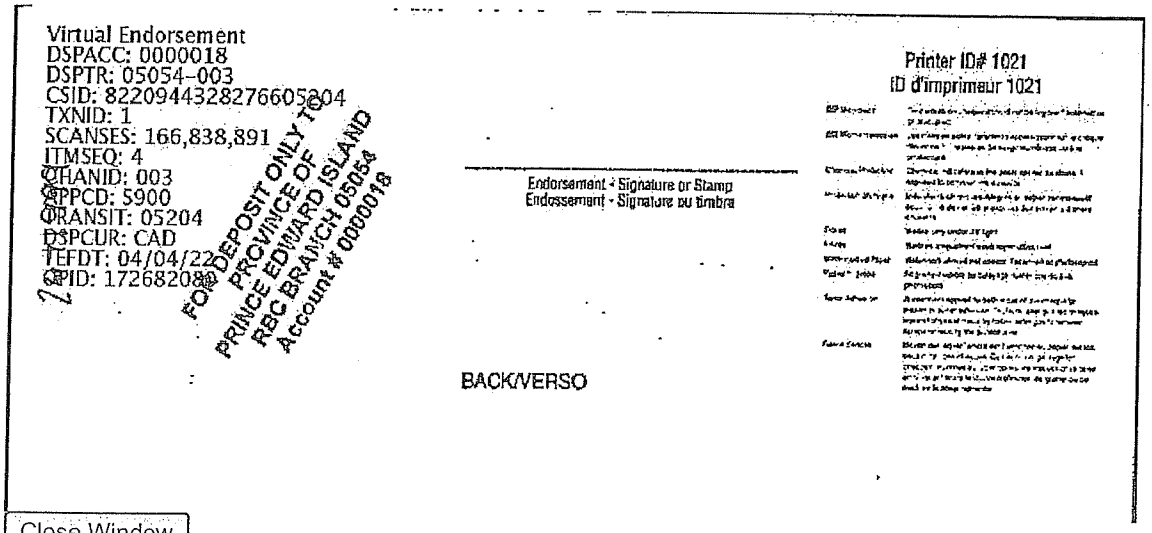
TO THE ORDER OF Minister of Finance

MIKE JAMES & SHELDON STEWART
PER
PER

⑈000632⑈ ⑆90023⑆839⑈ 31765⑆800⑈

Campbellton Road subdivision application.

Cheque back:



Virtual Endorsement
DSPACC: 0000018
DSPTR: 05054-003
CSID: 8220944328276605804
TXNID: 1
SCANSES: 166,838,891
ITMSEQ: 4
CHANID: 003
APPCD: 5900
TRANSIT: 05204
DSPCUR: CAD
TEFDT: 04/04/22
CPID: 17268208

FOR DEPOSIT ONLY TO
PROVINCE OF
PRINCE EDWARD ISLAND
RBC BRANCH 05054
Account # 0000018

Endorsement - Signature or Stamp
Endossement - Signature ou timbre

Printer ID# 1021
ID d'imprimeur 1021

BACK/VERSO

Close Window

POSTED WP

TAB C

Outlook Search Meet Now SS

Home View Help

New mail Delete Archive Report Sweep Move to Reply Read / Unread Categ

Your browser supports setting Outlook.com as the default email handler... Try it now Ask again later Don't show again

Favorites
- Sent Items
- Drafts 44
- Archive
- Junk Em... 43

Add favorite

Folders
- Inbox
- Junk Em... 43
- Drafts 44
- Sent Items
- Delete... 169
- Archive
- Notes
- Conversati...
- Unwanted

Create new ...

Groups

Close Previous Next

FW: Re: Campbellton Road

SS Sheldon Stewart
To: smacfarlane@gov.pe.ca

Wed 2022-03-30 2:14 PM

21044-P03-DRAFT#2.pdf
192 KB

Sent from my Bell Samsung device over Canada's largest network.

-------- Original message --------
From: Jamie Clow <jamie.clow@gmail.com>
Date: 2022-03-28 12:54 p.m. (GMT-04:00)
To: Sheldon Stewart <sheldonstewart64@hotmail.com>
Subject: Re: Campbellton Road

Hi Sheldon,
See attached.

Jamie

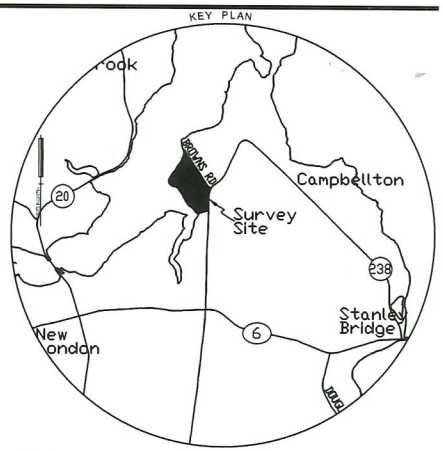
On Mon, Mar 21, 2022 at 12:59 PM Jamie Clow <jamie.clow@gmail.com> wrote:

> Hi Sheldon,
> Attached is a draft plan for discussion purposes. Need to decide open area location. Need about 3.6 acres.
>
> Jamie
>
> --
> **Jamie Clow**
> **Locus Surveys Ltd.**
> **PO Box 35**
> **16 Park Road**
> **Kensington, PE**
> **C0B 1M0**
> **902-836-3823**

--
Jamie Clow
Locus Surveys Ltd.
PO Box 35
16 Park Road
Kensington, PE
C0B 1M0
902-836-3823

Reply Forward

KEY PLAN



LEGEND:

⊙ PL.	PLACED SURVEY MARKER
⊙ FD.	FOUND SURVEY MARKER
PL.	PLACED
FD.	FOUND
P.I.D. NO.	PROPERTY IDENTIFICATION NUMBER
SQ.M.	SQUARE METRES
U.M.	UNMONUMENTED POINT
O.H.W.M.	ORDINARY HIGH WATER MARK

NOTES:

THIS PLAN IS METRIC AND ALL DISTANCES ARE IN METRES UNLESS OTHERWISE SPECIFIED.

CIRCLES SHOWN ARE 175' IN DIAMETER.

60' SHORELINE BUFFER.

THE DESIGNATORS, LOTS 22-1 THRU 22-26, ORIGINATE WITH THIS DRAWING.

PRELIMINARY APPROVAL IS REQUESTED FOR LOTS 22-1 THRU 22-26.

LOCUS SURVEYS LTD.
16 PARK ROAD
P.O. BOX 35
KENSINGTON, P.E.I.
C0B 1M0
PHONE 902-836-3823

Preliminary Plan of Survey Showing LOTS 22-1 THRU 22-26, being a Subdivision of Lands of MIKE JAMES and SHELDON STEWART

PID 88567
NEW LONDON
LOT/TOWNSHIP 21
COUNTY OF QUEENS
PROVINCE OF PRINCE EDWARD ISLAND

SURVEYOR'S CERTIFICATE

I, JAMES A. CLOW, PRINCE EDWARD ISLAND LAND SURVEYOR, HEREBY CERTIFY THAT THIS SURVEY WAS EXECUTED UNDER MY DIRECTION AND SUPERVISION AND THAT THIS PLAN IS A TRUE AND CORRECT REPRESENTATION OF SAID SURVEY.

DATED THIS 28TH DAY OF MARCH, 2022

JAMES A. CLOW, P.E.I.L.S.

THE ASSOCIATION OF PRINCE EDWARD ISLAND LAND SURVEYORS
JAMES A. CLOW
No. 35
P.E.I.L.S.
MEMBER

DRAFT

0 20 40 80 120
SCALE: 1:2,000 (metric)

DATE: MARCH 28, 2022
DWG NO: 21044-P03

TAB D

Stantec

Subsurface Investigation

Lot Classification for Onsite Sewage Disposal – Proposed 26-Lot Subdivision, PID 88567, Campbellton Road, New London, PE

Project No. 121623849

July 18, 2022

Prepared for:

Mike James and Sheldon Stewart
PO Box 700
Kensington PE C0B 1M0

Prepared by:

Stantec Consulting Ltd.
165 Maple Hills Avenue
Charlottetown PE C1C 1N9

Stantec Consulting Ltd.
165 Maple Hills Avenue, Charlottetown PE C1C 1N9

July 18, 2022
File: 121623849

Attention: Mr. Sheldon Stewart
Mike James and Sheldon Stewart
PO Box 700
Kensington PE C0B 1M0

Dear Mr. Stewart,

Reference: Lot Classification for Onsite Sewage Disposal – Proposed 26-Lot Subdivision, PID 88567, Campbellton Road, New London, PE

This report contains the findings of the subsurface investigation carried out at the above noted site, in accordance with your email request. Our services were completed in accordance with our proposal dated April 26, 2022 and submitted under file: 906310. The purpose of this investigation was to review the subsurface conditions and determine if the existing strata meet the general components for a sewage disposal system in accordance with the PEI *Planning Act* Subdivision and Development Regulations, current to July 24, 2021, and the PEI *Water Act* Sewage Disposal Systems Regulations, current to June 16, 2021.

BACKGROUND AND SITE INFORMATION

We understand that you are planning to subdivide a 14-hectare parcel of land identified by Property Identification (PID) number 88567. The site is bordered by Campbellton Road, Browns Road and the South West River in New London, PEI. A preliminary site plan, prepared by Locus Surveying Ltd. indicated the development will include 26 lots, identified as Lot 22-1 to Lot 22-26.

An initial review of available soils information for the area (Prince Edward Island Soil Survey 1988; 1:5,000 mapping) indicate the predominant soil types throughout the subject property consists of the Charlottetown (Ch) and Malpeque (Ma) soils map units. A 1.1 hectare area identified as Coastal beach (Cb) and Steep land (St) is located in the southern portion of the property within portions of lots identified as 22-12 to 22-14 and an open area. The topography at the site can generally be described as level to gently undulating, to undulating (0 to 5 percent slope).

FIELD INVESTIGATION

The field work for the present investigation was carried out on June 28, 2022 and consisted of excavating thirteen (13) test pits at the site with a rubber-tired backhoe. The test pit locations were established by Stantec personnel and surveyed with a high-precision global positioning system (GPS) unit.

Test pits were excavated by a contractor supplied by the client at the locations shown on Drawing No. 1 - Test Pit Location Plan, appended. Soil logging and sampling was completed by Stantec Consulting Ltd. (Stantec) to assess the subsurface conditions. The test pits were advanced to depths of approximately 1.9 to 2.0 m below the existing ground surface at the locations shown on the appended Drawing No. 1.

Reference: **Lot Classification for Onsite Sewage Disposal – Proposed 26-Lot Subdivision, PID 88567, Campbellton Road, New London, PE**

Representative samples of the soils encountered at the test pit locations were recovered for classification and laboratory testing. Field permeability tests utilizing a pask permeameter were carried out within the overburden soil at select test pit locations.

FINDINGS

The subsurface conditions encountered at the test pit locations are described in detail on the appended Test Pit Records. For the purposes of this investigation, the Canadian System of Soil Classification (CSSC), published by Agriculture Canada in 1983, was used for soil classification.

In general, the subsurface conditions observed at the test pits are described as follows:

- SILTY SAND: Compact, brown, silty sand with some gravel and rootlets: Topsoil, 250 to 300 millimeters in thickness; The topsoil has a silty sand texture and granular structure; underlain by,
- LOAM: Compact, reddish brown, silty sand with some gravel, trace rootlets: Till. The till has a loam texture and a blocky structure; underlain by,
- SILT LOAM: Dense, reddish brown, silty sand to sandy silt with some gravel and cobbles: Till. This principal till soil has a silt loam texture and blocky structure.

Six (6) samples were submitted for grain size analysis. Field permeability testing was completed at select test pit locations within the topsoil and till strata. The results are summarized in Tables 1 and 2 and shown on the corresponding Gradation Curves and Test Pit Records, attached.

Table 1. Grain Size Test Results

Test Pit Number	Moisture Content (%)	Percent Gravel	Percent Sand	Percent Silt/Clay	Soil Type, based on CSSC
TP-01	14.4	7.1	50.3	42.6	Silty Sand: TOPSOIL
TP-03	14.3	9.5	49.5	41.0	Silt Loam: TILL
TP-07	16.1	8.8	38.1	53.1	Silt Loam: TILL
TP-10	22.9	1.0	67.3	31.7	Silty Sand: TOPSOIL
TP-10	14.8	4.1	55.1	40.8	Silt Loam: TILL
TP-13	19.5	12.9	44.0	43.1	Silt Loam: TILL

Table 2. Field Permeability Test Results and Depth of Permeable Soil

Test Pit Number	Test Depth, m	Coefficient of Permeability, K_{fs} (cm/s)	Soil Type, based on CSSC
TP-01	0.30	2.1×10^{-4}	Loam: TILL
TP-01	0.61	2.1×10^{-5}	Silt Loam: TILL
TP-05	0.46	3.0×10^{-4}	Loam: TILL
TP-05	0.61	4.8×10^{-5}	Silt Loam: TILL

Reference: **Lot Classification for Onsite Sewage Disposal – Proposed 26-Lot Subdivision, PID 88567, Campbellton Road, New London, PE**

Test Pit Number	Test Depth, m	Coefficient of Permeability, K_{fs} (cm/s)	Soil Type, based on CSSC
TP-07	0.30	1.0×10^{-4}	Loam: TILL
TP-07	0.46	4.1×10^{-5}	Silt Loam: TILL
TP-10	0.38	4.4×10^{-4}	Loam: TILL
TP-10	0.61	4.1×10^{-5}	Silt Loam: TLL

The depth of permeable soil, distance to bedrock and distance to groundwater for each test pit can be summarized in Table 3, below. The depth of permeable soil is based on the field permeability test results and visual observations of subsurface conditions encountered at the test pit locations. Bedrock was not encountered within the depth excavated at the test pit locations. Groundwater was encountered in one test pit, TP-03, at 1.83 meters below ground surface.

Table 3. Depth of Permeable Soil and Distance to Bedrock, Groundwater

Test Pit Number	Depth of Permeable Soil (m)	Distance to Bedrock (m)	Distance to Groundwater (m)
TP-01	0.43	>1.88	>1.88
TP-02	0.36	>1.88	>1.88
TP-03	0.36	>1.85	1.83
TP-04	0.41	>1.85	>1.85
TP0-5	0.48	>1.88	>1.88
TP0-6	0.33	>1.91	>1.91
TP-07	0.33	>1.85	>1.85
TP-08	0.48	>1.98	>1.98
TP-09	0.36	>1.88	>1.88
TP-10	0.43	>1.85	>1.85
TP-11	0.36	>1.83	>1.83
TP-12	0.33	>1.91	>1.91
TP-13	0.51	>1.85	>1.85

DISCUSSION

The topsoil (SILTY SAND) and surficial till (LOAM) layers observed at the test pit locations are considered permeable soils, as per the PEI *Water Act* Sewage Disposal Systems Regulations and are considered suitable for use in onsite sewage disposal systems. The underlying principle Till layer (SILT LOAM) is considered to be a non-permeable soil and is therefore not suitable for use in onsite sewage disposal

systems. Bedrock and groundwater were not observed within 1.22 meters from ground surface for these test pit locations.

The provincial criteria for lot categorization are based on three site suitability standards; depth of permeable natural soil, depth of bedrock and depth of groundwater table, per Table 4, below. Minimum lot size standards for single dwelling units are provided based on lot categorization.

