

BEFORE THE ISLAND REGULATORY AND APPEALS COMMISSION

IN THE MATTER OF an appeal pursuant to s.28 of the *Planning Act*, RSPEI 1988 c. P-8 by Timothy Banks with respect to the approval of an application for development and building permit at PID 943241 located at Lot #30 in St Peters Estates, Greenwich, PE

**APPELLANT'S RECORD OF DECISION
PREPARED BY ENVIRONMENTAL COALITION OF PEI LTD.**

**Environmental Coalition of PEI Ltd.
81 Prince St., Charlottetown, PE
C1A 4R3**

Tim Banks
c/o APM
17 Union Road
Brackley, PE C1E 3B2

Developer

Michael Fleischmann
Legal Services
Justice and Public Safety
95 Rochford Street, PO Box 2000
Charlottetown, PE

Lawyer for the Minister of Housing,
Land and Communities

December 14, 2023

APPEALLANT'S RECORD OF DECISION

RE: Documents to support ECOPEI's response to the request from Jessica M. Gillis, General Counsel, IRAC on November 29, 2023, regarding File LA23020: *Environmental Coalition of PEI v. Minister of Housing, Land and Communities*.

INDEX:

TAB	Description of Document
<u>1</u>	Notice of Appeal submitted by Timothy Banks on December 21, 2022 for properties 943241 and 943274 Source: IRAC appeal docket LA 22024 (Notice-of-Appeal-12.pdf (irac.pe.ca))
<u>2</u>	Response from Mitch O'Shea on behalf of the Minister of Agriculture and Land relating to Appeal Docket LA22024 – Timothy Banks v. Minister of Agriculture and Land on February 14, 2023 Source: IRAC appeal docket LA 22024 (Final-Submissions-of-the-Minister-Feb-2023.pdf (irac.pe.ca))
<u>3</u>	Excerpt from Saltwire Online Article "P.E.I. developer Tim Banks suing environmental group, appraiser, Parks Canada over Greenwich land dispute" by Stu Neatby on December 7, 2023 Source: Saltwire (P.E.I. developer Tim Banks suing environmental group, appraiser, Parks Canada over Greenwich land dispute SaltWire)
<u>4</u>	Statement of Claim filed by Tim Banks on October 30, 2023, to Environmental Coalition of PEI and other defendants Source: ECOPEI; Supreme Court of Prince Edward Island
<u>5</u>	Excerpt from PEI Planning Decision Website search result for PID 943241 Source: PEI Planning Decisions website (PEI Planning Decisions Government of Prince Edward Island)
<u>6</u>	Tim Banks email to Gary Schneider (ECOPEI), Philip Rafuse (IRAC), Jessica Gillis (IRAC) on November 16, 2023 Source: Email November 16, 2023; Tim Banks "X" profile December 6, 2023
<u>7</u>	Email from Eugene Lloyd to Dean Lewis and Dean Carroll - Additional Document from Minister – November 14, 2023 Source: IRAC appeal docket LA 23020 (Microsoft Outlook - Memo Style (irac.pe.ca))
<u>8</u>	ECOPEI Statement of Defence Source: ECOPEI, as filed with Supreme Court of Prince Edward Island

TAB 1

RECEIVED

via email to Phil

DEC 21 2022

jm

The Island Regulatory
and Appeals Commission

Notice of Appeal

(Pursuant to Sections 28 of the *Planning Act*)

TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown, PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irac.pe.ca

NOTE:

Appeal process is a public process.

TAKE NOTICE that I hereby appeal the decision made by the Minister of Agriculture and Land ("Minister") on the 15th day of December, 2022, wherein the Minister denied two applications for permits to construct a boathouse on each of Provincial Parcel No. 9436241 and 943274 in Greenwich, Prince Edward Island, being Lot 2 and Lot 30 - a copy of the decision is attached as Schedule "A".

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows:

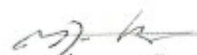
1. breached her duty of procedural fairness;
2. acted in an arbitrary manner;
3. procedural errors;
4. failed or refused to apply or enforce the conditions of the subdivision approval to the original developer and the successors in title in order to deny the permits;
5. erred in her interpretation of the *Planning Act* and associated Regulations;
6. erred in her interpretation of the requirements of the Department of Environment, Energy and Climate Action; and
7. such other grounds as may be revealed upon review of the full record produced by the Minister;

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I seek the following relief:

1. quash the decision of the Minister;
2. grant the permits as requested; and
3. such further and other relief as may be authorized under the *Planning Act* and the *Island Regulatory and Appeals Commission Act*.

Name(s) of
Appellant(s): Timothy Banks

Signature(s)
of
Appellant(s):


(as agent)

Mailing
Address: c/o Stewart McKelvey
Province: Prince Edward Island
Email Address: gdemeulenaere@stewartmckelvey.com

City/Town: Charlottetown
Postal Code: C1A 1K8
Telephone: (902) 629-4509

Dated this 20th day of December, 2022.

