



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

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The Island Regulatory
and Appeals Commission

Date Issued: June 10, 2024

Docket: LA21-024

Type: Planning Act Appeal

BETWEEN:

Lucas Arsenault, Jennie Arsenault and L&J Holdings Inc.

Appellants

AND:

Minister of Housing, Land and Communities
(successor to Minister of Agriculture and Land)

Respondent

IMPLEMENTATION ORDER

Panel Members:

M. Douglas Clow, Panel Chair

Kerri Carpenter, Commissioner

1. BACKGROUND

1. The Minister denied an application for a 19 Lot Subdivision for Residential Use from PIDs 203000 and 808154 (parcels to be consolidated to form one consolidated parcel of approximately 44 acres) (the "Property").
2. An appeal was filed with the Commission on October 7, 2021, appealing the Minister's decision to deny the application.
3. The Commission heard three days of oral testimony relating to the application. Final submissions were filed with the Commission in June 2022.
4. On May 12, 2023, the Commission issued Order LA23-04 allowing the appeal, and ordering the Property be consolidated and subdivided to permit the 19 lot subdivision for residential use.
5. On May 31, 2023, the Minister appealed Commission Order LA23-04 to the Prince Edward Island Court of Appeal. On October 23, 2023, the Minister abandoned the appeal to the Court of Appeal.
6. On July 20, 2023, the Minister approved the Official Plan and Land Use Bylaw for the Rural Municipality of West River.
7. On November 3, 2023, the Minister requested the Commission act in the name of the Minister and implement Order LA23-04 under section 28(11) of the *Planning Act*. The Minister made this request as he questioned his planning authority over the Property given the Official Plan and Land Use Bylaw was now in effect in this area. The Minister suggested the standard subdivision conditions, as they existed in 2021 (when the application was processed), be implemented by the Commission.
8. The Appellants have agreed with the Commission acting in the name of the Minister to implement Order LA23-04 as set out in section 28(11) of the *Planning Act*. The Appellants have further agreed to the inclusion of the standard subdivision conditions as suggested by the Minister.

2. IMPLEMENTATION ORDER

9. The parties having agreed to the conditions, which are the standard conditions that would have been in place at the time the Minister denied the Appellants' subdivision application, and in accordance with the Order LA23-04 and section 28(11) of the *Planning Act*, the Commission sets out the following conditions to be completed within two (2) years of the date of the within Implementation Order:
 - I. The lots being surveyed by a qualified surveyor and at least eight (8) copies of the survey plan being submitted to the Department of Housing, Land and Communities (the "Department"), for approval stamping.
 - II. Soil test(s) to be provided to the Department, and:
 - a. All Category 1 lots must have a minimum frontage of 100 feet with a minimum area of 25,000 square feet with dimensions that will permit the lot to contain a

150-foot circle within its boundaries, with an assumed depth of permeable soil of at least 60 cms;

- b. All Category 2 lots must have a minimum frontage of 100 feet with a minimum area of 35,000 square feet with dimensions that will permit the lot to contain a 175-foot circle, with an assumed depth of permeable soil of at least 30 cms;
 - c. All Category 3 lots must have a minimum frontage of 100 feet with a minimum area of 51,000 square feet with dimensions that will permit the lot to contain a 225-foot circle, with an assumed depth of permeable soil of at least 30 cms; and
 - d. All Category 4 lots must have a minimum frontage of 100 feet with a minimum area of 75,000 square feet with dimensions that will permit the lot to contain a 300-foot circle, with an assumed depth of permeable soil of less than 30 cms.
- III. A surface water management plan shall be submitted to the Department by a qualified engineer. This water management plan will be reviewed by the Department of Transportation and Infrastructure. The Department of Transportation and Infrastructure must be satisfied with the water management plan, based on the standard requirements for a 19-lot subdivision, prior to final approval being granted by the Department for any part of the subdivision.
- IV. The roads within the subdivision must be named and approved or verified by the 911 Administration Office. The names must be shown on the final plan of survey. Contact the office at (902)894-0385, 134 Kent Street, Suite 600, Charlottetown, PE, C1A 8L8.
- V. The road must be designed and constructed by a qualified professional engineer to the satisfaction of the Department of Transportation and Infrastructure. That department must be satisfied with the plan prior to final approval being granted for any part of the subdivision.
- VI. Open space of a minimum of 10% of the total area of the lots being subdivided must be set aside. This must be shown on the final survey plan.
- VII. All standard requirements of the Department of Transportation and Infrastructure must be satisfied.
- VIII. The *Planning Act Subdivision and Development Regulations* require a minimum 60 foot buffer or 60 times the annual rate of erosion, whichever is greater, measured from the top of bank along the watercourse. As well, the *Environmental Protection Act* requires a minimum 15-meter buffer zone adjacent the watercourse located at/near the southern boundary of this property. The applicant is advised that no development (including, but not limited to, the placement/construction of a building or other structure, the cutting of trees/shrubs, the operation of heavy equipment and any excavation/disturbance of the ground) is permitted in a watercourse, wetland or buffer zone without a Watercourse, Wetland and Buffer Zone (WWBZ) Activity Permit. For information on permitting requirements or for assistance in determining the location of a watercourse, wetland or buffer zone, the applicant should contact the Department of Environment, Energy and Climate Action at (902)368-5700.

- IX. All lots must be accessed via the internal subdivision road only, unless otherwise approved by the applicable Department.
 - X. The domestic wells for the proposed lots must be kept minimum 50 meters from the closest shoreline in order to reduce the risk of saltwater intrusion.
10. The Commission notes the following disclaimers attaching to the subdivision approval:
- a) The subdivision approval granted herein is permission to divide land. Subdivision approval should not be interpreted as including approval of the location of structures that are currently on the property.
 - b) Utility easements are not addressed by this approval.
 - c) Issuance of this subdivision approval/development permit does not imply any warranty against damages related to weather and/or climate change, including, but not limited to, coastal erosion and flooding. Government shall not be liable for any claims, demands, losses, costs, damages, actions, suits or proceedings of every nature and kind whatsoever arising out of or resulting from the issuance of this subdivision approval/development permit or which may occur to this subdivision/development as a result of damages related to the weather and/or climate change.
 - d) Properties located near a watercourse and/or coastline may be subject to erosion and flood hazards. For these properties, a Coastal Hazard Assessment is included as part of the development permit review process. The information contained in the Coastal Hazard Assessment should be taken into consideration in the design of the proposed subdivision/development.
 - e) All rights of way serving the approved subdivision meet the requirements of the *Planning Act Subdivision and Development Regulations*. Subdivision approval does not include or provide any actual legal right of way from the approved subdivision lot(s) to the public road. The provision of any such right of way is the responsibility of the rights of way owner(s).
11. Upon fulfillment of each of the conditions noted in paragraph 9(I)-(X), inclusive, the Commission orders that the Department of Housing, Land and Communities shall stamp the subdivision plan for final approval.

DATED at Charlottetown, Prince Edward Island, May 31, 2024.


BY THE COMMISSION:


M. Douglass Clow, Panel Chair


Kerri Carpenter, Commissioner

CONSENTED TO BY THE PARTIES:


David Hooley, K.C. or Melanie McKenna,
Counsel for the Appellants


Richard Collier, Counsel for the Respondent