Table 4. Lot Categories based on Site Suitability Standards

Lot Category	Depth of Permeable Natural Soil (m)	Depth to Bedrock (m)	Depth to Max. Groundwater (m)	Minimum Lot Size for a Single Dwelling Unit (m^2)[1]	Minimum Circle Diameter to be Contained within Lot Boundaries (m)[1]
Category I	≥ 0.61	≥ 1.22	≥ 1.22	2,322.5	45.7
Category II	0.30 <d< 0.61	≥ 1.22	≥ 1.22	3,251.5	53.3
Category III	≥ 0.30	0.61 ≤d< 1.22	0.61 ≤d< 1.22	4,738.0	68.6
Category IV	< 0.30	> 0.30	> 0.61	6,975.0	91.4
Category V	-	< 0.30	> 0.61	Not Developable	-

[1]Based on one dwelling unit per lot and a lot serviced by both onsite water and sewage disposal systems

Based on the conditions encountered and on the available soils mapping, a Category II lot classification is recommended for the lots identified as Lots 22-1 through 22-26. This lot classification would be applicable to the areas within the Charlottetown and Malpeque soils map units and is not applicable to the areas identified as Coastal beach and Steep land.

For a Category II lot serviced by onsite water and sewage systems, a minimum lot size of 3,251 m^2 (35,000 $ft.^2$) and a minimum contained circular diameter of 53.3 m (175 ft.) are required. The preliminary subdivision plan appears to be based on the requirements for a Category I lot size and should be revised to meet the Category II requirements for onsite septic disposal within the Charlottetown and Malpeque soils.

The present investigation was undertaken to facilitate the overall design and approval of the proposed subdivision development (i.e., macro approval). The Provincial approval process does require further assessment for each individual lot (i.e., micro approval) in conjunction with onsite sewage disposal system design and installation. The system installer should confirm that the subsurface conditions encountered within the disposal system area are as expected, based on this report.

CLOSURE

Use of this report is subject to the Statement of General Conditions provided in the Appendix. It is the responsibility of Mike James and Sheldon Stewart, as identified within the Statement of General Conditions, and its agents to review the conditions and to notify Stantec Consulting Ltd. should any of these not be satisfied. The Statement of General Conditions addresses the following:

- Use of the report
- Basis of the report
- Standard of care
- Interpretation of site conditions
- Varying or unexpected site conditions

- Planning, design or construction

A subsurface investigation is a random sampling of a site. Should any conditions be encountered which differ from those at the test locations, we request that we be notified immediately to permit reassessment of the information presented herein.

We trust that the contents of this report meet your present requirements. Should you have any questions or if we can be of further service, please contact us at your convenience.

Regards,

Stantec Consulting Ltd.

Digitally signed by Hegarty, Angela
Date: 2022.07.18 14:55:38 -03'00'

Angela Hegarty, P.Eng.
Intermediate Geotechnical Engineer
Phone: 902 566-2849
Fax: 902 566-2004
Angela.Hegarty@stantec.com

Digitally signed by Corey MacPhee
Date: 2022.07.19 10:32:07 -03'00'

Corey MacPhee, P.Eng.
Geotechnical Engineer
Phone: 902 566-2849
Fax: 902 566-2004
Corey.MacPhee@stantec.com

July 18, 2022
Mr. Sheldon Stewart

Reference: **Lot Classification for Onsite Sewage Disposal – Proposed 26-Lot Subdivision, PID 88567, Campbellton Road, New London, PE**

APPENDIX

STATEMENT OF GENERAL CONDITIONS

USE OF THIS REPORT: This report has been prepared for the sole benefit of the Client or its agent and may not be used by any third party without the express written consent of Stantec Consulting Ltd and the Client. Any use which a third party makes of this report is the responsibility of such third party.

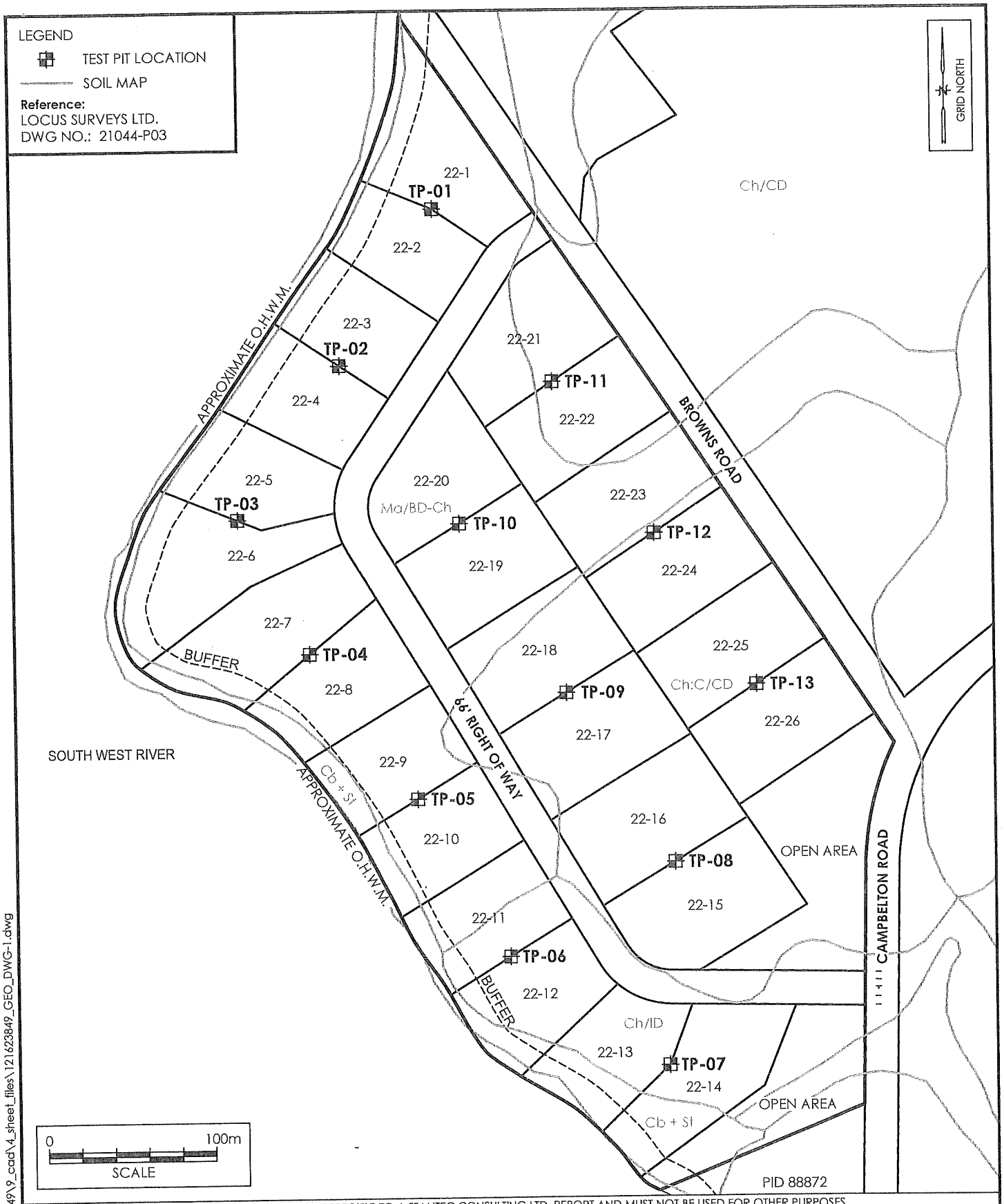
BASIS OF THE REPORT: The information, opinions, and/or recommendations made in this report are in accordance with Stantec Consulting Ltd's present understanding of the site specific project as described by the Client. The applicability of these is restricted to the site conditions encountered at the time of the investigation or study. If the proposed site specific project differs or is modified from what is described in this report or if the site conditions are altered, this report is no longer valid unless Stantec Consulting Ltd is requested by the Client to review and revise the report to reflect the differing or modified project specifics and/or the altered site conditions.

STANDARD OF CARE: Preparation of this report, and all associated work, was carried out in accordance with the normally accepted standard of care in the state or province of execution for the specific professional service provided to the Client. No other warranty is made.

INTERPRETATION OF SITE CONDITIONS: Soil, rock, or other material descriptions, and statements regarding their condition, made in this report are based on site conditions encountered by Stantec Consulting Ltd at the time of the work and at the specific testing and/or sampling locations. Classifications and statements of condition have been made in accordance with normally accepted practices which are judgmental in nature; no specific description should be considered exact, but rather reflective of the anticipated material behavior. Extrapolation of in situ conditions can only be made to some limited extent beyond the sampling or test points. The extent depends on variability of the soil, rock and groundwater conditions as influenced by geological processes, construction activity, and site use.

VARYING OR UNEXPECTED CONDITIONS: Should any site or subsurface conditions be encountered that are different from those described in this report or encountered at the test locations, Stantec Consulting Ltd must be notified immediately to assess if the varying or unexpected conditions are substantial and if reassessments of the report conclusions or recommendations are required. Stantec Consulting Ltd will not be responsible to any party for damages incurred as a result of failing to notify Stantec Consulting Ltd that differing site or sub-surface conditions are present upon becoming aware of such conditions.

PLANNING, DESIGN, OR CONSTRUCTION: Development or design plans and specifications should be reviewed by Stantec Consulting Ltd, sufficiently ahead of initiating the next project stage (property acquisition, tender, construction, etc), to confirm that this report completely addresses the elaborated project specifics and that the contents of this report have been properly interpreted. Specialty quality assurance services (field observations and testing) during construction are a necessary part of the evaluation of sub-subsurface conditions and site preparation works. Site work relating to the recommendations included in this report should only be carried out in the presence of a qualified geotechnical engineer; Stantec Consulting Ltd cannot be responsible for site work carried out without being present.



THIS DRAWING ILLUSTRATES SUPPORTING INFORMATION SPECIFIC TO A STANTEC CONSULTING LTD. REPORT AND MUST NOT BE USED FOR OTHER PURPOSES.

TEST PIT LOCATION PLAN

26 LOT SUBDIVISION - PID 88567

CAMPBELLTON ROAD, NEW LONDON, PE

Client: MIKE JAMES AND SHELDON STEWARD

Job No.:	121623849
Scale:	1 : 3000
Date:	18-JUL-2022
Dwn. By:	MA
App'd By:	CM

Dwg. No.: 1

Stantec

V:\01216\active\121623849\9_cad\4_sheet_files\121623849_GEO_DWG-1.dwg

SYMBOLS AND TERMS USED ON BOREHOLE AND TEST PIT RECORDS

SOIL DESCRIPTION

Terminology describing common soil genesis:

Rootmat	- vegetation, roots and moss with organic matter and topsoil typically forming a mattress at the ground surface
Topsoil	- mixture of soil and humus capable of supporting vegetative growth
Peat	- mixture of visible and invisible fragments of decayed organic matter
Till	- unstratified glacial deposit which may range from clay to boulders
Fill	- material below the surface identified as placed by humans (excluding buried services)

Terminology describing soil structure:

Desiccated	- having visible signs of weathering by oxidization of clay minerals, shrinkage cracks, etc.
Fissured	- having cracks, and hence a blocky structure
Varved	- composed of regular alternating layers of silt and clay
Stratified	- composed of alternating successions of different soil types, e.g. silt and sand
Layer	- > 75 mm in thickness
Seam	- 2 mm to 75 mm in thickness
Parting	- < 2 mm in thickness

Terminology describing soil types:
The classification of soil types are made on the basis of grain size and plasticity in accordance with the Unified Soil Classification System (USCS) (ASTM D 2487 or D 2488) which excludes particles larger than 75 mm. For particles larger than 75 mm, and for defining percent clay fraction in hydrometer results, definitions proposed by Canadian Foundation Engineering Manual, 4th Edition are used. The USCS provides a group symbol (e.g. SM) and group name (e.g. silty sand) for identification.

Terminology describing cobbles, boulders, and non-matrix materials (organic matter or debris):
Terminology describing materials outside the USCS, (e.g. particles larger than 75 mm, visible organic matter, and construction debris) is based upon the proportion of these materials present:

Trace, or occasional	Less than 10%
Some	10-20%
Frequent	> 20%

Terminology describing compactness of cohesionless soils:
The standard terminology to describe cohesionless soils includes compactness (formerly "relative density"), as determined by the Standard Penetration Test (SPT) N-Value - also known as N-Index. The SPT N-Value is described further on page 3. A relationship between compactness condition and N-Value is shown in the following table.

Compactness Condition	SPT N-Value
Very Loose	<4
Loose	4-10
Compact	10-30
Dense	30-50
Very Dense	>50

Terminology describing consistency of cohesive soils:
The standard terminology to describe cohesive soils includes the consistency, which is based on undrained shear strength as measured by *in situ* vane tests, penetrometer tests, or unconfined compression tests. Consistency may be crudely estimated from SPT N-Value based on the correlation shown in the following table (Terzaghi and Peck, 1967). The correlation to SPT N-Value is used with caution as it is only very approximate.

Consistency	Undrained Shear Strength		Approximate SPT N-Value
	kips/sq.ft.	kPa	
Very Soft	<0.25	<12.5	<2
Soft	0.25 - 0.5	12.5 - 25	2-4
Firm	0.5 - 1.0	25 - 50	4-8
Stiff	1.0 - 2.0	50 – 100	8-15
Very Stiff	2.0 - 4.0	100 - 200	15-30
Hard	>4.0	>200	>30

ROCK DESCRIPTION

Except where specified below, terminology for describing rock is as defined by the International Society for Rock Mechanics (ISRM) 2007 publication "The Complete ISRM Suggested Methods for Rock Characterization, Testing and Monitoring: 1974-2006"

Terminology describing rock quality:

RQD	Rock Mass Quality
0-25	*Very Poor Quality*
25-50	*Poor Quality*
50-75	*Fair Quality*
75-90	*Good Quality*
90-100	*Excellent Quality*

Alternate (Colloquial) Rock Mass Quality	
Very Severely Fractured	*Crushed*
Severely Fractured	*Shattered or Very Blocky*
Fractured	*Blocky*
Moderately Jointed	*Sound*
Intact	*Very Sound*

RQD (Rock Quality Designation) denotes the percentage of intact and sound rock retrieved from a borehole of any orientation. All pieces of intact and sound rock core equal to or greater than 100 mm (4 in.) long are summed and divided by the total length of the core run. RQD is determined in accordance with ASTM D6032.

SCR (Solid Core Recovery) denotes the percentage of solid core (cylindrical) retrieved from a borehole of any orientation. All pieces of solid (cylindrical) core are summed and divided by the total length of the core run (It excludes all portions of core pieces that are not fully cylindrical as well as crushed or rubble zones).

Fracture Index (FI) is defined as the number of naturally occurring fractures within a given length of core. The Fracture Index is reported as a simple count of natural occurring fractures.

Terminology describing rock with respect to discontinuity and bedding spacing:

Spacing (mm)	Discontinuities	Bedding
>6000	*Extremely Wide*	-
2000-6000	*Very Wide*	*Very Thick*
600-2000	*Wide*	*Thick*
200-600	*Moderate*	*Medium*
60-200	*Close*	*Thin*
20-60	*Very Close*	*Very Thin*
<20	*Extremely Close*	*Laminated*
<6	-	*Thinly Laminated*

Terminology describing rock strength:

Strength Classification	Grade	Unconfined Compressive Strength (MPa)
Extremely Weak	R0	<1
Very Weak	R1	1 – 5
Weak	R2	5 – 25
Medium Strong	R3	25 – 50
Strong	R4	50 – 100
Very Strong	R5	100 – 250
Extremely Strong	R6	>250

Terminology describing rock weathering:

Term	Symbol	Description
Fresh	W1	No visible signs of rock weathering. Slight discoloration along major discontinuities
Slightly	W2	Discoloration indicates weathering of rock on discontinuity surfaces. All the rock material may be discolored.
Moderately	W3	Less than half the rock is decomposed and/or disintegrated into soil.
Highly	W4	More than half the rock is decomposed and/or disintegrated into soil.
Completely	W5	All the rock material is decomposed and/or disintegrated into soil. The original mass structure is still largely intact.
Residual Soil	W6	All the rock converted to soil. Structure and fabric destroyed.