SCHEDULE "A"



Land Division

31 Gordon Drive
PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8

Agriculture
and Land

Agriculture
et Terres



Division de terres

31, promenade Gordon
C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8

December 15, 2022

Tim Banks
PO Box 2859 Station Central
Charlottetown,
PE C1A8C4

Dear Mr. Banks:

Subject:	Application to develop Lot #2 and Lot #30 St.Peters Estates Greenwich.
Property ID #:	943241 and 943274
Property Location:	Greenwich
Our File References:	M-2022-0277 and M-2022-0278

A. The Application

The Minister of Agriculture and Land has reviewed your application to construct Accessory Buildings on both Lot #2 and Lot #30 in the St. Peters Estates Ltd. resort development in Greenwich PEI. We have determined the lots in the resort development have been approved with conditions as per subsection 4.(1) of the *Planning Act* Subdivision and Development Regulations as they were at the time of application in 2004.

B. Decision

The Minister of Agriculture and Land is denying the application to construct Accessory Buildings on both Lot #2 and Lot #30 in the St. Peters Estates LTD resort development in Greenwich PEI pursuant to subsections 5.(a) and 51.(1) of the *Planning Act* Subdivision and Development Regulations.

C. Reasons

The 2004 Subdivision approval was subject to a number of conditions as indicated on the approval stamp and as per the requirements of subsection 51.(1) of the *Planning Act* Subdivision and Development Regulations (SDRs).

The Department of Environment, Energy and Climate Action (EECA) has not received a Certificate of Inspection nor the as-built drawings from an Engineer licensed to practice on PEI of the Central Water System. Also, EECA has not granted approval of the

Environmental Management Plan or the Human Use Management Plan for the St. Peters Estates Ltd. resort development in Greenwich PEI. As well, the Environmental Protection Plan is required to be updated and resubmitted for further approval. These approvals are required as per the *Planning Act* Subdivision and Development Regulations subsection 5.(a) prior to granting a development permit. The Minister is denying the Application to develop Lots 2 and 30 in the St. Peters Estates LTD resort development as EECA does not have the necessary documentation to fulfill their requirements for the operation of the central water system. The Environmental Protection Plan, Environmental Management Plan and the Human Use Management Plan must be updated and resubmitted for approval.

Planning Act Subdivision and Development Regulations

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

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

5.(a) 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;

51. (1) *A resort development shall be serviced by a central water supply system that complies with the Environmental Protection Act.*

D. Right of Appeal

Notice of this decision will be posted on the PEI Planning Decisions website. We suggest typing "PEI Planning Decisions" into your internet search engine to link to the website.

Please be advised that pursuant to section 28 of the *Planning Act*, this decision may be appealed to the Island Regulatory & Appeals Commission ("IRAC") (PO Box 577, Charlottetown, PE, C1A 7L1: <http://www.irac.pe.ca>). An appeal must be filed within 21 days after the date of this letter or the Commission is under no obligation to hear the appeal. For more information about appeals, please contact IRAC.

If you have any questions in regards to this decision, contact me at (902) 368-4465 or emlloyd@gov.pe.ca.

Sincerely,



Eugene Lloyd
Manager (Acting) of Provincial Planning

TAB 2



Prince Edward Island Île-du-Prince-Édouard

Justice and
Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada C1A 7N8

Justice et
Sécurité publique

Services légaux
C.P. 2000
Charlottetown PE
Canada C1A 7N8

February 14, 2023

VIA EMAIL – pjrafuse@irac.pe.ca

Philip J. Rafuse
Appeals Administrator
The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket LA22024 – *Timothy Banks v. Minister of Agriculture and Land*
Our File: LS 25021

-
1. These submissions are provided on behalf of the Minister of Agriculture and Land (the "Minister") in relation to the above noted appeal filed by Timothy Banks on December 20, 2022.
 2. The Minister's position is that the required proper process and procedure was followed in making this decision, and that the decision was made pursuant to the applicable legislation. Therefore, the appeal must be dismissed.

Background and Decision

3. On December 8, 2004 there was an approved subdivision for Resort Development use in the Greenwich area which included 70 lots, known as the St. Peters Estates LTD. The resort development use subdivision approval was subject to several conditions including:
 - a. That all lots be serviced by a central water system that was designed and constructed in accordance with the requirements of the then Department of Environment, Energy and Forestry; and
 - b. That the subdivision was to be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan and Human Use Management Plan also to be approved by the then Department of Environment, Energy and Forestry.¹
4. It appears as though in July of 2005 Mr. Banks, the Appellant in this matter, purchased a number of lots within St. Peters Estates LTD including Lot #2² and Lot #30³.

¹ Tab 5 at page 35 of the Record.

² Page 3 of the Additional Documents submitted by the Minister.

³ Page 6 of the Additional Documents submitted by the Minister.

