



## Prince Edward Island

Justice and  
Public Safety

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## Île-du-Prince-Édouard

Justice et  
Sécurité publique

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**VIA EMAIL – [mwalshdoucette@irac.pe.ca](mailto:mwalshdoucette@irac.pe.ca)**

Michelle Walsh-Doucette  
Commission Clerk  
Island Regulatory and Appeals Commission  
National Bank Tower, Suite 501  
134 Kent Street, Charlottetown PE C1A 7L1

**Re: Appeal Docket #LA24019  
Thea Jazbec v. Minister of Housing, Land and Communities  
Our File: LS 27105**

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1. We represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Thea Jazbec (the “Appellant”) on November 12, 2024 (the “Appeal”). The Appeal arises from the Minister denying the September 19, 2024, development permit application for a single-family dwelling on the Appellant’s property, PID# 749697 located at 1811 St. Patrick’s Road, Queens County (the “Subject Property”) (the “Application”). The majority of the Subject Property is designated as wetland with an adjacent 15 metre buffer zone.
2. The proposed location of the dwelling is located within the buffer zone on the Subject Property. After consultation with employees of the Department of Environment, Energy and Climate Action, it was determined that there was not sufficient area on the Subject Property to build the proposed structure (that being a single-family dwelling with dimensions of 21’ by 28’) without encroaching on the buffer zone and wetland. Thus, the Minister’s decision to deny the Application was in accordance with the *Planning Act*, RSPEI 1988, Cap. P-8 (the “Act”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “Regulations”).

### **Background and Decision**

3. On September 19, 2024, the Minister received the Application from Edmund Webster, as an individual authorized to act on behalf of the Appellant, as registered owner of the land proposed for development.
4. On completing a preliminary review of the Application, the Minister identified that the Subject Property had limited space for development given the wetland and buffer zone.

5. On October 18, 2024, the Department of Environment, Energy and Climate Action confirmed that the *Environmental Protection Act*, RSPEI 1988, c E-9, requires a 15 metre buffer zone adjacent to the wetland, which makes up the majority of the Subject Property. No development is permitted in a watercourse, wetland, or buffer zone without a Watercourse or Wetland Activity Permit or a Buffer Zone Activity Permit, or a combination thereof. If there was found to be insufficient area for development of the Subject Property outside of the wetland and buffer zone, the Department of Environment, Energy and Climate Action recommended that the Application be denied.
6. Pursuant to subsection 16(4) of the Regulations, the requested development permit cannot be granted. Subsection 16(4) states “No person shall undertake any development, including a sewage disposal system, within a required buffer.”
7. On October 21, 2024, the Minister denied the application pursuant to subsections 3(2)(a), 5(a), and 16(4) of the Regulations (the “Decision”). As outlined in the Decision, the denial was issued as the proposed single-unit dwelling is located within the buffer area on the Subject Property, and there is no room for development outside the buffer area on the Subject Property. The Appellant was directed to the Department of Environment, Energy and Climate Action to discuss the Decision and obtain more details as to where development may be suitable.

### **Appeal**

8. The Appeal is pursuant to section 28 of the Act.
9. The Appellant’s grounds of appeal are as follows:
  - *The Minister’s decision was based on inaccurate information provided by the Applicant in the Application (particulars of this ground of appeal can be found on page 2);*
  - *The Minister failed to provide sound reasons for their decision;*
  - *The Minister acted arbitrarily and violated its common law duty of procedural fairness and the principles of natural justice; and*
  - *Such further or other grounds as may be revealed upon review of the full record as produced by the Minister.*
10. The Appellant seeks the following relief from the Commission:

*An order allowing the appeal and substituting the Minister’s decision for its own.*
11. The Minister is providing the Record of the Decision to the Appellant and filing same with the Commission on the same date as the within submissions are dated.

12. The Minister’s response to the Appellant’s appeal is outlined below. Should the Appellant expand on, provide further explanation for, and/or otherwise provide submissions on the grounds of appeal, the Minister reserves the right to provide a further reply thereto.

**Legislation**

13. Subsection 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and its Regulations.

14. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Mount Stewart, which is an area where land use and development are not regulated by a local official plan or zoning by-law. Therefore, the land use and development of the Subject Property is regulated by the Act and Regulations.