STRATA PLOT

Strata plots symbolize the soil or bedrock description. They are combinations of the following basic symbols. The dimensions within the strata symbols are not indicative of the particle size, layer thickness, etc.

Boulders Cobbles Gravel | Sand | Silt | Clay | Organics | Asphalt | Concrete | Fill | Igneous Bedrock | Meta-morphic Bedrock | Sedi-mentary Bedrock

SAMPLE TYPE

SS	Split spoon sample (obtained by performing the Standard Penetration Test)
ST	Shelby tube or thin wall tube
DP	Direct-Push sample (small diameter tube sampler hydraulically advanced)
PS	Piston sample
BS	Bulk sample
HQ, NQ, BQ, etc.	Rock core samples obtained with the use of standard size diamond coring bits.

WATER LEVEL MEASUREMENT

measured in standpipe, piezometer, or well

inferred

RECOVERY

For soil samples, the recovery is recorded as the length of the soil sample recovered. For rock core, recovery is defined as the total cumulative length of all core recovered in the core barrel divided by the length drilled and is recorded as a percentage on a per run basis.

N-VALUE

Numbers in this column are the field results of the Standard Penetration Test: the number of blows of a 140 pound (63.5 kg) hammer falling 30 inches (760 mm), required to drive a 2 inch (50.8 mm) O.D. split spoon sampler one foot (300 mm) into the soil. In accordance with ASTM D1586, the N-Value equals the sum of the number of blows (N) required to drive the sampler over the interval of 6 to 18 in. (150 to 450 mm). However, when a 24 in. (610 mm) sampler is used, the number of blows (N) required to drive the sampler over the interval of 12 to 24 in. (300 to 610 mm) may be reported if this value is lower. For split spoon samples where insufficient penetration was achieved and N-Values cannot be presented, the number of blows are reported over sampler penetration in millimetres (e.g. 50/75). Some design methods make use of N-values corrected for various factors such as overburden pressure, energy ratio, borehole diameter, etc. No corrections have been applied to the N-values presented on the log.

DYNAMIC CONE PENETRATION TEST (DCPT)

Dynamic cone penetration tests are performed using a standard 60 degree apex cone connected to 'A' size drill rods with the same standard fall height and weight as the Standard Penetration Test. The DCPT value is the number of blows of the hammer required to drive the cone one foot (300 mm) into the soil. The DCPT is used as a probe to assess soil variability.

OTHER TESTS

S	Sieve analysis
H	Hydrometer analysis
k	Laboratory permeability
γ	Unit weight
G_s	Specific gravity of soil particles
CD	Consolidated drained triaxial
CU	Consolidated undrained triaxial with pore pressure measurements
UU	Unconsolidated undrained triaxial
DS	Direct Shear
C	Consolidation
Q_u	Unconfined compression
I_p	Point Load Index (I_p on Borehole Record equals $I_p(50)$ in which the index is corrected to a reference diameter of 50 mm)

	Single packer permeability test; test interval from depth shown to bottom of borehole
	Double packer permeability test; test interval as indicated
	Falling head permeability test using casing
	Falling head permeability test using well point or piezometer

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TEST PIT RECORD

TP-01

CLIENT Mike James and Sheldon Stewart

LOCATION PID No. 88567, Campbellton Road, New London, PE

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

PROJECT No. 121623849

TEST PIT No. TP-01

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure			GS	1	
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					- Kfs= 2.1 x 10-4 cm/s
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure			GS	2	- Kfs= 2.1 x 10-5 cm/s
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-02

CLIENT **Mike James and Sheldon Stewart**

LOCATION **PID No. 88567, Campbellton Road, New London, PE**

DATES: DUG **2022-06-28** WATER LEVEL **Not Observed**

PROJECT No. **121623849**

TEST PIT No. **TP-02**

DATUM **Not Available**

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure					
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-03

CLIENT Mike James and Sheldon Stewart

PROJECT No. 121623849

LOCATION PID No. 88567, Campbellton Road, New London, PE

TEST PIT No. TP-03

DATES: DUG 2022-06-28

WATER LEVEL 1.83 m on 2022-06-28

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure			GS	1	
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure		▽	GS	2	
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-04

CLIENT Mike James and Sheldon Stewart

PROJECT No. 121623849

LOCATION PID No. 88567, Campbellton Road, New London, PE

TEST PIT No. TP-04

DATES: DUG 2022-06-28

WATER LEVEL Not Observed

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure					
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-05

CLIENT Mike James and Sheldon Stewart

PROJECT No. 121623849

LOCATION PID No. 88567, Campbellton Road, New London, PE

TEST PIT No. TP-05

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure			GS	1	
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					- Kfs= 3.0x 10-4 cm/s
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure			GS	2	- Kfs= 4.8 x 10-5 cm/s
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-06

CLIENT Mike James and Sheldon Stewart

LOCATION PID No. 88567, Campbellton Road, New London, PE

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

PROJECT No. 121623849

TEST PIT No. TP-06

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure					
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-07

CLIENT Mike James and Sheldon Stewart

PROJECT No. 121623849

LOCATION PID No. 88567, Campbellton Road, New London, PE

TEST PIT No. TP-07

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure			GS	1	- Kfs= 1.0x 10-4 cm/s
1		SILT LOAM: Dense, reddish brown sandy silt with some gravel and cobbles: Till; blocky structure					- Kfs= 4.1x 10-5 cm/s
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-08

CLIENT Mike James and Sheldon Stewart

PROJECT No. 121623849

LOCATION PID No. 88567, Campbellton Road, New London, PE

TEST PIT No. TP-08

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure			GS	1	
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure			GS	2	
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

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TEST PIT RECORD

TP-09

CLIENT Mike James and Sheldon Stewart

LOCATION PID No. 88567, Campbellton Road, New London, PE

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

PROJECT No. 121623849

TEST PIT No. TP-09

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure					
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-10

CLIENT Mike James and Sheldon Stewart

LOCATION PID No. 88567, Campbellton Road, New London, PE

DATES: DUG 2022-06-28 WATER LEVEL Not Observed

PROJECT No. 121623849

TEST PIT No. TP-10

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure			GS	1	
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					- Kfs= 4.4x 10-4 cm/s
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure			GS	2	- Kfs= 4.1x 10-5 cm/s
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

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TEST PIT RECORD

TP-11

CLIENT **Mike James and Sheldon Stewart**

LOCATION **PID No. 88567, Campbellton Road, New London, PE**

DATES: DUG **2022-06-28** WATER LEVEL **Not Observed**

PROJECT No. **121623849**

TEST PIT No. **TP-11**

DATUM **Not Available**

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure					
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure					
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

Stantec

TEST PIT RECORD

TP-12

CLIENT **Mike James and Sheldon Stewart**

LOCATION **PID No. 88567, Campbellton Road, New London, PE**

DATES: DUG **2022-06-28** WATER LEVEL **Not Observed**

PROJECT No. **121623849**

TEST PIT No. **TP-12**

DATUM **Not Available**

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure			GS	1	
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure			GS	2	
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							

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TEST PIT RECORD

TP-13

CLIENT Mike James and Sheldon Stewart

PROJECT No. 121623849

LOCATION PID No. 88567, Campbellton Road, New London, PE

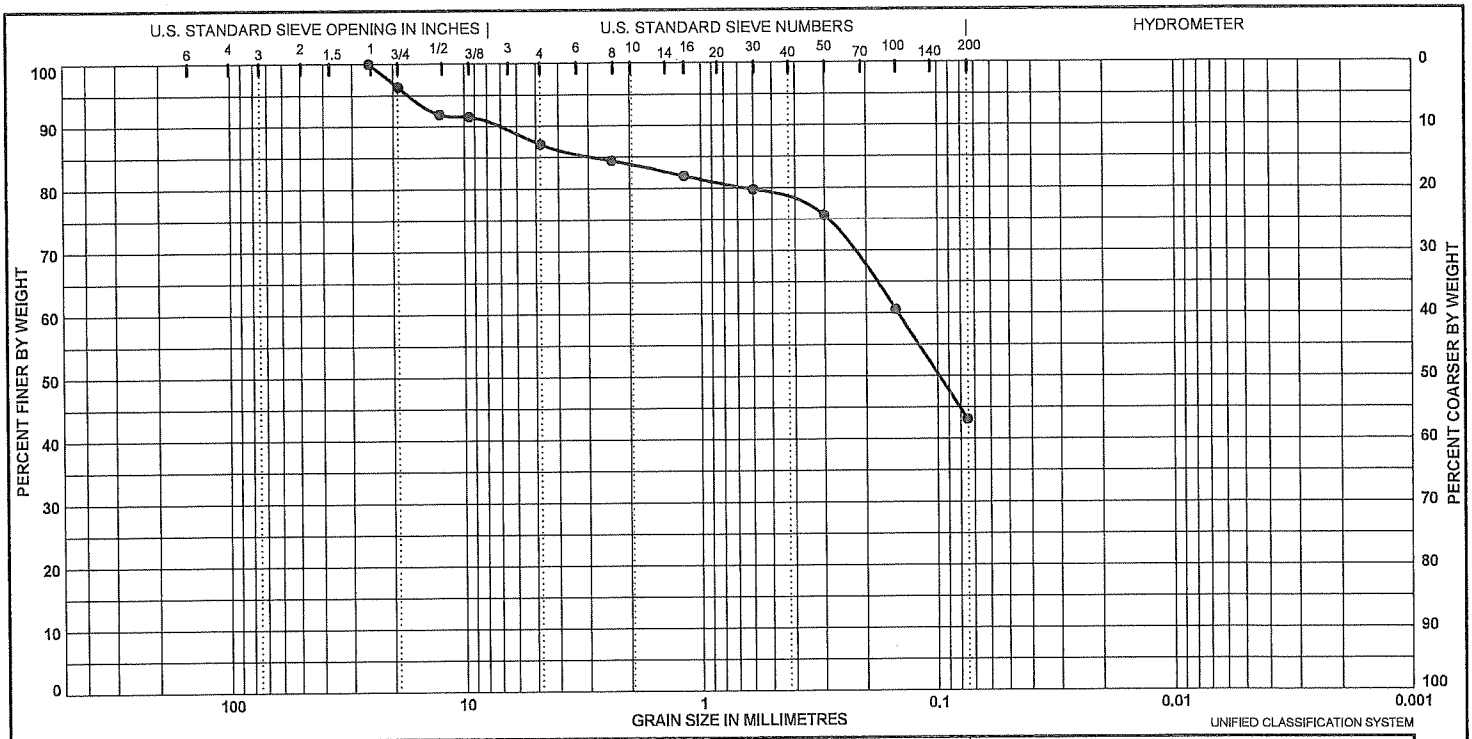
TEST PIT No. TP-13

DATES: DUG 2022-06-28

WATER LEVEL Not Observed

DATUM Not Available

DEPTH (m)	ELEVATION (m)	SOIL DESCRIPTION	STRATA PLOT	WATER LEVEL	TYPE	NUMBER	REMARKS
0		SILTY SAND: Compact, brown silty sand, some gravel with rootlets: Topsoil; granular structure			GS	1	
		LOAM: Compact, reddish brown silty sand with some gravel, trace rootlets: Till; blocky structure					- Kfs= 1.3x 10-4 cm/s
1		SILT LOAM: Dense, reddish brown silty sand with some gravel and cobbles: Till; blocky structure			GS	2	- Kfs= 6.9x 10-5 cm/s
2		End of Test Pit Soils described to the Canadian System of Soil Classification (CSSC), published by Agriculture Canada (1983)					
3							
4							
5							



COBBLES	GRAVEL		SAND			SILT and CLAY	
	coarse	fine	coarse	medium	fine	SILT	CLAY

Source	Depth	Description	W%	W_L	W_P	I_P	%Gravel	%Sand	%Silt	%Clay
TP-13	0.6	SILT LOAM: TILL	19.5				12.9	44.0	43.1	

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Project: **PID No. 88567, Campbellton Road,**	Location: **New London, PE**
Job No.: **121623849**	Notes:
Date: **2022/07/18**	**GRADATION CURVES**

TAB E

THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LA15010
Order LA17-06

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

BEFORE THE COMMISSION
on Thursday, the 10th day of August, 2017.

J. Scott MacKenzie, Q.C., Chair
Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Contents

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Appearances & Witnesses

1. **For the Appellant Donna Stringer**

   Counsel:

   John D. Stringer, Q.C.

   Witnesses:

   Donna Stringer

   Leland Wood

2. **For the Respondent Minister of Communities, Land and Environment**

   Counsel:

   Robert MacNevin

   Witness:

   Jay Carr

3. **For the Developers Betty Ann Bryanton and Gareth Llewelleyn**

   Counsel:

   Steven Forbes

   Witness:

   Betty Ann Bryanton

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Reasons for Order

1. Introduction

(1) On August 19, 2015, the Appellant Donna Stringer (the "Appellant") filed an appeal with the Island Regulatory and Appeals Commission (the "Commission") under section 28 of the ***Planning Act***, R.S.P.E.I. 1988, Cap. P-8, (the ***"Planning Act"***).

(2) The Appellant appealed an August 12, 2015 decision of the Respondent Minister of Communities, Land and Environment (the "Minister") granting Development Permit No. M-2015-0087 ("Permit 87") and Development Permit No. M-2015-0088 ("Permit 88") to the Developers Betty Ann Bryanton and Gareth Llewelleyn (the "Developers") to change the permitted use of an existing non-commercial storage building to a summer cottage (Permit 87) and to relocate three non-commercial storage buildings (Permit 88) on Provincial Parcel Number 931741, located on the south side of 158 Paradise Drive, in the Community of Little Pond (the "subject property").

(3) The Commission forwarded letters to the Minister and the Respondents advising of the Appeal and requesting that the Minister provide a copy of the development application file. On September 4, 2015 a copy of the application file was received and forwarded via email to the Appellant and the Developers.

(4) On September 15, 2015, Commission received a letter submission from Robert MacNevin, legal counsel for the Minister. Mr. MacNevin acknowledged that "Evidently the non-commercial storage buildings are used, from time to time, to accommodate people who use them to sleep at night during the summer months". Mr. MacNevin further advised that as these "non-commercial storage buildings are not hooked up to water or sewer systems, they are not considered to be "dwellings". He further submitted that "There was nothing in the ***Planning Act*** Subdivision and Development Regulations that regulate either the number or use of non-commercial storage buildings". Mr. MacNevin submitted that "There was no basis for the appeal to be successful".

(5) On September 18, 2015, the Commission's Appeals Administrator emailed the parties to facilitate the filing of written submissions and noting that the Commission was prepared to hear the appeal as early as November 2015.

(6) Submissions from Appellant's Counsel were received by the Commission on October 13, 2015. Submissions were received from the Developers on November 2, 2015.

