



Point Prim Appeal Expert Opinion

Introduction

My name is Chris Markides, a member of the Canadian Institute of Planners, a Licensed Professional Planner of Nova Scotia, and I hold a Master of Planning Degree from Dalhousie University. I have six years of professional planning experience as a Professional Planner in Atlantic Canada, focusing on policy and regulation at the local government level. My recent work involves assisting Municipalities with the development of Municipal Planning Strategy (MPS) and Land Use By-Law (LUB) regulations and preparing applications for clients working under this type of regulation. My CV is attached as Appendix 1.

I have been retained by McInnes Cooper, on behalf of their client, to review a decision by the Minister of Agriculture and Land to refuse an amended development permit at PID #877647 located at Bessie Willow Land, Point Prim, Queens County, Prince Edward Island.

While I have been retained on behalf of the appellant, I acknowledge that my duty as an expert is to advise the Commission impartially on matters within my area of expertise (Land Use Planning and Development), and that this duty overrides any duty to the party that has retained my services.

The purpose of this review is to analyze the reasons for refusing the development permit for a summer cottage to determine if the application complies with, and is consistent with the PEI planning and regulatory framework.

To complete my analysis of the development permit refusal I reviewed the following documents:

- Planning Act and Subdivision and Development Regulations
- The decision document refusing the development permit
- The application for the development permit (Permit Application)
- Correspondence between the applicant and the planning authority
- Historic Places records for Profitt Barn, River Crest Acres Barn, Gillis Barn, and Ramsay Barn

The analysis of the Planning Act and Subdivision and Development Regulations, along with the decision document denying the development permit, sheds light on the factors influencing the refusal of the application for the summer cottage. Additionally, the correspondence between the applicant and the planning



authority, as well as the records of historic places, such as Profitt Barn, River Crest Acres Barn, Gillis Barn, and Ramsay Barn, provide valuable insights into the context surrounding the development permit application and its subsequent refusal.

Background

The case revolves around the development permit application by Parry Aftab and Allan McCullough (hereinafter referred to as "the applicants") for their property. The application underwent amendments and considerations, culminating in a decision by the Minister of Agriculture and Land (hereinafter referred to as "the Minister") that denied the permit, subsequently appealed by the applicants.

Development Permit Application Submission:

On July 27, 2021, the applicants submitted an Amended Development Permit Application to clarify and amend a previously approved development permit issued on July 13th, 2017 (Permit 02017-0119).

Minister's decision:

On December 14, 2021, the Minister denied the development permit application, citing that (a) the proposed structure did not align with "sound planning principles" due to its lack of integration into the rural character, and (b) it would create a "detrimental impact" on surrounding land uses, citing concerns over visual impact (overlooking and loss of privacy), incongruity with the area's character, and potential adverse effects on visual amenity.

Defining Sound Planning Principles and Detrimental Impact

The concept of "sound planning principles" are crucial in the Minister's decision to deny the Amended Development Permit Application for PID #877647 and the subsequent appeal by Parry Aftab and Allan McCullough.

As stated in the Submissions of The Minister of Agriculture and Land (File No. LA22002), sound planning principles in the context of this application are comprised of the Objects outlined in the Planning Act (para. 23(b), 48). The objects include the "Purposes" of the Act and the "Provincial Interests".



As identified in the appeal record (Tab 4(J)) in the land use planning report prepared by Alex O'Hara, the specific Objects that were reviewed in this application were:

- Purposes – to promote sustainable and planned development.
- Provincial Interests – the protection of viewscales that contribute to the unique character of Prince Edward Island.

The appeal revolves around the "detrimental impact" mentioned in the Minister's decision to deny the development permit for the summer cottage. Concerns included potential privacy issues, visual amenity effects, and the impact on the rural character.

As defined in the Planning Act Subdivision and Development Regulations, "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:

- real property value;
- competition with existing businesses;
- viewscales; or
- development approved pursuant to subsection 9(1) of the Environmental Protection Act;

Real property value, competition with existing businesses, and viewscales are not considered under the definition of "detrimental impact" as per the Planning Act Subdivision and Development Regulations. Understanding these aspects is essential in addressing the concerns raised in the denial of the development permit application for the summer cottage.

Sound Planning Principles

When examined against the amended development permit application, the following can be said regarding the specific Objects that were reviewed:

Promote sustainable and planned development.

The proposed land use is consistent with the surrounding land uses, as per the Planning Act Subdivision and Development Regulations. When considering the plan's purpose, "to promote sustainable and planned development", it's important to differentiate between planning from a land use or group of land



use perspectives and site-specific development planning. Planned development refers to the process of designating lands for specific land uses or mix of land uses, such as residential, commercial, or industrial. This process creates comprehensive plans developed by planning authorities. The plans are informed by economic trends, environmental considerations, and community needs, with the goal of guiding the growth and development of a community in a sustainable and orderly manner. Given the high level nature of the Planning Act and its Purposes, it is not reasonable to apply this clause to a site-specific development where the land uses are compatible (summer cottage in an area where other summer cottages and single unit dwellings are the predominant land use).