5. On October 4, 2022 Mr. Banks submitted two applications to the Minister for Building and Development permits, one for Lot #2 and one for Lot #30 within the resort development of St. Peters Estates LTD. Both applications were for a "New Two Storey Boathouse".⁴
6. On December 15, 2022 the Minister denied both applications pursuant to sections 5(a) and 51(1) of the *Planning Act Subdivision and Development Regulations*, EC693/00 (the "Decision").⁵
7. The reasons for the Decision included that the conditions of the 2004 resort development use subdivision had not been complied with as the former Department of Energy, Environment and Forestry (now the Department of Environment, Energy and Climate Action) did not receive the required documents in relation to the central water system and no approvals were granted by the Department of Energy, Environment and Forestry for the Environmental Management Plan or the Human Use Management Plan.⁶
8. Pursuant to section 5(a) of the *Planning Act Subdivision and Development Regulations*, EC693/00 ("Regulations"),

5(a) No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate where an environmental assessment of an environmental impact statement is required under the *Environmental Protection Act*, approval has been given pursuant to that Act.

The Minister confirms that this section of the Regulations was in force at the time of the subdivision approval on December 8, 2004.

9. Pursuant to section 51(1) of the Regulations where there is a resort development, as there is in this case, the "resort development shall be serviced by a central water system that complies with the *Environmental Protection Act*." Again, the Minister confirms that this section was in force on December 8, 2004 when the resort development subdivision was granted.
10. The Minister had no choice but to deny the applications based on the proper approvals not having been granted pursuant to the *Environmental Protection Act*.

Appeal

11. On December 20, 2022 Mr. Banks appealed the Decision of the Minister.⁷ The Notice of Appeal does not provide any rational for the grounds of appeal but simply lists the grounds as follows:
 - a. (that the Minister) breached her duty of procedural fairness;
 - b. (that the Minister) acted in an arbitrary manner;
 - c. (that there were) procedural errors;

⁴ Tabs 3 and 4 at pages 9 to 33 of the Record.

⁵ Tab 1 of the Record.

⁶ Tab 1 at pages 4 and 5 of the Record.

⁷ Tab 2 at page 7 of the Record.

- d. (that the Minister) failed or refused to apply or enforce the conditions of the subdivision approval to the original developer and the successors in title in order to deny the permits;
 - e. (that the Minister) erred in her interpretation of the Planning Act and associated Regulations;
 - f. (that the Minister) erred in her interpretation of the requirements of the Department of Environment, Energy and Climate Action; and
 - g. Such other grounds as may be relevant upon review of the full record produced by the Minister.
12. Mr. Banks requests that the Commission quash the Decision of the Minister and grant the permits as requested.
13. These submissions respond to each ground of appeal as drafted, however, should the Appellant expand on the grounds in their submissions the Minister requests the opportunity to provide a written reply.

Minister's Position

14. The Commission has previously stated (Order LA17-06) that it is of the view that the following test should be applied to Ministerial decisions made under the *Planning Act* and its Subdivision and Development Regulations:⁸
- 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*.
15. The Minister followed the proper process and procedure required in making this Decision, and the Decision was made pursuant to the applicable legislation. The Minister's Decision should therefor be granted deference.

Ground #1- Procedural Fairness

16. The Minister submits that the Applications submitted by Mr. Banks were afforded procedural fairness. The Applications were provided a fair and unbiased assessment and ultimately denied based on non-compliance with the applicable legislation.
17. The Applications submitted by Mr. Banks were filed 11 days after Post Tropical Storm Fiona which may have contributed to the delay in the processing of the Applications. However, the Decision of the Minister was still made within a reasonable period of time and detailed reasons were provided as to why the Minister's decision was to deny the Applications.

⁸ *Stringer v Minister of Communities, Land and Environment*, Order LA17-06, para 52.

18. Mr. Banks was given opportunities to speak to the Minister's officials throughout the processing of the Applications.⁹

Ground #2- Arbitrariness

19. As detailed in these submissions, the Decision of the Minister was not arbitrary but rather was made in accordance with the applicable legislation.
20. The Decision of the Minister is also consistent with an inquiry from another owner of one of the lots in St. Peters Estates LTD from January 2021 where a request to install a private well on one of the lots was denied.¹⁰
21. The Decision of the Minister was not made on the basis of an arbitrary whim¹¹ or influenced by the "hues and cries" of neighbors or politicians.¹²

Ground #3- Process and Procedure

22. In respect of the third ground of appeal, the Minister submits that the Decision meets the first part of the two-part test in that the Minister followed the proper process and procedure, and the applicable legislation, when making the Decision.
23. Subsection 6(c) of the *Planning Act* provides that the Minister shall generally administer and enforce the Act and its Regulations. The Subdivision and Development Regulations apply to all areas of the province, except those municipalities with official plans and bylaws.¹³
24. The subject property is in Greenwich which is a special planning area and the lots which are the subject of this appeal are located within a resort development.
25. Part III- A of the Regulations sets out general provisions to be adhered to in relation to subdivision and development permits.
26. Section 5(a) of the Regulations provides that,

5(a) No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate where an environmental assessment of an environmental impact statement is required under the *Environmental Protection Act*, approval has been given pursuant to that Act.

This includes the approval for a development permit.

27. Part III – D of the Regulations sets out the standards specific to resort developments.

⁹ See for example Tab 8(C) at page 230, Tab 8(D) at page 232, Tab 8(F) at pages 239 to 240, and Tab 8(G) at page 242 of the Record.

¹⁰ Tab 7(C) at page 54 of the Record.