(7) On December 9, 2015 counsel for the Minister provided a further submission by letter, departing from the original position taken in his September 15, 2015 letter, now stating that "It is the Department's position that non-commercial storage buildings, which is what Permit No. N-2015-0088 allows, are not intended to be used as sleeping quarters, or "bunkies"." [emphasis added] He further submitted that there was a gap in the Subdivision and Development Regulations that has been recognized by the Department and he advised that the Department "Will be creating Regulations to specifically address this issue in the near future, and he noted that the regulatory changes will be made in the new year, and as such I suggest that this appeal be put on hold until the new Regulations come into force. At that time the Department officials will be in a position to determine if Ms. Bryanton's units are in compliance with the new Regulations." In response to this submission the Appellant's Counsel responded noting that statutes and Regulations are not to be construed as having retrospective operation unless they are expressly or by necessary implication required in the language of the regulation. He noted that "It is the view of the Appellant that any retroactive or retrospective future legislation would be prejudicial to the rights of the Appellant, thereby giving rise to a presumption against retroactivity." He requested that the appeal proceed to a public hearing to have the matter adjudicated.

(8) On January 15, 2016 the Commission advised the parties that the appeal would proceed to a hearing and invited the parties to indicate their available dates. After consulting with the parties, the Commission scheduled the appeal to be heard on June 9 and 10, 2016.

(9) On March 15, 2016, Steven Forbes advised the Commission that he would be representing the Developers. On March 18, 2016 the Commission received a letter from Mr. Forbes requesting a change in the hearing date to July 2016. Mr. Forbes also requested the opportunity to file written submissions. On March 22, 2016, John D. Stringer, Q.C., Counsel for the Appellant, advised the Commission that he did not object to a July or August hearing. On March 22, 2016 the Commission's Appeals Administrator contacted counsel for the three parties to encourage the parties to reflect on the possibility of alternative dispute resolution ("ADR") and offer the Commission's assistance in providing ADR services. Subsequently all parties and the Commission agreed to hearing dates of July 21 and 22, 2016. Dates for filing written submissions and rebuttal submissions were also agreed to.

(10) Following the receipt of the various written submissions, Counsel for the Appellant canvassed counsel for the other parties inquiring whether there was interest in pursuing ADR. By June 3, 2016 all counsel had expressed a willingness to participate in ADR.

(11) With the agreement of all parties and their legal counsel, ADR was held on the morning of July 21, 2016 with the Commission's Appeals Administrator as mediator. The parties were unable to reach a mediated solution and requested that the appeal be heard by the Commission.

(12) The Commission heard the appeal commencing on the afternoon of July 21, 2016. Legal counsel for all three parties filed an Agreed Book of Documents which was entered as Exhibit E-1. The hearing concluded on the morning of July 22, 2016.

2. Discussion

Appellant's Testimony and Submissions

(a) The Appellant Donna Stringer ("Mrs. Stringer") testified that she purchased her property in the autumn of 2007. Mrs. Stringer's property is located adjacent to the subject property. At the time Mrs. Stringer purchased her property, the Developers had a shed on their property and also placed a tent and a dining tent on the property for two to three weeks each year. In poor weather, the Developers slept in the shed.

(b) Mrs. Stringer testified that her cottage contains seven rooms including four bedrooms. The Appellant provided an aerial photo of the cottages on Paradise Drive (Tab 27 of Exhibit E-1). The aerial photo has been annotated to insert descriptions of the ownership of the cottages and the placement of the "bunkies". The photo shows a total of five cottages, three of which are the size of the Appellant's, one which is somewhat smaller and the Developer's converted shed cottage which is substantially smaller than the others.

(c) Mrs. Stringer testified that on July 20, 2015 a port-a-pottie or free standing portable outdoor toilet enclosure was delivered to the subject property. The next day a number of workers arrived with one shed and started putting in stakes where the shed was to be placed. The second shed arrived the next day. The sheds were put in place and windows were installed in the sheds to allow for a view of the water. Mrs. Stringer testified that the Developers informed her that they were just sheds. However, Mrs. Stringer could view the workers trying to put queen size air mattresses into the sheds. She stated that when she questioned the Developers on what permits they had obtained to be allowed to put the sheds on the property, the Developers responded that they did not need permits. The Appellant checked with Leland Wood of the Department of Communities, Land and Environment and he advised that no permits had been issued. Mrs. Stringer advised that a few days later after the initial installation the shed that was closest to the water was moved and the workmen began setting in pegs for the placement of a third shed. Pegs for a third shed were later removed.

(d) Mrs. Stringer testified that when she spoke to Leland Wood at a later time he advised her that the permits were in fact granted, directed her to the Planning website and told her that in order to get information on the permits issued to the Developers, she would have to launch an appeal to the Commission under the ***Planning Act***. When she received the file as part of the appeal process, she was surprised to learn that the original shed that had been on the property was now approved through Permit 87 as a cottage. Mrs. Stringer indicated that she has a concern over the number of accessory buildings being placed on this property and was concerned that more sheds were going to be placed on the property. She also noted that to her knowledge no septic system was ever installed on the Developers' property.

(e) Under cross-examination, Mrs. Stringer acknowledged that the sheds did not impede her view of the water and that, to date, her safety and security were not compromised by the presence of the sheds. However, Mrs. Stringer did note that in her view the Developers and the Developers' guests did compromise safety and security as there were no sanitary facilities on the property and she questioned the cooking and other sanitary facilities where there was no proper disposal. Under cross-examination when she was questioned about her concerns about more sheds, she testified that originally there was pegging put in the ground for four sheds, but in the end only two sheds were actually put on the property.

(f) Leland Wood ("Mr. Wood"), is a safety standards officer employed by the Minister. Mr. Wood was called to testify by Appellant's Counsel. Mr. Wood testified that he has worked for the Minister first as a property development officer and then as a safety standards officer, for the past 13 years. He is licensed as a septic inspector. Mr. Wood is not a land use planner. He testified a summer student working at his office had taken a building permit application for two "bunkies" from Betty Ann Bryanton ("Ms. Bryanton") who is one of the Developers. Mr. Wood testified that he spoke with Ms. Bryanton who confirmed that she was seeking a permit for "bunkies". Mr. Wood testified that the original application for the "bunkies" was refused for the reason that there was no dwelling or cottage on the property at the time of the application.

(g) Mr. Wood testified that he informed Ms. Bryanton that unless the first storage shed on the property was subject to a change of use to a dwelling, there could not be any other accessory buildings placed on her property. Mr. Wood informed Ms. Bryanton that there could only be one dwelling per lot. Mr. Wood testified that he informed her that a septic permit would be required in order to change the original shed to a cottage. He noted that it was a paper application and he did not visit the subject property. He testified that without the original shed being approved through a change of use to a cottage the two additional sheds could not be approved as the "bunkies" were considered to be accessory buildings. He noted that the term "bunkies" was used in the Developer's application.

(h) When asked if 20 "bunkies" would be permitted on the subject property, Mr. Wood replied that approving that many would be questionable as that would be a large number for one building lot. He acknowledged that the Regulations do not specify how many would be permissible and noted that the number allowed is "discretionary". He stated that "lots of people have four storage sheds". Mr. Wood testified that "bunkies' are not permitted to be used as accommodations because there is no septic system connected to the "bunkies". When asked whether you could live in a "bunkie" he replied "No". Mr. Wood testified that the original application was for "bunkies" and he told the applicant that they could not have "bunkies" and he suggested that the application be changed to a request for two non-commercial storage buildings instead.

(i) Mr. Wood testified that a building may be approved as a cottage if there is a septic permit, that there is no time limit on septic approval, no system is first required and no occupancy permit is required. He stated that with regard to a septic system, staff do not know if its installed as the building is not inspected and the Department does not follow-up to determine whether a septic system has been installed. He stated that the Regulations do not specify a minimum size for a cottage.

(j) Under cross-examination from Counsel for the Minister, Mr. Wood clarified that site inspections are not performed for every development permit as resources are not sufficient to do so.

(k) Under cross-examination from Counsel for the Developers, Mr. Wood clarified that Jay Carr directed him to approve the "bunkies" as non-commercial storage buildings with the condition attached to Permit 88 that they were not to be connected to water or sewer.

(l) Counsel for the Appellant submitted that the appeal is against the Minister's decision to issue Permit 87 and Permit 88. He submitted that there is little disagreement with respect to the facts. He submitted that where the parties do differ is on the interpretation of the ***Planning Act*** and the ***Planning Act*** Subdivision and Development Regulations (the "Regulations"). He submitted that the Regulations do not support the issuance of either permit. Highlights of his oral submissions include the following:

- The June 26, 2006 permit application for the original storage shed had the annotation "future cottage many years from now". Exhibit E-1, Tab 19, page 4 contains a reference to "bona fide cottage" which suggests that the Developers do not consider the original shed to be a true cottage. The change of use application which resulted in the issuance of Permit 87 identified the original shed which was changed to a cottage as being 12 by 14 feet for a square footage of 168 square feet.
- The original shed, now deemed to be a cottage, does not have a sewage disposal system. All that was required was approval of a septic permit form. That paper approval was issued about one year ago yet no system has been installed and the Developer has no present intention of installing a septic system. However, such a system is the underpinning for the change of use application.
- Exhibit E-1, Tab 18, provides photographs of four structures: the original shed or "cottage", a small plastic storage shed, a shed used as a "bunkie" and another shed used as a "bunkie".
- No site inspection occurred for either the change of use Permit 87 or the approval of the "bunkies" Permit 88.
- Past decisions of the Commission have emphasized a need for clear wording, objective criteria and the avoidance of arbitrary discretion.
- The definition of "dwelling" under the Regulations is relevant while the definition of dwelling unit is not.
- Granting the permit after locating the structures on the property is a contravention of Sec. 31 of the Act.
- The government did not proceed properly, there is no current septic system on the property, there was no site inspection done to determine whether the structures met the cottage requirements, that both the Developers and government personnel seemed to take the position that, with septic systems, all that is required is a permit, not the installation of the system itself.
- The sewage disposal system to be installed must be the system that was approved and for which a permit was issued as this is the basis for granting a change of use to a cottage under Permit 87.

- Sec. 42(1) of the ***Planning Act*** states that there cannot be more than one building used as a dwelling on a lot and that these terms are defined in the Act. This provision limits the ability to construct multiple buildings and dwellings and have one lot sprinkled with numerous "bunkies".
- "Bunkies" meet the definition of dwelling as set out in the Act.

(m) Counsel for the Appellant requested that the Commission revoke both Permit 87 and Permit 88 and require the two "bunkies" to be removed.

Testimony and Submissions on behalf of the Minister

(n) Jay Carr ("Mr. Carr") is the Safety Standards Chief for the Minister. Mr. Carr is not a land use planner. Mr. Carr testified that he deals with the more "out of the ordinary" files. He testified that the Department will not issue permits for "bunkies", they can't, as they are not provided for in the Regulations. The Regulations do provide for permits for non-commercial storage buildings, that are not dwelling units. The Regulations do not state what non-commercial storage buildings may be used for and nothing in the Regulations prevent sleeping in a non-commercial storage building. Mr. Carr noted that the Minister's staff now has one or two inquiries per year about "bunkies" and the matter is now on the Minister's "radar" and it is expected that in the future the Regulations will be amended to address "bunkies".

(o) Mr. Carr noted that the present matter involves three sheds on the subject property, which is a relatively large lot, and in his opinion at the time it would not have been referred to Planning for consideration for detrimental impact. He advised that as of two months prior to the date of giving his testimony the Department now has the safety standards officers under the Planning Division and that the Department was recently instructed after a decision of this Commission in another matter to have their personnel consult more with land use planners in the Department. He stated that previously it was the environmental aspects that were the focus of the Department in approving such permit applications, but now land use planners are also brought in and the planning aspect to an application needs to be considered. He stated that having three sheds on one lot was, in hindsight, not properly based on sound planning principles and if the application were received today land use planners in the Department would be consulted.

(p) Mr. Carr testified that the Regulations do not set out minimum size standards for a cottage. He noted that to constitute a dwelling unit a kitchen and bathroom is typically required.

(q) Mr. Carr explained that licensed septic contractors design a system, buy registered documents, fill the documents out, send the documents back to the Minister's staff and are required to notify the minister's staff when the system is going to be installed. The Minister's staff does not inspect every system but do random inspection audits. He testified that if an audit is done and they find a system that has not been installed then they proceed to enforce the septic tank permit.

(r) Under cross-examination from Counsel for the Appellant, Mr. Carr testified that the application filed by the Developers was for "bunkies" but the permit issued was for non-commercial storage buildings. Mr. Carr stated that non-commercial storage buildings are accessory buildings and must be accessory to a main use. Mr. Carr also reiterated that there is no minimum size requirement for a building to be approved as a cottage. When asked what the Department would do if they determined that no septic system was installed as in accordance with the permit, Mr. Carr testified that a letter would be provided providing one month to install the system and that if nothing was done then the Department would issue an order providing one month to install the system. Further enforcement steps could be taken including pulling septic tank permit if the work was not conducted.

(s) Under cross-examination from Counsel for the Developers, Mr. Carr stated that the definitions of a "dwelling" and a "dwelling unit" are considered by the Minister's staff to be essentially the same but they are technically separate definitions.

(t) Under questioning from the Commission's Chair, Mr. Carr stated that internal policy now requires planners to be consulted in these type of circumstances. Mr. Carr acknowledged that sound planning principles apply to the ***Planning Act*** and the Regulations. Mr. Carr testified that previously sound planning principles were far down on the list of considerations with applications such as these. As of the date of the hearing he confirmed that sound planning principles are now on the top of the list of considerations that must be dealt with. With respect to the consideration of premature development, Mr. Carr stated that premature development mostly applies to subdivision matters but could also apply with respect to the building of rental cottages.

(u) Counsel for the Minister, departing again from the previous written submission of December 9, 2015 where it was clearly stated that commercial storage buildings were not intended to be used as sleeping quarters or "bunkies", submitted that the use of non-commercial storage buildings as "bunkies" was not prohibited and as such there was no basis to allow the appeal and rescind the permits. Counsel for the Minister presented further oral submissions in support of the Minister's decisions, highlights of which include the following:

- There is nothing in the ***Planning Act*** or the Regulations to prohibit the storage of people in non-commercial storage buildings.
- These bunkies might only be used a handful of times per twelve-month period.
- The bunkies were unfinished inside and provided protection from the rain.
- It would be absurd to consider these structures to be dwellings. By way of example, if someone fell asleep in a gazebo, would that fact make the gazebo a dwelling?
- It was not warranted to send the matter to the Minister's planners.
- "Bunkies" are a new phenomenon in Prince Edward Island and new Regulations are being considered to address them.
- Sound planning principles are now, as of the date of this hearing, being used in development applications by the Department.

- Having this number of storage sheds on a property is not unusual, twenty such sheds would be unusual, but here the number involved was not enough to trigger any kind of a planning review.
- "Bunkies" cannot be considered to be dwellings as defined in the Act.
- Sec. 9 of the Act is a saving provision that allows permits to be issued where development occurs and it is then determined that an application should have been applied for.

(v) Counsel for the Minister submitted that Permit 87 and Permit 88 should be upheld and the appeal denied.

Developers' Testimony and Submissions

(w) Betty Ann Bryanton ("Ms. Bryanton") is the co-owner of the subject property. She purchased the property in 2003-2004. Ms. Bryanton told the Commission that she resides in Ontario. Ms. Bryanton testified that she was born and raised on Prince Edward Island and wanted a summer cottage "spot". She visits the subject property a minimum of a week per year to a maximum of five weeks per year, with the average visit being two to three weeks.