Protecting viewsapes that contribute to the unique character of Prince Edward Island.

The Planning Act Subdivision and Development Regulations specify protected viewsapes, but none exist in the Point Prim area. Scenic viewsapes are protected by the Scenic Viewscape Zone outlined in Section 58 of the Planning Act Subdivision and Development Regulations. The importance of a specific Scenic Viewscape Zone cannot be understated. It is clear that the statement of provincial interest regarding the protection of viewsapes underscores the significance of preserving and enhancing the aesthetic appeal of the landscape. While the summer cottage proposal aligns with the predominant land use in the area, the absence of protected viewsapes in Point Prim raises questions about the Minister's emphasis on this aspect. Understanding the nuances of these planning principles is crucial in evaluating the decision to deny the development permit application and its implications on sustainable development and provincial interests.

The analysis of the "sound planning principles" used by the Minister to make their decision to refuse the development permit was flawed. The Minister's flawed rationale in refusing the development permit lies in a misinterpretation of the Planning Act's provisions. By not recognizing the absence of a designated Scenic Viewscape Zone in Point Prim, the decision incorrectly applies the principle of protecting viewsapes. It is imperative for decision-making to be grounded in accurate application of the relevant statutes to ensure that sustainable development is not hindered by errors in judgment. The implications of this decision extend beyond this single case, potentially affecting future applications and the overall approach to planning within the province.

This is further underscored when reviewing the reasons stated by the minister that the development causes a "detrimental impact" on the surrounding land uses.

In exploring the minister's assertion of "detrimental impact" on the neighboring properties, it's necessary to delve into the nature of these impacts. Concerns regarding public health, safety, and environmental protection are paramount in planning decisions. However, in this scenario, the speculative nature of the claimed impacts lacks substantial evidence, particularly when the current land use pattern in Point Prim does not contrast sharply with the proposed development of a summer cottage.

Analysis of Reasons deemed to cause a Detrimental Impact

In the Background section of this document, the term "Detrimental Impact" is introduced and defined as: *"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:*

- *real property value;*
- *competition with existing businesses;*
- *viewscales; or*
- *development approved pursuant to subsection 9(1) of the Environmental Protection Act;"*.

The rural single-family dwelling doesn't impact public health or safety. In terms of "protection of the natural environment," the applicant received approval for the construction of a building on the subject property. Despite the increased size of the subject building from the building shown in the permit drawings, it is unlikely that a significant increase in harm to the natural environment was incurred. Therefore, the only loss or harm that can reasonably result from the construction of the subject building is "loss or harm suffered in person or property in matters related to ... surrounding land uses." However, the definition makes clear that considerations for loss or harm cannot include "real property value, ... or viewscales." The onus, then, is on the Minister to provide rationale as to how "loss or harm" are suffered by persons or property in surrounding land uses. The reasons provided by the Minister, as outlined below, relate to the relationship of the subject building to the adjacent property(ies) and appear to claim that the loss or harm incurred relate to privacy and the design/visual appearance of the subject building. It is unclear how the subject building, as constructed, differs so significantly from the building shown in the previous approved Development Permit that *more* loss of privacy and *more* impact on visual amenity would be incurred.

However, if it can be determined that the subject building does, in fact, increase the loss or harm incurred based on the three reasons given below, then this section can be used to determine whether those reasons can be reasonably defended using ‘sound planning principles’, when analyzing for the presence of “loss or harm”.

In Section C of the Appeal Record Tab 1B, the Minister outlines three reasons for having determined that the proposal would have “Detrimental Impact” on surrounding land uses. The reasons given include “Overlooking and Loss of Privacy”, “Design, Appearance and Materials”, and “Impact on Visual Amenity”. This section provides an analysis of each of these reasons and uses sound planning principles, as defined in the previous section, to outline a professional planning opinion as to whether “loss or harm” are likely to be incurred by “person or property in matters related to ... surrounding land uses”.

Reason one provided by the Minister: “Overlooking and Loss of Privacy”

This subsection evaluates whether “overlooking and loss of privacy” for the subject property has been reasonably mitigated to limit the “harm or loss” to “surrounding land uses”, and whether this harm would be significantly greater than that of the proposed building.

1. Building Height

In this area, the Planning Act Regulations do not specify a height limit. However, in areas where height limits are specified in the Act, the regulation is the number of storeys. The structure in question can be considered a single-family dwelling or seasonal dwelling. In areas where there are height limits for such structures, the maximum height is three storeys. It can reasonably be assumed that if height restrictions did exist for the subject property, they would be in line with the existing regulations for other seasonal and single-family dwellings. Therefore, the subject building is in line with planning regulations for like dwellings in other areas and in line with expected regulations in the subject area, should they exist in the future. Furthermore, it is not likely that the structure as completed causes any loss or harm to surrounding land uses than the structure proposed and approved by the initial development permit.