¹¹ *Pine Cone Developments Inc v City of Charlottetown*, Order LA16-08 at para 48

¹² *Pine Cone*, at para 47

¹³ Regulations, s. 2(1).

28. Section 51(1) of the Regulations requires that a resort development be serviced by a central water system.
29. In this case, the Minister found that the proper requirements and approvals pursuant to the *Environmental Protection Act* had not been granted for the resort development.
30. The Minister submits that a review of the Decision and the Record demonstrates that the statutory requirements and principles set out in the *Planning Act* and its Subdivision and Development Regulations were considered and applied during the Minister's consideration of the building and development permit applications of Mr. Banks.
31. The Record demonstrates that upon receipt of the application, Eugene Lloyd, Manager (Acting) of the Provincial Planning Branch of the Department of Agriculture and Land, sought input on whether there were approvals for the Human Use Management Plan, the Environmental Protection Plan and the Environmental Management Plan¹⁴.
32. It was determined that there was an approved Environmental Protection Plan dated March 29, 2005 and a draft Environmental Management Plan which included a Human Use Management Plan section had been submitted. However, the draft Environmental Management Plan was not given any approval.¹⁵
33. There were also inquiries made into approvals for the central water system.¹⁶ While it was determined that there was an approval to construct a central water system, and it is believed that the system was largely constructed, there is no approval for the central water system to be commissioned.¹⁷ There was also an approval issued for the construction and operation of a wastewater collection and treatment system. It is unknown as to whether this wastewater collection and treatment system has been installed.¹⁸
34. Both the approval for the central water system and the wastewater collection and treatment system required that the "as-built" plans had to be submitted to the then Department of Environment, Energy and Forestry. For the systems to be commissioned one of the conditions was that these "as-built" plans must have been submitted. Neither system has been given approval to be commissioned.¹⁹
35. The Minister submits that the first part of the test is satisfied. The Decision demonstrates that the relevant sections of the *Planning Act* and its Subdivision and Development Regulations were considered and applied in this case, and that the Minister followed the proper process and procedure in deciding on the Applications.

Ground #4- Subdivision Approval Conditions

36. It is the understanding of the Minister that Mr. Derek Key, K.C. represented the developer, Mr. Wayne Carew, who got the resort development use subdivision approval in December of 2004 and who subsequently sold several lots to Mr. Banks.

¹⁴ Tab 7(A) at page 42 of the Record.

¹⁵ Tab 7(D) at page 56 of the Record.

¹⁶ Tab 7(C) at page 52 of the Record.

¹⁷ Tab 7(F) at page 68 of the Record.

¹⁸ Tab 7(T) at page 176 of the Record.

¹⁹ Tab 7(T) at pages 184 to 187 of the Record.

37. It appears to be Mr. Carew's position that he fully complied with the December 8, 2004 Resort Development Use permit²⁰. The Minister takes the opposing position.
38. The Minister had no option other than to deny the Applications submitted by Mr. Banks based on the December 8, 2004 Resort Development Use permit conditions not being met.
39. Any issues that arise as between Mr. Banks as the purchaser of several lots within St. Peters Estates LTD and Mr. Carew as the vendor of the lots within St. Peters Estates LTD is outside the purview of the Minister and the Commission.

Ground #5- Interpretation of the Legislation

40. The Minister properly interpreted the legislation as it is now and as it was in December of 2004. The applicable sections, namely 5(a) and 51(1) of the Regulations remained unchanged from December 2004 to the time of the decision in December 2022.
41. There was no other interpretation available other than strict compliance with the wording of those sections available to the Minister.

Ground #6- Department of Environment, Energy and Climate Action Requirements

42. The Minister did not interpret the requirements of the Department of Environment, Energy and Climate Action (formerly the Department of Environment, Energy and Forestry). The Minister was informed of what approvals were and were not given pursuant to the *Environmental Protection Act*.
43. The December 8, 2004 Resort Development Use permit required:
- a. That all lots be serviced by a central water system that was designed and constructed in accordance with the requirements of the then Department of Environment, Energy and Forestry; and
 - b. That the subdivision was to be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan and Human Use Management Plan also to be approved by the then Department of Environment, Energy and Forestry.²¹
44. It appears there may have been a central water system installed but no approval was granted for that system to be commissioned. There are outstanding items and conditions not complied with as per the Certificate of Approval dated April 18, 2005.
45. There was an approved Environmental Protection Plan dated March 29, 2005. No approved Environmental Management Plan or Human Use Management Plan have been issued for the St. Peters Estates LTD resort development.
46. Throughout many exchanges with employees in the Department of Environment, Energy and Climate Action the above was confirmed.

²⁰ Tab 7(A) at pages 43 and 44 of the Record.

²¹ Tab 5 at page 35 of the Record.

Conclusion

47. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
48. In assessing these building and development Applications, the Minister considered relevant, consistent and objective criteria.
49. The relevant sections of the *Planning Act* and its Subdivision and Development Regulations were considered and applied in making this Decision, and the Minister followed the proper process and procedure in assessing the Appellants' applications.
50. Trusting this is satisfactory, if you have questions about these submissions, please do not hesitate to contact the undersigned.