(x) Ms. Bryanton told the Commission that at first she had a tent on the property and went to Sally's Beach to use the washroom facilities there. Ms. Bryanton stated that she needed a well and a building for the well. In 2006 storage shed #1 was placed on the property and she tented next to the building, with the building itself being used to store "our stuff" (e.g. camping gear). There is now a full kitchen in shed #1. One year prior to the application for Permit 87 and Permit 88 an eight foot by eight-foot shed was put up. Prior to receiving the septic permit a portable chemical toilet was used.

(y) Ms. Bryanton testified that Leland Wood helped her with the applications and that she met him to ensure that they complied with all of the set-back requirements and placements. After consulting him she ended up moving one of the placements of the "bunkie" further back up on the property as she was advised that it was not placed properly. Draft applications were prepared and they were then reviewed by Mr. Wood and that was when Mr. Wood told her to correct the placement for the lower "bunkie". She testified that she had told Mr. Wood that she bought sheds hoping that people would be able to stay in them. Mr. Wood, however, advised her that there are no "bunkies" permitted in PEI. She was told that only non-commercial accessory buildings could be used and that fit best for her as their plan was to use the "bunkies" as storage as well. She testified that when it came to the placement of the shed, she placed them on the left side of her property away from the Stringer's property and out of view of their cottage so that there would be privacy for anyone who stayed in the "bunkies". She testified that she never intended to have four "bunkies" on the property, only two "bunkies".

(z) Ms. Bryanton testified that the "bunkies" are small pre-built sheds that were placed on the subject property and were then upgraded with vinyl siding and windows. The "bunkies" would allow her guests to sleep in them rather than in tents when it was raining. The "bunkies" do not have running water or electricity. An air mattress is used for sleeping. The original shed has a kitchen and waste is taken care of. The change of use for the original shed is representative of what it is. In the summer of 2015 there were more people at the subject property due to the activity of placing and upgrading the sheds and an outside portable toilet was used. The "bunkies" are not presently rented out

and she testified that she has no intention to rent out the "bunkies". When questioned Ms. Bryanton testified that she did not anticipate putting anymore "bunkies" on the lot.

(aa) Under cross-examination by Counsel for the Appellant, Ms. Bryanton testified that she would consider using an outside portable toilet again as she had discovered that it was much more convenient than using the chemical toilet located in the original shed, now the cottage. She has not ordered an outside portable toilet so far this year. Ms. Bryanton testified that the cost of installing a septic system would exceed the benefit of such a system. She maintained that a septic system was not required; rather only a permit for such system. She stated that composting toilets were something she was looking into. Waste water from washing dishes, known as "greywater", goes through a trough and is drained underneath into gravel and goes into the ground.

(bb) Ms. Bryanton testified that the change of use for the original shed was filed at Mr. Wood's behest. When not used for sleeping, the bunkies are also used for seasonal storage of items such as a picnic table, wheel barrow, shovels, rakes, chairs etc.

(cc) Under re-direct examination from Counsel for the Developers, Ms. Bryanton testified that she is willing to investigate alternate waste disposal methods with the Minister's staff.

(dd) In response to questions from the Commission panel, Ms. Bryanton testified that she never had any intention of installing a septic system for two weeks per year use. She then added that she would install such a system if she had to, but she would prefer to utilize a composting toilet. Ms. Bryanton confirmed that the "bunkies" were unfinished on the inside and had standard shed type doors.

(ee) Counsel for the Developers presented oral submissions in favour of upholding Permit 87 and Permit 88. These oral submissions include the following points:

- With respect to Permit 87, the change of use permit for the original shed now a cottage, a change of use represents an authorization to do rather than a certification of what has been done. Ms. Bryanton has testified that she will consult with the Minister's staff to deal with alternative options to deal with waste and if necessary, she is open to installing a septic system.
- Both Permit 87 and Permit 88 exist for a period of twenty-four months from the date of issue. As that time period has not passed yet, there is no issue of non-compliance today.
- With respect to Permit 88, that permit is for three non-commercial storage buildings. Of these three buildings, two are used as "bunkies" for at most ten days per year. At all other times, they are used for storage. The mere fact that an air mattress is placed on the floor for a few days per year does not turn a shed into a dwelling.
- In this matter there are only two small buildings being considered as bunkies and this would not be of a sufficient degree to constitute a detrimental impact. Therefore, there is no need to have the application evaluated by the Minister's planning staff.

- Bunkies are not a prohibited use and there would need to be clear and express wording to prohibit using non-commercial storage buildings as bunkies. A right to restrict should be interpreted narrowly while a right to permit should be interpreted broadly. There is no clear wording to prohibit the use of these buildings as bunkies.
- With respect to the definitions of dwelling and dwelling unit: a dwelling is a home, apartment building, a duplex etc. while a dwelling unit is a base unit such as an apartment in an apartment building. Thus, the definition of dwelling and dwelling unit, which are found in the same section of the Regulations, should be applied in the same way.
- The Developers contend that both Permit 87 and Permit 88 were validly granted. However, in the event that the appeal was successful, what would be an appropriate remedy? Permit 87 is a matter of compliance only. As for Permit 88, if the two non-commercial storage buildings used as bunkies were considered to be dwellings, then the only proper remedy would be to prohibit their use for sleeping as there would be no reason not to use them for non-commercial storage.

(ff) Counsel for the Developers submit that Permit 87 and Permit 88 should be upheld by the Commission and the appeal dismissed.

3. Findings

(13) After a careful review of all documents in evidence, the oral testimony of the witnesses, the written and oral submissions of counsel for the parties and the applicable law, it is the decision of the Commission to allow the appeal.

(14) Subsection 28.(1) of the ***Planning Act*** sets out the Commission's jurisdiction to hear this appeal of both Permit 87 as a change of use permit and Permit 88 as a development permit:

> *28. (1) Subject to subsections (1.2) to (4), any person who is dissatisfied by a decision of the Minister that is made in respect of an application by the person, or any other person, pursuant to the Regulations for*
>
> *(a) 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 or approval that the Minister may grant or issue under the Regulations,*
>
> *may appeal the decision to the Commission by filing with the Commission a notice of appeal.*
>
> Emphasis added.

(15) The objects of the ***Planning Act*** are set out in section 2:

> *2. The objects of this Act are*
>
> *(a) to provide for efficient planning at the provincial and municipal level;*
> *(b) to encourage the orderly and efficient development of public services;*
> *(c) to protect the unique environment of the province;*
> *(d) to provide effective means for resolving conflicts respecting land use;*

(e) to provide the opportunity for public participation in the planning process. 1988,c.4,s.2.

(16) The following definitions found within section 1 of the Regulations are noteworthy:

(a) "accessory building" means a building whose use is incidental and subordinate to, and consistent with, the main or approved use of the lot upon which the building is located;

...

(c) "building" means any structure having a roof supported by columns or walls intended for the shelter, housing or enclosure of any person, animal, or chattel, and includes a mini home or mobile home;

...

(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;

...

(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;

...

(g.1) "dwelling" means a building or portion thereof designed, arranged or intended for residential occupancy, and

(i) "dwelling unit" means one or more rooms used or intended for domestic use of one or more individuals living as a single housekeeping unit with cooking and toilet facilities,

(ii) "single unit dwelling" means a building containing one dwelling unit and does not include mobile homes, but does include mini homes,

...

(v.2) "summer cottage" means a single unit dwelling that is intended to be occupied primarily during the summer months;

(17) At the hearing, Counsel for the Minister took the position that the Minister was correct in issuing both Permit 87 and Permit 88. However, Counsel for the Minister had taken a different position in his December 9, 2015 letter to the Commission, as he stated that it was the Department's position that non-commercial storage buildings are not intended to be used as sleeping quarters or bunkies. He advised that Regulations to address the issue would be prepared in the near future and requested that the appeal be put "on hold" until the new Regulations come into force.

(18) For the record, the appeal was not held in abeyance and there is no evidence before the Commission that such regulatory additions have been made.

(19) From a review of the file and the testimony of Mr. Carr, it is clear that the Minister did not consult with a professional land use planner prior to issuing either Permit 87 or Permit 88. This causes the Commission concern, especially where there are compelling reasons to seek the expertise of a professional planner. The testimony of Mr. Carr also indicates that the Minister's internal policy now provides for staff planning professionals to be consulted on applications such as those filed by the Developers. The Commission commends the Minister for this change in policy to now use land use planners on these types of applications.

(20) In the context of municipal planning decisions, the Commission has often utilized a two-part test to guide its consideration of an appeal. The Commission is of the view that the same test should be applied to appealable Ministerial decisions made under the ***Planning Act*** and the Regulations. In the context of Ministerial decisions, that test is:

- Whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the ***Planning Act*** and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for a development permit, including a change of use permit; and
- Whether the Minister's decisions with respect to the applications for development and the change of use have merit based on sound planning principles within the field of land use planning and as identified in the objects of the ***Planning Act***.

The Commission's Consideration of Permit 87

(a) Permit 87 grants permission to the Developers to change the use of a non-commercial storage building previously permitted by permit K-095-2006 to a summer cottage on parcel number 931741 located on the south side of 158 Paradise Drive in the Community of Little Pond. The permit is dated August 12, 2015 and expires twenty-four (24) months from the date of issue. The permit is subject to the structure being erected in accordance with the approved application sketch and compliance with the Environmental Protection Act's 15 metre watercourse/wetland buffer zone.

(b) Permit 87 is issued under the authority of the Regulations and purports to change an existing non-commercial storage building to a summer cottage. While a summer cottage is a defined term under the Regulations, a non-commercial storage building is not defined in the Regulations. The definition of a summer

cottage references the meaning of a single unit dwelling which in turn references a dwelling unit. The definition of dwelling unit specifies a single housekeeping unit with cooking and toilet facilities. The testimony of Ms. Bryanton indicates that there is a kitchen, with wastewater from washing dishes going through a trough into a graveled area and into the ground. There is also a chemical toilet and Ms. Bryanton has considered using an outside portable toilet in the future as having used it in the summer of 2015 proved more convenient than using a chemical toilet.

(c) The evidence given at the hearing was that although a septic system is required for a dwelling unit to be considered a cottage, such a system did not have to be installed, but that all that is required is that a septic permit be obtained. This is an absurdity. While possession of such a permit may facilitate proceeding with the construction of a cottage, mere possession of a septic system permit, without installing the septic system itself, does not legitimately allow for the use of a cottage. The septic system must be installed, inspected and approved before the landowners may occupy their cottage. The presence of an approved septic system is necessary to protect the environment. The absence of the installation of an approved septic system places the environment at risk.

(d) The Commission does not endorse the actions of a property owner taking it upon themselves to install a greywater drainage system that has not been inspected and approved by the Minister's environment experts. It should be the Minister's environmental experts, not the property owner, who decides what is acceptable. The septic system, which is a condition required under Permit 87, must be used for greywater disposal as well.

(e) The Minister's staff did not perform a site inspection of the original 12 by 14 foot building prior to issuing Permit 87. In the absence of such an inspection, and given the testimony of Ms. Bryanton, the Commission finds that the 12 by 14-foot converted shed does not meet the definition of a "cottage" or a "dwelling unit" as set out in the Regulations without the installation of toilet facilities in the unit itself and without the installation of an approved septic system. The Commission, therefore, finds that the Minister did not follow an acceptable proper process of procedure as required in the Regulations in ensuring that the building that was to be subject to a change of use, complied with and met the Regulations. The Minister therefore contravened the first part of the two-part test as enumerated in paragraph 52.

(f) The second part of the two-part test enumerated in paragraph 52 requires that the Minister's decision for this change of use have merit based on sound planning principles within the field of land use planning as identified in the objects of the ***Planning Act***. The evidence of the Minister's staff is that at the time this application was dealt with sound planning principles were far down on the list of considerations. As of the date of the hearing, the staff confirmed that sound planning principles are now on the top of the list of considerations that must be dealt with. This Commission has found, in numerous past decisions, that there must be evidence that a proposed development or change of use is consistent with sound planning principles (*Biovectra v. City of Charlottetown*, Order LA12-06). In determining whether or not a development proposal should go forward, the Minister must make an examination beyond the strict conformity with the Regulations and must consider sound planning principles including, but not limited to, the quality of architectural design, compatibility with architectural character of adjacent development, site development principles for the placement of structures and a thorough assessment of whether the development

is consistent with sound planning principles (*Atlantis Health Spa Ltd. V. City of Charlottetown*, Order LA12-02). The alteration of the character and appearance of the neighbourhood must also not be contrary to sound planning principles (*Compton v. Town of Stratford*, Order LA07-05).

(g) The evidence is irrefutable and the Commission finds that the Minister did not consider whether sound planning principles supported a decision to approve the change of use of the 12 by 14 foot building from "non-commercial storage building" to a summer cottage. As such, the Minister failed to demonstrate adherence to a key object of the ***Planning Act***, namely efficient planning based on sound planning principles at the provincial level, and accordingly, the Commission hereby quashes Permit No. M-2015-0087.

The Commission's Consideration of Permit 88

(h) Permit 88 grants permission to the Developer Betty Ann Bryanton to relocate three non-commercial storage buildings located on parcel number 931741 located on the south side of 158 Paradise Drive in the Community of Little Pond. The permit is dated August 12, 2015 and expires twenty-four (24) months from the date of issue. The permit is subject to the structure being erected in accordance with the approved application sketch, compliance with the Environmental Protection Act's 15 metre watercourse/wetland buffer zone, and that none of the non-commercial storage buildings are to be serviced with sewer or water.

(61) Once again, the terminology of "non-commercial storage buildings" is neither defined nor referred to in the Regulations, although the term "accessory building" is both defined and referred to in the Regulations. It is not apparent from the face of Permit 88 that the non-commercial storage buildings are approved as sleeping quarters or "bunkies". It was clear from the evidence that the Minister's staff were well aware that these sheds were bought for and intended to be used so that people could stay in them. It was the Minister's staff that advised that this was not permissible, but that the shed could fall within the Regulations and be permitted to be placed on the property as a "non-commercial storage building". By accepting an application, knowing full well that the intended use is not what is stated on the application, the Minister therefore breached the first part of the two-part test and did not follow proper process and handling of the application.

(62) The evidence before the Commission is that at no time did anyone in the Department seek the opinion of a professional land use planner with respect to the application which resulted in Permit 88.

(63) The objects of the ***Planning Act*** require: efficient planning, protection of the Province's unique environment, an effective means for resolving land use conflict and to provide the opportunity for public participation in the planning process. The Commission expects decisions made under the ***Planning Act*** and the Regulations to not only follow the legislative requirements but also be in accordance with sound planning principles. Adherence to sound planning principles is especially important where, as here, the legislation has not addressed a particular type of development. Sound planning principles could consider not only whether "bunkies" would or would not be permitted, but also, if deemed to be permissible, determine the number permitted on a parcel, size, location, appearance, consultation with adjacent property owners and other such factors.

(64) The Commission reiterates, as set out in paragraph 58 herein, that this type of development must have merit based on sound planning principles. Adherence to sound planning principles is especially important where there are applications to place a number of buildings on a single lot all of which, for the most part, would be used as "bunkies". Sound planning principles would determine whether it is appropriate to have a sprinkling of sheds over a cottage lot property and, if so, what number, size and location, appearance would be permitted on the parcel, after consultation with adjacent property owners and consideration of other factors. (*Atlantis Health Spa Ltd. v. City of Charlottetown*, Order LA12-02). The ***Planning Act*** addresses not only municipalities with Official Plans and land use bylaws but also areas of the Province which do not have Official Plans and land use bylaws. Sound planning must be a common feature of development throughout Prince Edward Island and property owners located in areas of the Province for which there is no municipal government should not be subject to inferior land use planning rights and responsibilities. Sound planning principles are a guard against arbitrary decision making especially where a regulatory checklist does not address a concern. 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. The Minister's staff admitted that, in hindsight, the decision to grant the permits for these applications allowing the placement of three sheds on one lot was not based on sound planning principles. The Minister's staff further acknowledged that the applications, if they were now received, would not have been processed without land use planners being consulted.