2. Location on the Lot

Location on the lot, or “siting”, is an important component of sound planning. Typically, ideal lot siting would set structures back from property lines, which can either be prescribed as a certain distance from a lot line or another structure, or

variable based on the height of the structure. On Prince Edward Island, the Planning Act Subdivision and Development Regulations outline setbacks from property lines, water courses, etc. It is my understanding based on the documents in the appeal record that the prescribed setbacks have been met or exceeded.

From the perspective of sound planning principles, a typical variable setback regulation would be approximately half the height of the building. In this case, the building well exceeds that best practice. Furthermore, the building is strategically placed toward the rear of the lot, maximizing the distance from the two neighbouring dwellings and from any public viewpoints. As well, the position of the building reduces direct sightlines into neighbouring yards and dwellings due both to its setback and the fact that it is linearly offset from the neighbouring buildings. While the exact distance from neighbouring properties is not known based on documents in the appeal record, based on a google earth measurement I've calculated that the structure is at least 75 metres away from the nearest adjacent dwelling. At this distance, the summer cottage in question cannot reasonably be considered to be overlooking any adjacent dwellings. These siting features mitigate concerns of overlooking and privacy loss to the degree that can be reasonably expected. Furthermore, it is not likely that the structure as completed causes any loss or harm to surrounding land uses than the structure proposed and approved by the initial development permit.

3. Vegetative Buffer

Vegetative buffers can be composed of trees or shrubbery that stand tall enough to provide visual shielding between properties. These buffers are frequently required in land use planning documents and are considered, based on sound planning principles, to provide privacy, shielding, and an increased visual separation between adjacent uses, properties, etc. On the subject property, a significant vegetative buffer including mature trees exists between the proposed structure and the nearest neighbouring property (Parcel 877654).

In this case, this buffer not only enhances privacy for neighbouring properties, but also contributes to the rural character of the area and helps to reduce the visual impact of neighbouring structures.

Design, Appearance, and Materials

This subsection examines whether the design, appearance, and materials of the subject building are out of character with the surrounding environment and

whether the “loss or harm” caused by these materials is greater than that which may have been caused by the building shown in the Permit Drawings.

4. Architectural Style

The structure in question is designed to look like a barn in keeping with the rural character of the surrounding area. It includes a gambrel roof, wood clapboard siding, and is three stories in height. Barns with a similar appearance can be found throughout rural Prince Edward Island, and the style of the structure is consistent with several historic buildings in the region. This includes the following examples of similar proportion and design which are Registered Heritage Properties:

- Profitt Barn <https://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=18474>
- River Crest Acres Barn <https://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=18702>
- Gillis Barn <https://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=20997&pid=0>
- Ramsay Barn <https://www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=20267>

The above list is not exhaustive and many more such examples exist as this is a common historic form in rural PEI. It should be noted that while the subject building does not share exact dimensions as the listed historic structures, this is mainly due to the difference in the modern Building Code, which has requirements that far exceed those under which historic buildings were constructed. Nevertheless, these examples underscore the proposed structure's compatibility with regional architectural heritage. Furthermore, it is not likely that the structure as completed causes any loss or harm to surrounding land uses than the structure proposed and approved by the initial development permit.

Impact on Visual Amenity

This subsection examines whether “visual amenity” can be considered under sound planning principles and whether the “loss or harm” caused to “visual amenity” is greater than what may have been caused by the proposed building approved in the Building Permit.

The concern provided in the Decision of the Minister document (Tab 1B) which refers to “the impact on visual amenity” as a reason for refusal should be



questioned based on sound planning principles. Visual amenity is not defined in the Planning Act and cannot be specifically regulated without excluding the development of any property which may interfere with the “visual amenity” of adjacent properties. In this sense, any new development could be said to be interfering with visual amenity, given that new development inherently introduces a new structure to a property that had either a different structure, or was a completely undeveloped. Furthermore, it is not likely that the structure as completed causes any loss or harm to surrounding land uses than the structure proposed and approved by the initial development permit.

Conclusion

In assessing the overall impact of the structure on its surroundings, it is clear that the development is in keeping with the area's established aesthetic and planning standards. The existence of a robust vegetative buffer, adherence to the region's architectural vernacular, and compliance with modern Building Codes all demonstrate the project's alignment with the community's character. Additionally, any potential loss of privacy or visual amenity is minimized through thoughtful siting and landscape integration, ensuring compatibility with neighboring properties. It is my opinion that the Minister erred in their interpretation of and application of “Sound Planning Principles” and “Detrimental Impact” with respect to this development permit application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Chris Markides".

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