Mitch O'Shea

cc. Gary Demeulenaere, K.C.
Counsel for the Appellant

TAB 3

The ECOPEI appeal, filed in August, contested a conditional permit granted to Banks by the P.E.I. Department of Housing, Land and Communities for his Greenwich properties. That appeal is still before IRAC.

While the province granted Banks a development permit, Banks told SaltWire in September that the P.E.I. government later granted him a building permit but then mysteriously rescinded it the same day.

Banks' lawsuit claims ECOPEI and the other defendants "caused the province to rescind a permit issued to Mr. Banks almost immediately after its issuance."

In an email, April Gallant of the Department of Land, confirmed a building permit was issued to Banks but said it was issued incorrectly due to a "miscommunication of process within the department."

Gallant said a building permit cannot be issued to a property that lacks access to potable water.

"It was rescinded the same day, a very short time after the error was noticed," Gallant said in the email.

TAB 4

SUPREME COURT OF PRINCE EDWARD ISLAND

(GENERAL SECTION)



BETWEEN:

OCT 30 2023

Supreme Court of P.E.I.

AND:

TIM BANKS

PLAINTIFF

**HERMAN McQUAID, RBKR LTD. c/o/b/a ATLANTIC REALTY ADVISORS (ARA)
McQUAID ASSOCIATES, ENVIRONMENTAL COALITION OF PEI and JANELL
SMITH**

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Prince Edward Island lawyer acting for you must prepare a statement of defence in Form 18A and a designation of address for service (Form 16A.1), prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are in Prince Edward Island.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, this period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED the 30th day of October, 2023.

(SGD.) ELIZABETH MURRAY
Deputy Registrar

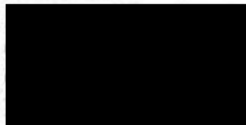
Issued by

Deputy Registrar
Sir Louis Henry Davies Law Courts
42 Water Street
Charlottetown, PE C1A 1A4

TO: **HERMAN McQUAID**



AND TO: **RBKR LTD.**



AND TO: **ENVIRONMENTAL COALITION OF PRINCE EDWARD ISLAND**
81 Prince Street
Charlottetown, PE
C1A 4R3
Defendant

AND TO: **JANELL SMITH**



CLAIM

1. The Plaintiff claims against the Defendants:
 - (a) general damages in an amount to be disclosed prior to trial;
 - (b) punitive, exemplary, and aggravated damages in an amount as this Honourable Court deems just and necessary;
 - (c) a declaration that some or all of the defendants conspired, agreed, and/or arranged with each other to make or cause to be made statements to third parties disparaging the Plaintiff's title to certain lands situate at Greenwich, Kings County, Prince Edward Island, being PID numbers 943241, 943258, 943266, 943274 and understating the value thereof, knowing that the Plaintiff intended to develop and/or sell the said land and knowing their actions were calculated to diminish the value of the said land and interfere with the Plaintiff's development of same;
 - (d) prejudgment and post-judgment interest, pursuant to the provisions of the *Judicature Act*, RSPEI 1988, Cap. J-2.1;
 - (e) the Plaintiff's costs in this action; and
 - (f) such further and other relief as counsel may advise and this Honourable Court may deem just and expedient.
2. The Plaintiff, Tim Banks (hereinafter "**Mr. Banks**"), is an individual residing in Prince Edward Island, and is the owner of certain lands situate at Greenwich, Kings County, Prince Edward Island, being PID numbers 943241, 943258, 943266, 943274 (hereinafter the "**Subject Properties**").
3. The Defendant, Herman McQuaid (hereinafter "**Mr. McQuaid**"), is a resident of Prince Edward Island and an accredited real property appraiser.
4. The Defendant, RBKR LTD. (hereinafter "**RBKR**") is a corporation incorporated under the laws of the Province of Prince Edward Island, which carries on business using the registered trade name "Atlantic Realty Advisors (ARA) McQuaid & Associates".
5. The Defendant, Environmental Coalition of Prince Edward Island (hereinafter "**ECO-PEI**"), is a corporation based in Charlottetown, Prince Edward Island.
6. The Defendant, Janell Smith (hereinafter "**Ms. Smith**") is an individual residing in Prince Edward Island, and is employed as the Chief Financial Officer and Land Acquisition


Officer of the Island Nature Trust. She is also a chartered professional accountant. She is also on the steering committee of ECO-PEI.