(65) The Commission notes that when the Appellant contacted the Minister's department to get information on the building permits that were issued she was advised that she would have to launch an appeal with this Commission in order to get that information. The Commission recommends that the Minister change this policy when dealing with inquiries with respect to applications or permits under the ***Planning Act***. No one should be forced to launch a quasi-judicial appeal simply to obtain information with respect to a permit issued by the Minister. As the Commission has seen in the past this results in numerous appeals being filed, only to be withdrawn after there is full disclosure to the Appellant with respect to the permit. The Commission recommends that the Minister develop an internal procedure to allow for the efficient dissemination of information on permits issued so that interested parties can then make a determination as to whether or not an appeal should be filed.

(66) The Developers' applications to designate a small storage shed a cottage and receive approval for "bunkies" were not contemplated by the Regulations and thus required consultation with a professional land use planner. As the Minister's staff did not consult with a professional planner, the Commission finds that the Minister failed to consider sound planning principles. Accordingly, the second part of the two-part test has not been met and the Commission hereby quashes Permit No. M-2015-0088.

4. Disposition

(67) An Order allowing the appeal and quashing Permit No. M-2015-0087 and Permit No. M-2015-0088 follows.

IN THE MATTER of an appeal by Donna Stringer of a decision of the Minister of Communities, Land and Environment, dated August 12, 2015.

Order

WHEREAS the Appellant Donna Stringer appealed the decision of the Minister of Communities, Land and Environment to issue two permits, both dated August 12, 2015;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on July 21 and 22, 2016 after due public notice and suitable scheduling for the parties and their legal counsel;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the ***Island Regulatory and Appeals Commission Act*** and the ***Planning Act***

IT IS ORDERED THAT

1. **The appeal is allowed.**

2. **Permit No. M-2015-0087 and Permit No. M-2015-0088 issued by the Minister on August 12, 2015 are hereby quashed.**

DATED at Charlottetown, Prince Edward Island, this 10th day of August, 2017.

BY THE COMMISSION:

(sgd.) *J. Scott MacKenzie*
J. Scott MacKenzie, Q.C., Chair

(sgd.) *Douglas Clow*
Douglas Clow, Vice-Chair

(sgd.) *John Broderick*
John Broderick, Commissioner

NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

> *12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the ***Act*** provide as follows:

> *13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*
> *(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)

TAB F

Date: 19971113
Docket: AD-0685
Registry: Charlottetown

PROVINCIAL TAX COMMISSIONER

APPELLANT

AND

MARITIME DREDGING LIMITED AND
ISLAND REGULATORY AND APPEALS COMMISSION

RESPONDENT

Before: Carruthers, C.J.P.E.I.; Mitchell and
McQuaid, JJ.A.
Heard: June 10, 1997
Judgment: November 13, 1997

ADMINISTRATIVE LAW - Judicial review - Statutory Appeal - Standard of Review

The decisions of the Island Regulatory and Appeals Commission are subject to a statutory right of appeal on questions of law and jurisdiction. The decision of the Commission in issue was as the result of the taxpayer's appeal from the Provincial Tax Commissioner's reconsideration of a Notice of Assessment. In these circumstances, the Court held the Commission's decision was subject to review on the standard of correctness as the Commission did not possess expertise in the subject matter before it.

SALES AND SERVICE TAX - Sales Tax - Assessments - Statutory Review

Pursuant to the ***Revenue Administration Act***, R.S.P.E.I. 1988 Cap. 13.2, the taxpayer had a right of appeal to the Island Regulatory and Appeals Commission from a decision of the Provincial Tax Commissioner in relation to the reconsideration of a Notice of Assessment for sales tax. The Court held the Commission was correct in finding that the right of appeal to the Commission was a hearing ***de novo*** and as result the taxpayer was not precluded from raising issues which had not been raised before the Provincial Tax Commissioner.

SALES AND SERVICE TAX - Sales Tax - Exemptions

The Court held that the Commission was correct in finding that goods consumed by the taxpayer to effect repairs to a commercial vessel were exempt pursuant to s.12(1)(u) of the ***Revenue Tax Act***, R.S.P.E.I. 1988 Cap. R-14, because the vessel normally operated in extra-territorial waters.

SALES AND SERVICE TAX - Sales Tax - Interpretation of Statutory Provisions - Manufacture and Production of Goods

The Court held the Commission was not correct in finding the goods consumed by the company's vessel in the collection of mussel mud were exempt from taxation pursuant to s.12(1)(u) of the ***Revenue Tax Act*** because, in the collection of mussel mud, the vessel was not used directly in the production and manufacture of goods for sale.

CASES CONSIDERED: ***Pezim v. British Columbia (Superintendent of Brokers)***, [1994] 2 S.C.R. 557 (S.C.C.); ***Irving Oil Limited v. Elmsdale Corner Grocery Limited***, [1996] 1 P.E.I.R. B112 (P.E.I.S.C.A.D.); ***Reference Re: Island Regulatory and Appeals Commission Act and The Constitution Act***, [1997]2 P.E.I.R. B16 (P.E.I.S.C.A.D.); ***Attorney-General of Canada v. Ritchie Contracting and Supply Co.***, [1919] A.C. 999; ***Campbell v. Minister of Finance*** (1980), 26 Nfld. & P.E.I.R. (P.E.I.C.A.); ***Friends of the Island Inc. v. Canada (Minister of Public Works)*** (1995), 131 D.L.R. (4th) 285 (Fed.C.A.)

STATUTES CONSIDERED: ***Revenue Tax Act***, R.S.P.E.I.1988 Cap. R-14, s. 4, s-ss.12(1)(i),(l),(u); ***Revenue Administration Act***, R.S.P.E.I. 1988 Cap.13.2, s-ss.1(a), (f), (h); ss. 2, 9, 10; ***Island Regulatory and Appeals Commission Act***, R.S.P.E.I. 1988 Cap. I-11, s-ss. 1(e), 3(1), 5(c)(iii), 13(1) and (4), s.6; ***Constitution Act, 1867***, R.S.C., s. 108; ***Federal Court Rules***, C.R.C. 1978, c. 663, Rule 1618; ***Gasoline***

Tax Act, R.S.P.E.I. 1988 Cap. G-3; ***Health Act***, R.S.P.E.I. 1988, Cap.H-3; ***Planning Act***, R.S.P.E.I. 1988 Cap.P-8, ss.28, 37
Roger B. Langille, Q.C., and Ruth M. DeMone, for the appellant
Geoffrey D. Connolly, for Maritime Dredging Limited
M. Lynn Murray, for Island Regulatory and Appeals Commission
McQUAID J.A.:
FACTS:
[1] Maritime Dredging Limited is the owner of a commercial vessel licensed by the Transport Canada and Canada Customs as No. 392496. The vessel is a dredge, and it is used by the company in various dredging operations in waters around Atlantic Canada, including Prince Edward Island. The company also owns a ***Komatsu*** tractor which at times material to the issues in this appeal is used in tandem with the dredge when the company is engaged in dredging operations and when it is engaged in the removal of mussel mud from the beds of certain rivers in Prince Edward Island.
[2] The harbours in issue are: North Lake, Souris and Fortune, Prince Edward Island, as well as Shag Harbour, Nova Scotia. The mussel mud operation was conducted on the Hillsborough River in Prince Edward Island. Before the Commission it was agreed that Shag Harbour, Nova Scotia was beyond the territory of Prince Edward Island. It was also agreed that the Hillsborough River is within the territorial limits of Prince Edward Island.
[3] By Notice of Assessment dated October 16, 1992, the Prince Edward Island Department of Finance, Revenue Division, sought payment from the company of sales tax in the amount of $27,980.30, plus interest in the amount of $12,633.14, for a total of $40,613.44. The sales tax was assessed on goods consumed by the company for the purpose of making repairs to the dredge and the tractor.
[4] On October 22, 1992, Maritime Dredging filed a Notice of Objection with the Provincial Tax Commissioner stating that it did not owe the sales tax assessed because the purchases were for goods used in the repair of the commercial vessel which operated in extra-territorial waters outside the jurisdiction of the Province of Prince Edward Island, and thus the goods were exempt from sales tax by virtue of s-s.12(1)(u) of the ***Revenue Tax Act***, R.S.P.E.I.1988 Cap. R-14. By letter dated December 1, 1992, the Provincial Tax Commissioner responded to the Notice of Objection by indicating to the company that the vessel did not operate in extra-territorial waters, and thus the company was not exempt from the payment of sales tax by virtue of s-s.12(1)(u). The Commissioner declined to make any adjustment to the amount claimed in the Notice of Assessment.
[5] On December 21, 1992, Maritime Dredging appealed to the Island Regulatory and Appeals Commission pursuant to the provisions of s.10 of the ***Revenue Administration Act***, R.S.P.E.I. 1988 Cap.13.2. The appeal was on four grounds which may be summarized as follows: (1) the company operates commercial vessels, its operations are carried out in extra-territorial waters and thus the goods purchased to repair the vessels are exempt from the payment of sales tax by virtue of s.12(1)(u) of the ***Revenue Tax Act***, supra; (2) the goods consumed by the company were not consumed in the Province and thus were exempt from taxation by virtue of s.4 of the ***Revenue Tax Act***, supra; (3) in the alternative, the works performed by the company were strictly works within the jurisdiction of the Federal Government, and as such, the Province did not have the jurisdiction to tax purchases made in conjunction with carrying out those works; and (4) in the further alternative, the dredge and the tractor, when not used on Federal works, are used in the production and manufacture of goods for sale and are exempt from tax by virtue of s.12(1)(l) of the ***Revenue Tax Act***, supra. The grounds of appeal were more extensive and raised different issues from those raised by the Notice of Objection.
[6] The Island Regulatory and Appeals Commission convened a hearing on November 16 and 17, 1995, where both the company and the Commissioner adduced evidence and made submissions. The Commission made an order on June 7, 1996, ordering as follows:
1. The appeal is allowed;

2. The Decision of the Provincial Tax Commissioner, dated December 1, 1992, is varied as follows:
2.1 The goods consumed in connection with the commercial vessel, registered as no. 392496, are not taxable, pursuant to clause 12(1)(u) of the ***Revenue Tax Act***;
2.2 The operations of the appellant in obtaining mussel mud from the Hillsborough River are exempt from taxation to the extent allowed, pursuant to s.12(1)(i) of the ***Revenue Tax Act***;
2.3 Any taxes paid in error relating to matters separate from those dealt with by the Notice of Assessment dated October 16, 1992, and the Notice of Objection dated October 22, 1992, require either a separate Notice of Objection or should be sought pursuant to section 19 of the ***Revenue Administration Act***.
3. Additional evidence on outstanding issues identified in the annexed Reasons for Order will be heard by the Commission at a date to be fixed, upon the Commission receiving a written request from either party that such a hearing is necessary for a resolution of outstanding matters.
[7] The Provincial Tax Commissioner appealed the Commission's decision pursuant to s-s.13(1) of the ***Island Regulatory and Appeals Commission Act***, R.S.P.E.I. 1988 Cap. I-11, which provides that an appeal lies from a decision of the Commission to the Appeal Division of the Supreme Court on a question of law or jurisdiction. The grounds of appeal as set forth in the Notice of Appeal are as follows:
1. The Commission erred in ruling that its jurisdiction was not limited to the issues raised before the Commissioner in the Notice of Objection;
2. The Commission erred in law in its interpretation and application of the ***Revenue Tax Act*** (the Act) and in particular:
(a) in its determination that public harbours are not within the territory of the Province of Prince Edward Island;
(b) in failing to determine, as a matter of law, that the dredge vessel's limited operations outside the province were not sufficient to bring it within the expression normally operate in extra-territorial waters found in clause 12(1)(u) of the Act;
(c) the Commission erred in ruling that the consumption of goods in relation to the operation of the dredge vessel did not occur in the Province.
3. The Commission erred in ruling that the dredge vessel qualifies as machinery or apparatus used directly in the manufacture or production of goods for sale.

. . . . .

SUPPLEMENTARY NOTICE OF APPEAL

. . . . . .

1. The third ground of appeal is amended to read as follows:
3. The Commission erred in ruling that the dredge vessel and tractor qualify as machinery or apparatus used directly in the manufacture or production of goods for sale.

ISSUES

[8] This appeal raises the following issues:
(1) What is the standard of review to be employed in reviewing the Order of the Commission?
(2) Is an appeal pursuant to s.10 of the ***Revenue Administration Act***, supra, a hearing ***de novo*** thereby allowing the parties to adduce fresh evidence and raise new issues?
(3) Are the harbours at Souris, North Lake and Fortune, Prince Edward Island, within the territory of the Province?
(4) Were the dredge vessel and the tractor, both owned by Maritime Dredging, used directly in the manufacture or production of goods for sale when they were utilized in the collection of mussel mud?

(1) Standard of Review

[9] The Island Regulatory and Appeals Commission has jurisdiction to hear appeals from the decisions of the Provincial Tax Commissioner by virtue of s.10 of the ***Revenue Administration Act***, supra, and also by virtue of s-s.5(c)(iii) and s.6 of the ***Island Regulatory and Appeals Commission***

Act, supra. As noted above there is a statutory right of appeal from decisions of the Commission, on questions of law and jurisdiction, to this Court.

[10] As confirmed in ***Pezim v. British Columbia (Superintendent of Brokers)***, [1994] 2 S.C.R. 557 (S.C.C.), the absence of a privative clause and the existence of a statutory right of appeal does not resolve the issue of the scope of the powers of review vested in this Court. In ***Pezim*** Iacobucci J, writing on behalf of the Court said at p. 589-591:

The central question in ascertaining the standard of review is to determine the legislative intent in conferring jurisdiction on the administrative tribunal. In answering this question, the courts have looked at various factors. Included in the analysis is an examination of the tribunal's role or function. Also crucial is whether or not the agency's decisions are protected by a privative clause. Finally, of fundamental importance, is whether or not the question goes to the jurisdiction of the tribunal involved.

Having regard to the large number of factors relevant in determining the applicable standard of review, the courts have developed a spectrum that ranges from the standard of reasonableness to that of correctness. Courts have also enunciated a principle of deference that applies not just to the facts as found by the tribunal, but also to the legal questions before the tribunal in the light of its role and expertise. At the reasonableness end of the spectrum, where deference is at its highest, are those cases where a tribunal protected by a true privative clause, is deciding a matter within its jurisdiction and where there is no statutory right of appeal. See ***Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.***, [1979] 2 S.C.R. 227; ***U.E.S., Local 298 v. Bibeault***, [1988] 2 S.C.R. 1048, at p. 1089 (***Bibeault***), and ***Domtar Inc. v. Quebec (Commission d appel en matière de lésions professionnelles)***, [1993] 2 S.C.R. 756.