15. Subsection 3(2) of the Regulations provides:

***3(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would***

***(a) not conform to these regulations or any other regulations made pursuant to the Act;***

*(b) precipitate premature development or unnecessary public expenditure;*

*(c) in the opinion of the Minister, place pressure on a municipality or the province to provide services;*

*(d) have a detrimental impact; or*

*(e) result in a fire hazard to the occupants or to neighbouring buildings or structures.*

[Empasis Added]

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

17. Subsections 1(b.3), 1(g), 1(x), 5(a), and 16(4) of the Regulations provide as follows:

*1. Definitions*

*In these regulations*

...

*(b.3) “buffer” means an area of land which serves to separate two or more different types of land use;*

...

(g) “development” means

(i) site alteration, including but not limited to

(A) altering the grade of the land,

(B) removing vegetation from the land,

(C) excavating the land,

(D) depositing or stockpiling soil or other material on the land, and

(E) establishing a parking lot,

(ii) locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land,

(iii) placing temporary or permanent mobile uses or structures in, under, on or over the land, or

(iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;

...

(x) “wetland” means a wetland as defined in the Environmental Protection Act Watercourse and Wetland Protection Regulations;

...

#### 5. Other approvals required

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

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

...

16.

...

#### Development prohibited in buffer

(4) No person shall undertake any development, including a sewage disposal system, within a required buffer.

18. Subsections 1(1)(e), 1(1)(gg), and 1(1)(hh), 2(1), and section 3, in part, of the *Watercourse and Wetland Protection Regulations*, PEI Reg EC720/08, provide as follows:

1(1)(e) “buffer zone” means the 15-metre-wide area referred to in section 3;

...

(gg) “wetland” means

(i) an area which contains hydric soil, aquatic or water-tolerant vegetation, and may or may not contain water, and includes any water therein and everything up to and including the wetland boundary, and

(ii) without limiting the generality of the foregoing, includes any area identified in the Prince Edward Island Wetland Inventory as open water,

deep marsh, shallow marsh, salt marsh, seasonally flooded flats, brackish marsh, a shrub swamp, a wooded swamp, a bog or a meadow;

...

(hh) "wetland boundary" means where the vegetation in a wetland changes from aquatic or water-tolerant vegetation to terrestrial vegetation or water-intolerant vegetation;

...

## Part II – WATERCOURSES AND WETLANDS

### 2. Prohibition

**(1) No person shall, without a license or a Watercourse or Wetland Activity Permit, and other than in accordance with the terms and conditions thereof, alter a watercourse or a wetland, or any part thereof, or water flow therein, in any manner, or engage in any of the following activities in or on a watercourse or a wetland:**

(a) drain, pump, dredge, excavate, or remove soil, water, mud, sand, gravel, stones, rubbish, rocks, aggregate or material or objects of any kind;

(b) dump or infill, or deposit soil, water, mud, sand, gravel, stones, rubbish, litter, rocks, aggregate or material or objects of any kind;

**(c) construct or place, repair or replace, demolish or remove, buildings or structures or obstructions of any kind, including but not limited to bridges, culverts, breakwaters, dams, wharves, docks, slipways, decks, or flood or erosion protection works;**

...

(f) disturb, remove, alter, disrupt or destroy the ground in any manner;

(g) disturb, remove, alter, disrupt or destroy vegetation in any manner, including but not

limited to the cutting of live trees or live shrubs;

(h) carry out any type of watercourse or wetland enhancement activity, including but not

limited to debris removal, habitat development, or placement of structures.

...

## PART III – BUFFER ZONES

...

**3 (3) No person shall, without a license or a Buffer Zone Activity Permit, and other than in accordance with the conditions thereof, alter or disturb the ground or soil within 15 metres of a watercourse boundary or a wetland boundary, or cause or permit the alteration or disturbance of the ground or soil, therein, in any manner.**

**(4) No person shall, without a license or a Buffer Zone Activity Permit, and other than in accordance with the conditions thereof, engage in or cause or permit the engaging in any of the following activities within 15 metres of a watercourse boundary or a wetland boundary:**

(a) drain, pump, dredge, excavate, or remove soil, water, mud, sand, gravel, stones, rocks, or aggregate;

(b) dump or infill, or deposit soil, water, mud, sand, gravel, stones, rubbish, litter, rocks, aggregate or material or objects of any kind;

**(c) construct or place, repair or replace, demolish or remove, buildings or structures or obstructions of any kind, including but not limited to bridges, culverts, breakwaters, dams, wharves, docks, slipways, decks, or flood or erosion protection works;**

...

(e) disturb, remove, alter, disrupt or destroy the ground in any manner;

...