7. Mr. Banks acquired the Subject Properties in 2005. The Subject Properties are directly adjacent to the Prince Edward Island National Park (hereinafter the “**National Park**”) in Greenwich, Prince Edward Island.
8. In 2022, Parks Canada began purchasing land at Greenwich in the immediate vicinity of the Subject Properties within the confines of a development project once known as “St. Peters Estates”, with the ultimate objective of incorporating those lands into the National Park.
9. Parks Canada retained the Island Nature Trust and, in turn, Ms. Smith to act as their agents in the course of acquiring the aforementioned lands at Greenwich.
10. During this period of land acquisition, Parks Canada, through the Island Nature Trust, also contacted Mr. Banks with respect to acquiring the Subject Properties.
11. The Island Nature Trust retained Mr. McQuaid and RBKR to produce a valuation of the Subject Properties for use in the course of negotiating with Mr. Banks.
12. On 2 June 2021, Mr. McQuaid and RBKR produced an appraisal of the Subject Properties which was grossly deficient in that it failed to account for the unique characteristics and highly desirable location of the Subject Properties, as well as the realities of the real estate market, and significantly undervalued the Subject Properties. This appraisal valued the Subject Properties at \$180,000.
13. On 27 September 2023, Todd C. Stokes of Stokes Property Appraisal & Consulting Services, a real property appraiser retained by Mr. Banks, produced a valuation of \$528,000 for the Subject Properties.
14. After investing significant time and money to qualify for a development permit from the Province of Prince Edward Island for the Subject Properties, Mr. Banks obtained a suitable permit on 24 July 2023 for the Subject Properties.
15. ECO-PEI filed an appeal of the development permit awarded to Mr. Banks for the Subject Properties. Moreover, the Defendants caused the Province to rescind a permit issued to Mr. Banks almost immediately after its issuance.
16. Mr. Banks asserts, and the fact is, that the Defendants voluntarily and actively conspired with each other to slander Mr. Banks’ title to the Subject Properties and took direct action to actively impede and confound Mr. Banks’ efforts to develop and/or sell the Subject Properties.

17. The Defendants were motivated to conspire against the Plaintiff. Their predominant purposes and concerns were to harm Mr. Banks by preventing him from successfully developing the Subject Properties, as is his right, and by engineering a situation whereby Parks Canada could acquire the Subject Properties for a strategically reduced price.
18. Mr. McQuaid and RBKR owed a duty to Mr. Banks to produce a fair and reasonable valuation of the Subject Properties free from the interference of the other Defendants.
19. Ms. Smith owed a duty to negotiate with Mr. Banks in good faith as an agent of Parks Canada.
20. Ms. Smith used her position and office with the Island Nature Trust, and in turn as agent for Parks Canada, to conspire against and harm Mr. Banks by impeding his ability to develop and/or sell the Subject Properties, and in doing so furthered the interests of the Island Nature Trust and ECO-PEI and profited from her relationship with Parks Canada.
21. The Defendants have coordinated their actions and efforts in reference to the Plaintiff's said property with the intent to interfere with the plaintiff's lawful use and development of his said property and to diminish the value of same.
22. The wrongful conduct of the Defendants is of such a reprehensible nature as to warrant an award of aggravated and/or punitive damages in order to deter the Defendants, and others both in this jurisdiction and elsewhere in Canada, from engaging in such wrongful and malicious activity in the future.

The Plaintiff proposes that this action be tried at Charlottetown, Prince Edward Island.

DATED at Charlottetown, Queens County, Prince Edward Island, this 30th day of October, 2023.


KENNETH L. GODFREY
Campbell Lea
400-65 Water Street
P.O. Box 429
Charlottetown, PE CIA 7K7
T – (902) 566-3400
F – (902) 367-3713
Lawyer for the Plaintiff

TO: **HERMAN McQUAID**
554 North River Road
Charlottetown, PE
C1E 1K1
Defendant

AND TO: **RBKR LTD.**
554 North River Road
Charlottetown, PE
C1E 1K1
Defendant

AND TO: **ENVIRONMENTAL COALITION OF PRINCE EDWARD ISLAND**
81 Prince Street
Charlottetown, PE
C1A 4R3
Defendant