At the correctness end of the spectrum, where deference in terms of legal questions is at its lowest, are those cases where the issues concern the interpretation of a provision limiting the tribunal's jurisdiction (jurisdictional error) or where there is a statutory right of appeal which allows the reviewing court to substitute its opinion for that of the tribunal and where the tribunal has no greater expertise than the court on the issue in question, as for example in the area of human rights. See for example ***Zurich Insurance Co. v. Ontario (Human Rights Commission)***, [1992] 2 S.C.R. 321; ***Canada (Attorney General) v. Mossop***, [1993] 1 S.C.R. 554, and ***University of British Columbia v. Berg***, [1993] 2 S.C.R. 353. (Emphasis added.)

[11] Furthermore, at pp.591-592, Iacobucci J., relying on previous decisions, emphasized that even when there is a statutory right of appeal, which would seem to indicate a court may substitute its views for that of the tribunal, the concept of the specialization of duties dictates that deference be shown to the tribunal on subject matters which fall squarely within its area of expertise. On the other hand, where the tribunal does not possess expertise on the subject matter before it, and there is a statutory right of appeal, this may be reason to refuse deference.

[12] This first issue is to be resolved by considering: (1) the nature of the statutes conferring jurisdiction on the Commission; (2) the Commission's role or function; (3) the presence or absence of a privative clause; (4) whether or not there is statutory right of appeal; (5) the expertise of the Commission in the particular matter before it; (6) whether the question goes to the jurisdiction of the Commission; and (7) the role of the Commission in policy development. See: ***Irving Oil Limited v. Elmsdale Corner Grocery Limited***, [1996] 1 P.E.I.R. B112 (P.E.I.S.C.A.D.) at p.114. I would add to these, the necessity of the court considering the nature of the problem before the Commission. As I have previously noted, there is no privative clause, and there is a statutory right of appeal. As well, consideration of the statutes conferring jurisdiction on the Commission will disclose its expertise on the matter in issue as well as its role in policy development. Finally, in the absence of a privative clause, there is no question as to whether the issues go to the jurisdiction of the Commission.

[13] The Island Regulatory and Appeals Commission is established pursuant to the ***Island Regulatory and Appeals Commission Act***, supra. It receives its power and jurisdiction from this ***Act*** and numerous other pieces of legislation which confer jurisdiction on the Commission. It is a regulatory agency regulating utilities and petroleum products. The Commission decides matters

relating to land use, and it is an appellate tribunal vested with jurisdiction to hear appeals from the decisions of certain persons. See: Sections 5 and 6 of the ***Island Regulatory and Appeals Commission Act***, supra, and the ***Petroleum Products Act***, R.S.P.E.I. 1988 Cap. P-5.1

[14] The membership of the Commission is made up of two fulltime Commissioners, the chair who is the chief executive officer of the Commission, the vice-chair who is to assume primary responsibility for land issues, one other commissioner and not more than five part-time commissioners who are to be knowledgeable in one or more of the areas of accounting, agriculture, municipal planning, engineering, business, environmental matters, finance, economics, law, utilities, taxation and consumer protection. See: s-s.3(1) of the ***Act.***

[15] Generally speaking, a review of the ***Island Regulatory and Appeals Commission Act***, supra, and the various other statutes vesting the Commission with jurisdiction, discloses the Commission is an administrative tribunal vested both with the responsibilities of a regulator and an appeal tribunal. Whether the Legislature intended to vest it with relative expertise in all these areas may only be discerned from these statutes. For example, pursuant to the ***Petroleum Products Act***, R.S.P.E.I. 1988 Cap. P-5.1, the Commission is vested with broad powers to regulate the sale and distribution of petroleum products in Prince Edward Island prompting this Court to hold the Commission possesses relative expertise in this area and based on the principle of the specialization of duties deference should be shown to decisions of the Commission on issues within the parameters of that expertise. See: ***Irving Oil Limited v. Elmsdale Corner Grocery Limited***, supra. A similar conclusion might also be reached with respect to the Commission's role in regulating a utility as it is defined in s.1(e) of the ***Island Regulatory and Appeals Commission Act***, supra. Thus, where the Commission acts in a regulatory capacity, vested with broad powers to determine what is in the public interest and to make some policy in relation to the subject matter being regulated, such as utilities and petroleum products, the Commission's duties are specialized, and in relative terms, it would possess expertise greater than the reviewing court. Acting within the scope of that expertise, the Commission's decisions on matters of law and jurisdiction are entitled, even where there is a statutory right of appeal and no privative clause, to a high degree of deference because of the principle of specialization of duties. Its decisions would be reviewable on the standard of reasonableness.

[16] On the other hand, from reading the ***Island Regulatory and Appeals Commissions Act***, supra, and the other statutes which establish the Commission as an appellate tribunal, it is clear the Commission has not been vested with any responsibility to regulate in the particular subject area of the appeal nor does the Commission appear to have a policy-making role in these areas. The Commission's role and function is that of an intermediate appellate tribunal with no particular expertise or specialization on matters of law and jurisdiction that might be under consideration on appeal. Therefore, where there is a statutory right of appeal from these decisions of the Commission on questions of law and jurisdiction, the decisions of the Commissions are reviewable on the less deferential standard of correctness.

[17] The nature of the problem before the Commission was an appeal from a decision of the Provincial Tax Commissioner which raised questions of law alone. While one of the not more than five part-time Commission members is to be knowledgeable in tax , this fact in itself is not sufficient indicia of an intent on the part of the Legislature to vest the Commission with expertise in the legal issues which might arise in sales tax, or indeed other tax matters. In addressing the issues before it on the appeal from the Provincial Tax Commissioner, the Commission was obligated to interpret certain provisions of the ***Revenue Tax Act***, supra, as well as to interpret and apply a body of common law on the issue of what constituted territorial waters. Exercising these functions in an appellate role, it is my view the Commission does not possess any greater expertise than that of a reviewing court. Consequently, the scope of review is broad and is at the least deferential end of the spectrum referred to by Iacobucci J. in ***Pezim***. The standard of review to be employed in considering the questions of law raised by the appeal of the Provincial Tax Commissioner to this Court is correctness.

(2) Is An Appeal Pursuant to s.10 of the Revenue Administration Act, supra, a hearing de novo?

[18] Section 10 of the ***Revenue Administration Act***, supra, provides as follows:

10.(1) If the taxpayer or collector is dissatisfied with the decision of the Commissioner under subsection (3), he may, within thirty days from the date of mailing of the decision, appeal to the Island Regulatory and Appeals Commission hereafter referred to as the Commission .

(2) Any appeal shall be commenced by serving upon the Commission a notice of appeal in writing setting out the grounds of the appeal and stating briefly the facts relative thereto.

(3) A notice of appeal is sufficiently served if delivered to the office of the Commission or sent by registered mail addressed to the Commission.

(4) On the hearing of the appeal both the appellant and the Commissioner are entitled to appear and be heard and to submit further evidence.

(5) The Commission may, in writing, designate a person to act on its behalf and hear an appeal under this section and any reference in this section and any reference in this section or section 11 to the Commission includes a person so designated.

(6) Upon any appeal, the Commission may affirm, vary or reverse the decision of the Commissioner and shall give the appellant written notice of its decision by registered mail.

[19] The Commission carefully considered this provision, together with relevant authorities, and concluded that an appeal to the Commission from a decision of the Provincial Tax Commissioner was a hearing ***de novo*** which did not limit the jurisdiction of the Commission to issues raised before the Commissioner when he considered the Notice of Objection lodged pursuant to s.9 of the ***Revenue Administration Act***, supra. In reaching this conclusion, the Commission was correct.

[20] Pursuant to s.9 of the ***Revenue Administration Act***, supra, a taxpayer or a tax collector may dispute liability for, or the amount of, the assessment by delivering to the Provincial Tax Commissioner a Notice of Objection setting forth the reasons for the objection and the relevant facts. A tax collector is a person authorized by a revenue Act or by an agreement to collect tax, while a taxpayer is a person required by a revenue Act to pay tax. See: s-ss.1(a) and (h) of the ***Revenue Administration Act***. A revenue Act is defined to mean the following: the ***Gasoline Tax Act***, R.S.P.E.I. 1988 Cap. G-3; the ***Health Act***, R.S.P.E.I. 1988, Cap.H-3; the ***Revenue Tax Act***, supra, and the ***Environment Tax Act***, R.S.P.E.I. 1988, Cap.E-14. See: s-s.1(f) of the ***Revenue Administration Act***, supra.

[21] The Provincial Treasurer is charged with the administration of the revenue Acts as well as with the administration of the ***Revenue Administration Act***, supra. Pursuant to s.2 the Provincial Tax Commissioner is obligated to take instructions from the Provincial Treasurer, and he is vested with general supervisory powers over all matters relating to the revenue Acts and the ***Revenue Administration Act***, supra. Although vested with the jurisdiction to consider a Notice of Objection pursuant to s.9, the Provincial Tax Commissioner is under no obligation to hold a hearing, and he could hardly be said to be at arms length from the Provincial Treasurer, the person from whom he takes his direction and the person responsible for the assessment of the tax in the first instance. In substance, when the Provincial Tax Commissioner acts on a Notice of Objection, he is conducting a reconsideration of the assessment, a process which is not in the nature of an appeal. Therefore, the appeal to the Island Regulatory and Appeals Commission is the first opportunity a taxpayer or a tax collector will have to make submissions and present evidence to an independent tribunal with respect to the amount of the Notice of Assessment or liability for that amount.

[22] The issue of whether an appeal to the Commission is a hearing ***de novo*** was recently considered by this Court in the context of sections 28 and 37 of the ***Planning Act***, R.S.P.E.I. 1988 Cap. P-8. The Court concluded that an appeal under those provisions was a hearing ***de novo*** primarily because the relevant legislation contemplated and intended that an appeal to the Commission would be the first opportunity for interested parties to participate before a tribunal. See: ***Reference Re: Island Regulatory and Appeals Commission Act and The Constitution Act***, [1997] P.E.I.J. No. 70 (Q.L.) (P.E.I.S.C.A.D.), paras. 9 & 10.

[23] The same may be said of s.10 of the ***Revenue Administration Act***. The appeal is commenced by Notice of Appeal setting forth the grounds of appeal and a brief statement of

the facts relevant to the grounds. The parties to the appeal are the appellant (the taxpayer or the tax collector) and the Commissioner. Both are entitled to appear, be heard and to submit further evidence which presumably would include evidence other than that which was before the Commissioner when he
considered the Notice of Objection. The Commission is given broad powers to vary, confirm or reverse the decision of the Commissioner. The appeal to the Commission is clearly one by way of hearing ***de novo***, and there is no reason why an appellant should be restricted to only those issues raised before the Provincial Tax Commissioner, nor should the Commission be precluded from adjudicating upon those issues provided any new issues are raised by the appellant in the Notice of Appeal from the Commissioner's decision. Accordingly, the Commission was correct in so finding.

(3) Are The Harbours At Souris, North Lake and Fortune, Prince Edward Island, Within The Territory of the Province?

[24] Section 12(1)(u) of the ***Revenue Tax Act*** provides as follows:

12.(1) A consumer is not liable to pay the tax in respect of the consumption of the following goods:

. . . . .

(u) commercial vessels or boats that normally operate in extra-territorial waters, and repairs thereto, but excluding boats used for recreational or sporting purposes and yachts; ...

[25] The Commission ruled the dredge was a commercial vessel within the meaning of the ***Act*** as it was designed to operate only in water; it operated below the low-water mark; and it was used for commercial purposes. The Commission also ruled the tractor was not a commercial vessel within the meaning of the ***Act*** and therefore did not fall within the exemption of s.12(1)(u) even though it was used with the vessel in the dredging operations. The parties have not taken issue with these findings.

[26] The Commission went on to consider, however, the issue of whether the vessel operated in extra-territorial waters, and it found that work done by the dredge at Souris and Fortune, Prince Edward Island, as well as work done in Shag Harbour, Nova Scotia, was extra-territorial. With respect to the work done at North Lake Harbour, Prince Edward Island, the Commission found that the work carried on inside the entrance to North Lake Harbour was work carried on within the province, and the work done outside the entrance to the harbour was extra-territorial. Based on these conclusions, the Commission found the vessel normally operated in extra-territorial waters and thus goods consumed to effect repairs to the vessel were exempt from taxation pursuant to s.12(1)(u).

[27] In the alternative, the Commission found that the goods consumed by Maritime Dredging in connection with the work completed at Souris and Fortune, Prince Edward Island, and Shag Harbour, Nova Scotia, and some of the goods consumed in connection with work done outside the entrance at North Lake, Prince Edward Island, were consumed outside the Province. Accordingly, the Commission found that pursuant to s.4 of the ***Revenue Tax Act***, supra, there would be no tax payable on these goods as they would not have been consumed in the Province. The matter of apportioning the amount of these goods was left to be decided by the Commission at a later date, if necessary.

[28] The Commission, relying on evidence presented by Maritime Dredging, found that Souris and Fortune had been used as public harbours and thus relying on a passage from ***Attorney-General of Canada v. Ritchie Contracting and Supply Co.***, [1919] A.C. 999, at pp. 1003-1004, concluded these were not merely places where ships sought shelter but that they had, in a commercial sense, been actually used as public harbours. As public harbours they became the property of Canada by virtue of s.108 of the ***Constitution Act, 1867***. The Commission rejected the argument of the Commissioner that even though these harbours had become the property of the Government of Canada, the Province retained legislative control over the areas as there was no evidence such concurrent jurisdiction was to exist with respect to the territory occupied by these harbours.

[29] The Commission also rejected the argument of the Commissioner that the Province had jurisdiction over extra-territorial waters because, at the time the Province entered Confederation, it controlled beyond the low water mark and that it continues to control this area. Relying on a number of authorities, the Commission concluded the Commissioner had to adduce specific evidence of a clear legislative delineation of specified areas as being part of the territory of the Province. It then concluded that no such evidence was adduced, and thus there was no basis for the Commissioner's argument that the Province had any control over the extra-territorial waters.

[30] With respect to North Lake Harbour, the Commission found that it was not a public harbour as was Fortune and Souris, but that part of the harbour inside the entrance was nevertheless within the boundaries of the Province, and tax would be payable on goods consumed in relation to work conducted inside the entrance to North Lake. With respect to the work carried on outside the entrance to North Lake, the Commission found that insufficient evidence had been adduced to establish that this territory was ***inter fauces terrae***, and thus it concluded the territory was outside the territory of Prince Edward Island.

[31] The Commission was correct. It thoroughly canvassed the relevant case law and, together with the evidence it accepted, reached the above conclusions. I am unable to find any error in the Commission's analysis or application of the law.

(4) Were the dredge vessel and the tractor, both owned by Maritime Dredging, used directly in the manufacture or production of goods for sale when they were utilized in the collection of mussel mud?

[32] Mussel mud is found in the beds of rivers or bays and is commonly used by farmers and others as a natural fertilizer. On the appeal to the Commission, the Provincial Tax Commissioner argued that the goods consumed in relation to work done by the company's dredge and tractor in the removal of mussel mud from the Hillsborough River were not exempt from taxation by virtue of s.12 (1)(i) of the ***Revenue Tax Act*** which states as follows:

12.(1) A consumer is not liable to pay the tax in respect of the consumption of the following goods:

. . . . .

(i) machinery, apparatus and complete parts therefor, as defined by regulation, used directly in the manufacture or production of goods for sale and where partly used in such manufacture or production of goods for sale and partly used for other purposes, the exemption conferred by this clause shall be determined on the basis of the proportion of the time in which the machinery or apparatus is used in such manufacture or production; ...

