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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 LA22-012– *Willemina and Floyd Squires. v. Minister of Agriculture and Land*
Our File: LS 24543

These submissions are provided on behalf of the Minister of Agriculture and Land (“Minister”) in response to the January 16, 2023 letter from Geoffrey D. Connolly, K.C. on behalf of the Appellants in the above noted appeal.

With respect to the Appellants and their counsel, the Minister submits that they have missed the mark and are still asking the Commission to find that they have jurisdiction to hear a boundary line dispute.

The Development Permit issued on May 27, 2022 (Tab 1 of the Record) authorized Mr. McQuillan to construct a non-commercial storage building on PID 492702. The construction of the building was to be completed “in accordance with the plans and information submitted, and subject to compliance with the provisions of all regulations under “The Planning Act”, governing and affecting the development.”

Section 32 of the Planning Act Subdivision and Development Regulations (“Regulations”) prescribes the required materials for a development permit application and includes: a copy of a property map, an application fee, and any additional information the Minister considers necessary. The application is to be made on the form prescribed by the Minister.

The Development Permit Application of March 31, 2022 submitted by Mr. McQuillan (Tab 2 of the Record) was on the form prescribed by the Minister, the application was paid, a property map was provided and all additional information that the Minister considered necessary was included. The Development Permit of May 27, 2022 was issued in accordance with the prescribed materials from the legislation and was properly issued by the Minister.

The Appellants seem to suggest that the Commission has jurisdiction to hear this appeal because the Development Permit Application contained insufficient information in order for the Minister to decide whether to approve or deny the Application. The Minister submits that all required

information was contained in the March 31, 2022 Development Permit Application submitted by Mr. McQuillan.

When applying for a Building and Development Permit the following must be included as part of the sketch:

- Property boundaries and dimensions;
- Structures including exterior dimensions;
- Distance of structures from centre of roads;
- Location of driveways from the centre to the nearest property boundary;
- Location of any well, septic tank, and field tile and distances from the structure;
- Roads;
- Setbacks from side and rear yard property lines;
- Distances from watercourses, top of banks, and sand dunes;
- Natural slope of the land; and
- Distance between well and septic system.

There is no “point of reference”, “survey pins” location, or “other monuments” required as part of the sketch in an application. All required information was contained in the sketch submitted with the March 31, 2022 Development Permit Application.

The Development Permit Application submitted on March 31, 2022 by Mr. McQuillan clearly states at section 6.g. that:

- the minimum distance from the front yard property line to the structure would be 200 feet;
- the minimum distance from the rear yard property line to the structure would be 640 feet;
- the minimum distance from the right-side property line to the structure would be 166 feet; and
- the minimum distance from the left-side property line to the structure would be 28 feet.

The Appellants take issue with the distance from the left-side property line to the structure and note that, “At Tab 2, there is a sketch accompanying the Application. While the sketch shows a 28 ft side yard from the “community boundary/property line,” there is no indication of any point of reference to define where that line is in space.” Determining a “community boundary/property line” is not within the purview of the Minister in issuing or denying a Development Permit Application.

The structure approved in the May 27, 2022 Development Permit is required to be constructed a minimum of 28 feet from the left-side property line. Where that property line is located is not within the jurisdiction of the Commission to decide.

The Appellants, “seek to ensure that a permit is issued which requires compliance with setbacks from an identified monument so that a structure is not placed within the required setback.” Pursuant to section 38(1) of the Regulations there must be a minimum of 15 feet between a structure and a side lot line.

The Development Permit was properly issued pursuant to the applicable legislation, given that the structure was to be 28 feet from the left-side property line. If the structure was not built in accordance with the May 27, 2022 Development Permit then it becomes an enforcement issue for non-compliance with a Development Permit, again not an issue which is within the jurisdiction of the Commission.

The Minister continues to take the position that the Commission does not have jurisdiction to hear this appeal.

The Commission gets their jurisdiction to hear appeals, in relation to decisions of the Minister, pursuant to section 28(1) of the Planning Act,

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.

The Commission has no “inherent jurisdiction”¹ to hear and decide matters like a superior court does. The Commission must be “assigned the statutory jurisdiction”² in order to hear a matter. To hear a matter outside the Commission’s jurisdiction would be an abuse of process³.

All information as required by the Regulations was submitted by Mr. McQuillan in the March 31, 2022 Development Permit Application, that information was considered by the Minister in issuing the May 27, 2022 Development Permit. If the structure on PID 492702 was not constructed a minimum of 15 feet from the left-side property line, then it becomes an encroachment issue for the PEI Supreme Court to deal with. If there is a dispute about where the property line is which would affect whether the structure constructed on PID 492702 is a minimum of 15 feet from the left-side property line then that is also an issue for the PEI Supreme Court to deal with. The Commission does not have jurisdiction to decide on issues of encroachment or a boundary line dispute.

The Minister submits that the appeal must be dismissed by the Commission as they do not have jurisdiction.



Mitch O'Shea
Legal Counsel for the Minister

¹ Brian R. MacKay v Minister of Agriculture and Land, Order No: LA22-03..

² *Ibid.*

³ *Ibid.*