AND TO: **JANELL SMITH**
507 New Argyle Road
New Argyle, PE
C0A 1H7
Defendant

TAB 5

Property ID Number

943241

Consolidated Property ID Number

Community

All

Planning Authority

-Select-

Application Type

All

Address

Appeal Date From

2023

Aug

7

Appeal Date To

2024

Jan

10

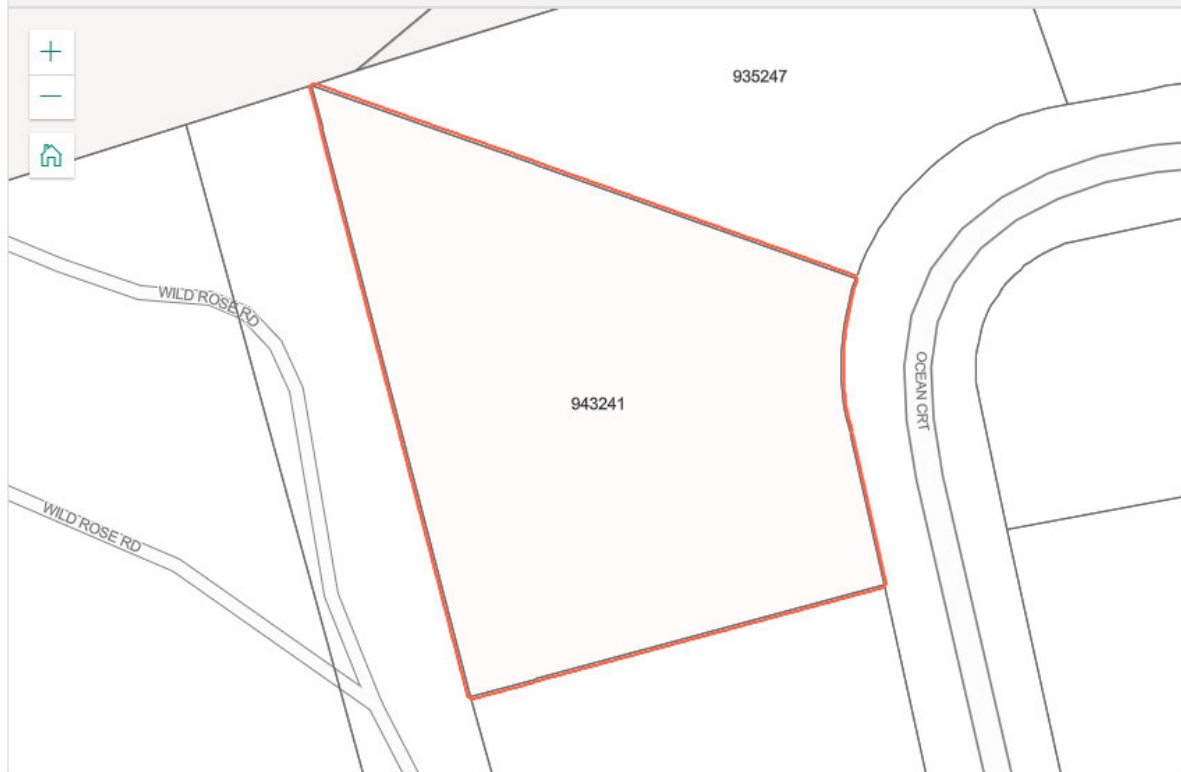
Search

Showing results 1-1 of 1


PID	Address, Community	Application Type	Application Details	Nature of Decision	Appeal By Date
943241	Ocean Court, GREENWICH	Development Permits	Residential, Residential (Single Unit Dwelling)	Approved	2023-08-15

Community	GREENWICH
Application Type	Development Permits
Address	Ocean Court
File Number	C-2023-0273
Nature of Decision	Approved
PID	943241
Consolidation PIDs	
Decision Date	2023-07-24
Posted Date	2023-07-24
Last Appeal Date	2023-08-15
Application Details	Residential, Residential (Single Unit Dwelling)
Approving Authority	Province of PEI

Planning Decision Map



How did we do? Give us your feedback on this service

Appeals to IRAC must be filed within 21 days of the decision in question. The calculation of the days included in the 21-day appeal period will be made in accordance with section 23 of the "[Interpretation Act](#) 

Published date: September 22, 2022

TAB 6

Dear Mr. Schneider,

It's evident that both our interests lie in the well-being of Prince Edward Island, and I'd like to shed light on my perspective.

Firstly, I want to assure you that I am an Islander who deeply cares about our home. Over the years, I have been actively involved in environmental preservation efforts on PEI, having raised millions of dollars for wetland conservation, donated lands to the Province, and financially supported various watershed initiatives. I sat on the board of Nature Conservancy of Canada both nationally and provincially for close to 20 years. So, I will not tolerate being painted as an environmental villain.

Regarding Greenwich, the issue is simple. The matter revolves around a large discrepancy in the appraisal value of my land (\$528,000) compared to the offer from the park (\$180,000). I agreed to accept their offer if the difference in the appraisals could be given as a federal tax credit but they didn't respond. Back in 2005 I paid \$240,000 for those 4 lots and property taxes around \$800 per lot for 18 years. I recently presented an alternate option to Parks to achieve fair remuneration and that process is currently underway (which I hope works out) but is ultimately in their hands.

I understand the importance of ECOPEI's mission and share the desire to uphold environmental stewardship on the Island. As such, I don't want to harm or fight with your organization. But I would ask you to help me convince the Park to pay me my bona fide appraisal, so I can move on, and we continue to support our PEI environment.

Best regards,

Tim

TAB 7

Meaghan Hughes

From: Eugene Lloyd
Sent: Wednesday, July 19, 2023 8:20 AM
To: Dean Lewis; Dean Carroll
Subject: Tim Banks Greenwich Lot 2 C-2023-0273

Tim submitted a new application yesterday for Lot 2 in Greenwich. We have committed to providing an approved permit in short order, by the end of the week if possible.

The permit was put in under a Charlottetown number (C-2023-0273) but at this point, it doesn't matter.

Can one of you find some time in the very near future to work on this and hopefully finalize as soon as possible? I'd use all the conditions created previously and ensure he signs off on those conditions. Once complete, I will ask him to withdraw the current appeal, as at that point it would be moot anyway.

Thank you and sorry for the short notice!

Eugene Lloyd
Manager (Acting) of Development Control
31 Gordon Drive
Charlottetown, PE C1A 7N8
(ph) 902-368-4465

TAB 8

NOV 17 2023

**SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)**

BETWEEN:

Supreme Court of P.E.I.