[33] The Commission found that the dredge and the tractor, to the extent the latter was used in the removal of the mussel mud, came within the exemption set forth in s.12(1)(i) of the ***Revenue Tax Act***, supra. The Commissioner states the Commission erred in reaching this conclusion in that it erred in finding the tractor and the dredge ... were used directly in the manufacture or production of goods for sale... The Commissioner argues the harvesting of the mussel mud does not involve any process of manufacture or production in that the mud is simply removed from the bed of the river, de-watered, and either placed in bags for sale or sold in bulk. The company, on the other hand, argues the Commission did not err in concluding the dredge and the tractor used in the harvest of the mussel mud were exempt under s.12(1)(i) because, according to the argument of the company, the harvest of the mussel mud does entail production and manufacture.

[34] On this issue I agree with the position taken by the Commissioner, and I find the Commission erred in holding the exemption applied. According to the evidence of William Wellner, the president of Maritime Dredging, the dredge is floated to the site of the mussel mud in the bed of the river, a site is also obtained nearby on land as a containment area, a pipeline is run from the dredge to the land site and the dredge commences digging the mud. When removed from the bed of the river, the mud is agitated, pumped into the containment area where it is de-watered , picked up by trucks and either delivered in bulk to various buyers or

taken to the supplier's premises where it is placed in bags and sold to various retailers.

[35] Manufacturing is the production of articles for use from raw or prepared materials by giving them new forms, qualities and properties or combinations either by hand or machinery. See: ***Campbell v. Minister of Finance*** (1980), 26 Nfld. & P.E.I.R. (P.E.I.C.A.). The collection of mussel mud does not involve the manufacturing or production of a good for sale. Except for the fact it is de-watered or dried, the product is sold in virtually the same state as it was at the bottom of the river. Accordingly, neither the dredge nor the ***Komatsu*** tractor are engaged, directly or indirectly, in the manufacture or production of a product for sale, and thus goods consumed by the company in relation to this operation are not exempt from taxation under s.12(1)(i) of the ***Revenue Tax Act.***, supra.

COSTS

[36] Pursuant to s.13(4) of the ***Island Regulatory and Appeals Commission Act***, supra, costs are not payable by a party to an appeal from a decision of the Commission unless the Court in its discretion and for special reasons so orders. Maritime Dredging argues that special reasons do exist in this appeal for an order for costs against the Provincial Tax Commissioner regardless of the outcome of the appeal because resolution of the main issues arising from the appeal will benefit tax payers and tax collectors across the Province in that it will delineate the jurisdiction of the Department in assessing tax on commercial vessels. Therefore, the company states, it should not be saddled with the full burden of the costs associated with an appeal which could benefit others. The Provincial Tax Commissioner, on the other hand, argues that no such special reasons exist and each party should bear their own costs regardless of the outcome.

[37] Normally costs on an appeal will follow the event; however, the provisions of s.13(4) clearly militate against the application of this course of action. Rule 1618 of the ***Federal Court Rules*** is similar to s.13(4). The Rule provides that no costs are payable on an application of judicial review to the Federal Court unless the Court finds there are special reasons for making such an order. The Federal Court of Appeal has interpreted the purpose of this Rule as being intended to assure a citizen, adversely affected by a decision of a federal administrative tribunal, that he or she may challenge that decision without the risk of being burdened by onerous costs consequences should he or she be unsuccessful. See: ***Friends of the Island Inc. v. Canada (Minister of Public Works)*** (1995), 131 D.L.R. (4th) 285 at p. 287. I would impute the same purpose to s.13(4) of the ***Island Regulatory and Appeals Commission Act***, supra; however, the question remains as to what are special reasons for making an award of costs. In my opinion, special reasons may exist where the issues on the appeal raise difficult or novel points of law and where the issues are of importance to a broad class of persons or are of general public interest. Special reasons may also exist where one party may have frivolously or vexatiously advanced the appeal.

[38] Counsel for Maritime Dredging argues that the issues raised on the appeal affect a broad group of citizens other than the company and the issues are of broad public interest. I am unable to agree. On the other hand, however, the issue on appeal both to the Commission and to the Court, dealing with extra-territorial waters was somewhat novel, complex and essential to the company's grounds of appeal. The appeals could not have been advanced without the assistance of counsel, and only then, after a considerable amount of research and analysis. Considering the company was successful in advancing this issue before the Commission as well as before the court, my view is that special reasons do exist for an award of costs to the company. Accordingly, I award it 50% of its party and party costs on this appeal which costs are to be taxed.

CONCLUSION AND SUMMARY

[39] The appeal is allowed in part. The Commission's order that the goods consumed in connection with the commercial vessel, registered as #392496, are exempt from taxation by virtue of s.12(1)(u) of the ***Revenue Tax Act***, supra, is confirmed. The Commission's order that the operations of the company in the removal of mussel mud from the Hillsborough River are exempt from taxation pursuant to s.12(1)(i) of the ***Revenue Tax Act***, supra, is set aside. The company is

awarded 50% of its party and party costs on the appeal to this Court, and these costs are to be taxed.

The Hon. Mr. Justice J.A. McQuaid
I AGREE:

The Hon. Chief Justice N.H. Carruthers
I AGREE:

The Hon. Mr. Justice G.E. Mitchell...

TAB G

COMMISSION DE RÉGLEMENTATION ET D'APPELS DE L'ÎLE

THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LA10003 and LA10004
Order LA10-08

IN THE MATTER of appeals by Ian Cray and Paul Christensen of a decision of the Minister of Finance and Municipal Affairs, dated February 3, 2010.

BEFORE THE COMMISSION
on Friday, the 27th day of August, 2010.

Maurice Rodgerson, Chair
Allan Rankin, Vice-Chair

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse
Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of appeals by Ian Cray and Paul Christensen of a decision of the Minister of Finance and Municipal Affairs, dated February 3, 2010.

Contents

IN THE MATTER of appeals by Ian Cray and Paul Christensen of a decision of the Minister of Finance and Municipal Affairs, dated February 3, 2010.

Appearances & Witnesses

1. **For the Appellants Ian Cray and Paul Christensen**

   Representative:

   Christopher Callbeck

   Witnesses:

   Ian Cray
   Paul Christensen

2. **For the Respondent Minister of Finance and Municipal Affairs**

   Garth Carragher

3. **For the Developer Myles Hickey**

   Myles Hickey
   James Hickey

IN THE MATTER of appeals by Ian Cray and Paul Christensen of a decision of the Minister of Finance and Municipal Affairs, dated February 3, 2010.

Reasons for Order

1. Introduction

[1] The Appellants Ian Cray and Paul Christensen (the Appellants) have filed appeals with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the ***Planning Act***, R.S.P.E.I. 1988, Cap. P-8, (the ***Planning Act***). Mr. Cray's Notice of Appeal was received on February 23, 2010. Mr. Christensen's Notice of Appeal was received on February 24, 2010.

[2] These consolidated appeals (the appeal) concern the February 3, 2010 decision of the Respondent Minister of Finance and Municipal Affairs (the Minister), to grant to Myles Hickey (the Developer) preliminary subdivision approval, summer cottage use only, of 9 lots [later amended after the appeal was filed to 10 lots] from property number 872473 and 15 lots from property number 795732 in Seaview.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard on July 8, 2010.

2. Discussion

The Appellants' Position

[4] The submissions presented on behalf of the Appellants may be summarized as follows:

- The Appellants submit that the proposed subdivision does not meet the beach access requirements set out in subsections 16(1) and 26(2) of the Planning Act Subdivision and Development Regulations (the Regulations). The Appellants note that the Developer is promoting beach access to potential purchasers and, without specific provisions for such access, there is a risk of trespass over properties owned by other nearby land owners.

- The Appellants submit that the proposed subdivision does not meet the road requirements set out in subsection 17(2) of the Regulations.

- The Appellants submit that the lot density in the proposed subdivision is too high for the area and a lower density of development is necessary for such a development to be environmentally sustainable.

[5] The Appellants request that the proposed subdivision, if it proceeds, be revised to a picturesque low density development consistent with other nearby properties and that provisions for safe beach access and parking be provided to reduce trespassing on private property and minimize damage to the environment.

The Minister's Position

[6] The submissions presented on behalf of the Minister may be summarized as follows:

- The Developer's application was received on March 25, 2009. However, the Developer had been engaged in releasing the properties from a land identification agreement as early as 2007. The lots are to be subdivided from two distinct parcels of land.

- The Developer's application was circulated to the Department of Environment, Energy and Forestry, the Department of Transportation and Infrastructure Renewal, the Fire Marshall and the Malpeque Bay Community Council. It was also considered pursuant to section 56 to 58 inclusive of the Regulations pursuant to the Princetown Point – Stanley Bridge Special Planning area.

- It is not part of the Minister's mandate to design beach access. It is, however, part of the Minister's mandate to ensure protection of the environment through the establishment of buffer zones.

- With respect to subsection 17(2) of the Regulations, the Minister submits that the Developer's application was grandfathered, especially as the application could not proceed until the parcels were released in 2007, and then further in 2009, from the land identification agreement. Further, the subdivision involves the subdivision of 15 lots from one parcel and 10 lots from another parcel, as opposed to 25 lots from a single parcel, and therefore it is submitted that the requirements of subsection 17(2) of the Regulations do not affect this subdivision as a mandatory public road is required where there are over 20 lots off the same parent parcel.

- With respect to subsection 26(2)(b)(i), conditions relating to the allocation of land for the provision of shore access is discretionary, as evidenced by the use of the term "may".

[7] The Minister requests that the Commission deny the appeal.

The Developer's Submission

[8] The Developer addressed the issue of beach access and noted that beaches are public. Access to a beach, however, may be public or private. The Developer may, subject to the approval of the Department of Environment, Energy and Forestry, establish private access for the benefit of purchasers of the lots via stairs to the beach. If stairs are not installed, purchasers of lots will be expected to drive to a public beach access point.

3. Findings

[9] After a careful review of the submissions of the parties and the applicable law, it is the decision of the Commission to allow this appeal in part. The reasons for the Commission's decision follow.

[10] Subsections 16(1)(c) and 26(2) of the Regulations pertain to the shore access issue and read as follows:

> *16. (1) Where a subdivision is proposed within a coastal area, the proposed subdivision shall, where applicable, include the following:*
>
> *...*
>
> *(c) where feasible and appropriate, access to the beach or watercourse for the use of the owners of the lots.*
>
> *...*
>
> *26(2) Preliminary approval for all or a portion of a plan of subdivision may include conditions relating to:*
>
> *...*
>
> *(b) the allocation of land for any of the following purposes:*
>
> *(i) the provision of shore access,*
>
> Emphasis added.

[11] The Appellants submit that the proposed subdivision does not meet the beach access requirements set out in subsections 16(1)(c) and 26(2) of the Regulations. However, the Commission finds that a careful reading of these subsections reveals that access to the shore for the use of lot owners is required "where feasible and appropriate" and preliminary approval of a subdivision "may" include conditions relating to the provision of shore access. This rather qualified statutory wording makes specific enforceability difficult, if not impossible. Accordingly, the Commission finds that the proposed subdivision is not in breach of the beach access requirements set out in the Regulations.

[12] The Appellants also submit that the proposed subdivision does not meet the road requirement set out in subsection 17(2) of the regulations. The Minister contends that the Developer's application was grandfathered, as the application for the subdivision could not proceed until the parcels were released from the land identification agreement. The Minister also contends that subsection 17(2) does not apply, as the proposed subdivision is actually two subdivisions, one of 10 lots, the other of 15 lots, each subdivision taken off of a separate parent lot.

[13] Subsection 17(2) of the Regulations pertains to the road requirement issue and read as follows:

17(2) All roads serving 21 or more lots approved after March 21, 2009, shall be public roads.

[14] Based on a reading of subsection 17(2), the Commission cannot *prima facie* [at first sight] accept the Minister's position with regard to the road requirement specified in subsection 17(2). Subsection 17(2) refers to a date of approval, not a date of application. The Developer's present application, while dated March 13, 2009, was received by the Minister on March 25, 2009, four days after subsection 17(2) came into effect. Preliminary approval was granted on February 3, 2010; over ten months after subsection 17(2) came into effect. Subsection 17(2) is not qualified or restricted in scope; it does not make an exception for lots approved from separate parent parcels. It is not followed by a "notwithstanding" subsection to exempt applications in process, but not yet approved, before the specified date.

[15] The Commission must therefore consider whether the Minister's contention, that subsection 17(2) does not apply to the particular circumstances in the present matter, is a reasonable construction and interpretation of the Regulations.

[16] Section 9 of the ***Interpretation Act***, R.S.P.E.I. 1988, Cap. I-8 (the ***Interpretation Act***), reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.

[17] Section 2 of the ***Planning Act*** reads as follows:

2. The objects of this Act are

(a) to provide for efficient planning at the provincial and municipal level;

(b) to encourage the orderly and efficient development of public services;

(c) to protect the unique environment of the province;

(d) to provide effective means for resolving conflicts respecting land use;

(e) to provide the opportunity for public participation in the planning process. 1988,c.4,s.2.

[18] Subsection 17(2) is part of a group of fairly recent amendments to the Regulations, approved by Executive Council on March 10, 2009 [see the Royal Gazette, March 21, 2009]. The Commission interprets subsection 17(2) as requiring any road or roads serving 21 or more lots approved after March 21, 2009, to be a public road or roads. This interpretation is consistent with one of the objects of the Planning Act, "... *to encourage the orderly and efficient development of public services;*" as public roads are a public service. The Commission is required to follow the law, that is to say, the ***Planning Act*** and the Regulations. The Minister's internal policies are not binding on the Commission. The Commission finds that the interpretation of subsection 17(2) suggested by the Minister is not supported by the ***Planning Act*** or the Regulations.

[19] The Commission does recognize that there is merit in the Minister's policy to apply the Regulations as they existed at the time of application. When regulations change after an application is filed, and these changes are to have almost immediate effect, it does make common sense that the matter proceed on the basis of the Regulations in effect at the time of application, in effect, a 'grandfathering'. However, as the Minister's 'grandfathering' policy has not been included in the Regulations, subsection 17(2) applies in this present matter, as the Commission must follow the Regulations. Simply put, a department's internal policies must be elevated to the status of Regulations to have the force of law.

[20] Accordingly, the Commission allows the appeal in part and orders that the February 3, 2010 decision of the Minister, as amended, be further amended to bring said decision into full compliance with the Regulations, as this decision did not include a condition requiring the proposed subdivision to be served by public roads.

4. Disposition

[21] An Order allowing the appeal in part follows.

IN THE MATTER of appeals by Ian Cray and Paul Christensen of a decision of the Minister of Finance and Municipal Affairs, dated February 3, 2010.

Order

WHEREAS the Appellants Ian Cray and Paul Christensen appealed a decision of the Minister of Finance and Municipal Affairs, dated February 3, 2010;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on July 8, 2010 after due public notice;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the ***Island Regulatory and Appeals Commission Act*** and the ***Planning Act***

IT IS ORDERED THAT

1. **The appeal is allowed in part.**

2. **The Minister's February 3, 2010 decision, as amended, granting preliminary subdivision approval for parcel numbers 872473 and 795732, be further amended to bring said decision into full compliance with the Planning Act Subdivision and Development Regulations.**

DATED at Charlottetown, Prince Edward Island, this 27th day of August, 2010.

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*
Maurice Rodgerson, Chair

(Sdg.) *Allan Rankin*
Allan Rankin, Vice-Chair

NOTICE

Section 12 of the ***Island Regulatory and Appeals Commission Act*** reads as follows:

> *12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it or rehear any application before deciding it.*

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written **Request for Review**, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the ***Act*** provide as follows:

> *13.(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.*
>
> *(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)