(5) The land within 15 metres of a watercourse boundary or a wetland boundary referred to in subsections (3) and (4) shall be known as a buffer zone.

[Emphasis Added]

### **Test**

19. In Order LA17-06 ("*Stringer*")<sup>1</sup>, the Commission outlines the applicable test for Ministerial decisions made under the Act and Regulations, namely:
- a. whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the Regulations, in the 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
  - b. 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 Act.

### **Test Application**

20. In this matter, the Minister followed the proper process as set out by law, applied sound planning principles, and, therefore, the Decision requires deference.
21. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, and the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
22. Subsection 16(4) of the Regulations prohibits development within a required buffer. Subsection 1(b.3) of the Regulations defines buffer as an area of land which serves to

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<sup>1</sup> *Stringer (Re), Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 at para 52 ("*Stringer*").

separate two or more different types of land use. Subsection 1(g) of the Regulations defines development to include locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land.

23. Section 2 of the *Watercourse and Wetland Protection Regulations* prohibits, unless with a license or a Watercourse or Wetland Activity Permit, altering or disturbing the ground or vegetation, or constructing or placing, repairing or replacing, demolishing or removing buildings or structures or obstructions of any kind in or on a watercourse or a wetland.
24. Section 3 of the *Watercourse and Wetland Protection Regulations* also prohibits, unless with a license or a Buffer Zone Activity Permit, altering or disturbing the ground or soil, or constructing or placing, repairing or replacing, demolishing or removing buildings or structures or obstructions of any kind within 15 metres of a watercourse boundary or a wetland boundary.
25. In this matter, Property Development Officer, Sarah MacVarish, sent the details of the Application to the Department of Environment, Energy and Climate Action for confirmation that the Subject Property could accommodate development given the majority of the Subject Property being designated as wetland with an adjacent 15 metre buffer zone. The Subject Property was observed to have insufficient space available outside of the wetland and buffer zone to accommodate development.
26. The Department of Environment, Energy and Climate Action confirmed that the Application should be denied if there is insufficient area for development of the Subject Property outside of the wetland and buffer zone.
27. It was reasonable for the Property Development Officer to rely on the Department of Environment, Energy and Climate Action's determination that the Subject Property did not appear to have sufficient space outside of the wetland and buffer zone for the proposed dwelling and corresponding recommendation to deny the Application.
28. The Minister notes that the Appellant has not obtained a Watercourse or Wetland Activity Permit or a Buffer Zone Activity Permit, or a permit pertaining to a combination thereof, pursuant to Part VI of the *Watercourse and Wetland Protection Regulations*.
29. In response to the Notice of Appeal, the Minister acknowledges that the Interoffice Memorandum dated October 18, 2024, from Dale Thompson, Environmental Assessment Officer, to Sarah MacVarish incorrectly states the dimensions of the single-unit dwelling to be 21' by 82'. Notwithstanding this error, it is the Minister's position that there is also not sufficient space available on the Subject Property outside of the wetland and buffer zone for a 21' by 28' single-unit dwelling, being the size of the dwelling set forth in the Application. Appendix "D" to the Notice of Appeal contains drawings of the proposed

dwelling on the Environment Map generated on October 18, 2024.<sup>2</sup> The Environment Map provides an outline of the wetland, but does not include the adjacent 15 metre buffer zone. Once the buffer zone is taken into account, the developable land on the Subject Property is reduced considerably.<sup>3</sup>

30. The Minister also met the second part of the test as the Decision is supported by objective and reliable evidence, and is based on the Act, the Regulations, and sound planning principles. The Commission states in *Stringer* that “*sound planning principles require regulatory compliance*”.<sup>4</sup>
31. Given the Application’s lack of regulatory compliance, the Decision satisfies both steps of the test.

### **Conclusion**

32. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
33. As set out in the Decision, the Minister encourages the Appellant to contact the Department of Environment, Energy and Climate Change to discuss and obtain more information as to where development may be suitable on the Subject Property or apply for a Watercourse or Wetland Activity Permit and/or a Buffer Zone Activity Permit, as applicable.
34. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact us.

### **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

Yours truly,



Christiana Tweedy  
Mitchell O’Shea  
Lawyers for the Minister of  
Housing, Land and Communities

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<sup>2</sup> Tab 7F, Minister’s Record.

<sup>3</sup> Tab 7D, Minister’s Record.

<sup>4</sup> *Stringer* at para 64.