TIM BANKS

PLAINTIFF

AND:

**HERMAN McQUAID, RBKR LTD. c/o/b/a ATLANTIC REALTY ADVISORS (ARA)
McQUAID ASSOCIATES, ENVIRONMENTAL COALITION OF PEI and JANELL
SMITH**

DEFENDANTS

STATEMENT OF DEFENCE

1. Except as hereinafter expressly admitted, the Defendant, Environmental Coalition of Prince Edward Island Ltd. ("ECOPEI"), denies each and every allegation contained in the Statement of Claim as if set forth and specifically denied herein and puts the Plaintiff to the strict proof thereof. Further, the Defendant states that it is misnamed in the Plaintiff's Claim, and that its proper legal name is the "Environmental Coalition of Prince Edward Island Ltd".
2. The Defendant specifically denies the allegations contained in paragraphs 1, 15, 16, 17, 20, 21, and 22 of the Statement of Claim.
3. The Defendant has no knowledge in respect of the allegations contained in paragraphs 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 18, and 19 of the Statement of Claim.
4. With respect to paragraph 5 of the Statement of Claim, the Defendant states that it is a community-based action group and registered non-profit corporation with charitable status based in P.E.I., whose objects and purposes are to promote conservation and enhancement of the environment. The primary initiative of ECOPEI is the MacPhail Woods Ecological Forestry Project which works to protect natural areas through wildlife

enhancement, forest stewardship, watershed protection, environmental education, and ecological research.

5. As to paragraph 6 of the Statement of Claim, the Defendant acknowledges that Janell Smith is a member of ECOPEI's Steering Committee.
6. As to paragraphs 1(c) and 16 of the Statement of Claim, the Defendant states that the Plaintiff's claim of civil conspiracy is baseless and wholly without merit and denies that the Plaintiff is entitled to the relief claimed in paragraph 1 or to any relief whatsoever from the Defendant and puts the Plaintiff to the strict proof thereof.
7. The Plaintiff has alleged that the Defendant unlawfully engaged in a civil conspiracy to harm the Plaintiff, when in reality, the Defendant's sole objective and involvement in this matter has been limited to lawfully exercising its right to seek administrative review of a development permit which was approved in an ecologically sensitive area of P.E.I. At all material times, the Defendant acted in furtherance of its longstanding environmental protection objectives.
8. As to paragraph 15 of the Statement of Claim, the Defendant states that in keeping with its public interest and environmental protection objectives, it properly commenced an Island Regulatory and Appeals Commission ("IRAC") appeal pursuant to section 28 of the *Planning Act*, RSPEI 1988, c P-8, by Notice of Appeal on August 11, 2023 (the "IRAC Appeal"), seeking that a residential development permit for PID 943241 in Greenwich P.E.I. which was granted on July 24, 2023, be quashed, and the related approval overturned/reversed.
9. At the time of filing this Statement of Defence, IRAC remains seized of the IRAC Appeal.
10. As to paragraph 17, and the whole of the Statement of Claim, the Defendant states that the Plaintiff's claim of civil conspiracy is an allegation of "malice or intent", as specified in Rule 25.06(8) of the *Prince Edward Island Rules of Civil Procedure*, and that the Plaintiff has failed to plead full or sufficient particulars of those allegations.

11. Further, the Defendant states that it is plain and obvious that the Plaintiff's Statement of Claim fails to disclose a reasonable cause of action known at law, and that the Plaintiff has suffered no damage.
12. In the alternative, the Defendant states that the Plaintiff's Claim is an abuse of process, and an improper use of civil litigation to intimidate and harass a non-profit public interest organization which is actively engaged in an administrative hearing—namely the IRAC Appeal.
13. Accordingly, the Defendant states that the Plaintiff's pleading is scandalous, frivolous, or vexatious, and should be struck pursuant to Rule 2.1.01(1) or Rule 25.11 of the *Prince Edward Island Rules of Civil Procedure*.
14. The Defendant pleads and relies upon the specific provisions of the *Judicature Act*, RSPEI 1988, c J-2.1.
15. The Defendant respectfully submits that this action be dismissed with substantial indemnity costs payable to the Defendant.

DATED at Charlottetown, Queens County, Province of Prince Edward Island, this 17th day of November, 2023.


Duncan H.T. Sturz
McInnes Cooper
141 Kent Street, Suite. 300
Charlottetown, PE C1A 1N3
duncan.sturz@mcinnescooper.com
Tel: 902 368 8473
Fax: 902 368 8346

**Lawyer for the Defendant, Environmental
Coalition of PEI Ltd.**

TO: KENNETH L. GODFREY
Campbell Lea
400-65 Water Street
PO Box 429
Charlottetown, PE C1A 7K7
Tel: 902 566 3400
Fax: 902 367 3713
Lawyer for the Plaintiff

AND TO: HERMAN McQUAID



AND TO: RBKR LTD.



AND TO: JANELL SMITH



SUPREME COURT OF PRINCE EDWARD ISLAND
(GENERAL SECTION)

PROCEEDING COMMENCED AT CHARLOTTETOWN,
QUEENS COUNTY

STATEMENT OF DEFENCE

Duncan H.T. Sturz
McInnes Cooper
141 Kent Street, Suite 300
Charlottetown, PE C1A 1N3
duncan.sturz@mcinnescooper.com
Tel: 902 368 8473
Fax: 902 368 8346

DS/mm - 240864