



65 Grafton Street, P.O. Box 2140
Charlottetown PE C1A 8B9 Canada tel: 902.892.2485 fax: 902.566.5283
stewartmckelvey.com

File Reference: SM105.134

Scott M. Barry
Direct Dial: 902.629.4582
sbarry@stewartmckelvey.com

January 24, 2024

Via Electronic Mail

Ms. Jessica Gillis
Island Regulatory and Appeals Commission
134 Kent Street, Suite 501
PO Box 577
Charlottetown, PE C1A 7L1

Dear Sir/Madam:

**Re: Docket LA23020
Permit No. C-2023-0273
(PID 943241)**

These are submissions on behalf of Timothy R. Banks (“Banks”), owner of PID 943241 (the “Lot”) and holder of Development Permit No. C-2023-0273 (the “Permit”), in opposition to the appeal proceeding commenced by the Environmental Coalition of PEI challenging issuance of the Permit.

Summary of Facts

1. St. Peter’s Estates Ltd. was a body corporate duly incorporated under the laws of the Province of Prince Edwards Island.

2. St. Peter’s Estates was the owner of lots 1-70 of in Greenwich, for which it sought and obtained subdivision approval such that it could convey individual lots to successors in title. The lots were approved for Resort Development use subject to conditions on December 8, 2004. The conditions of note include:
 - a. All lots shall be serviced by a central water system that has been designed and constructed in accordance with the requirements of the Department of Environment, Energy and Forestry.
 - b. [Not applicable as it relates to Lots 35 to 38 and 45 to 70 – not the Lot which is lot 2].
 - c. [Not applicable as it is specific to Category III lots and the Lot is a Category I lot].

- d. The use of water conservation plumbing fixtures shall be mandatory throughout the development.
 - e. The resort shall be developed and occupied in accordance with an Environmental Protection Plan, Environmental Management Plan and Human Use Management Plan as approved by the Department of Environment, Energy and Forestry.
3. Lots 2, 28, 29, and 30 were acquired by Timothy R. Banks on September 9, 2005.
4. St. Peter's Estates Ltd. took steps to satisfy the conditions of subdivision approval in 2005.
5. December 31, 2005 was the last annual return filed by St. Peter's Estates Ltd. The status of the corporation is 'dissolved'.
6. In response to recent efforts by Banks to develop some of his lots in this subdivision, the province took the view that certain loose ends remained for the conditions of approval such that the conditions had not been fully satisfied by (the now defunct) St. Peter's Estates Ltd.
7. There were a number of discussions between Banks and the province towards an approach that would allow Banks to develop his lots while also satisfying the underlying conditions for their approval.
8. Banks submitted a Building and Development Permit Application dated July 18, 2023 to construct a single unit summer cottage/seasonal dwelling on the Lot.
9. The Development Permit was approved by the senior development officer and issued by the Department of Housing, Land and Communities under the authority of the Subdivision and Development Regulations on July 24, 2023.
10. The Environmental Coalition of PEI Ltd. has elected to appeal the issuance of the development permit.

Standard of Review

11. The Legislature intended appeals under the *Planning Act* to take the form of a hearing *de novo* before the Commission¹. The Commission is required to determine appeals in accordance with the *Planning Act*, adhere to the rules of procedural fairness, and provide reasons for its decisions².
12. The Commission must make its own decision on the merits of an appeal³. The Commission may make its own decision by agreeing with a decision by the Minister, giving weight to a decision by the Minister, or substituting its own decision for the one made by the Minister⁴. In order to exercise its mandate as an intermediate appellate tribunal, it is necessary for the Commission to have the capacity to review planning-related decisions for both substantive and procedural errors⁵.
13. The guideline used by the Commission when reviewing decisions strikes the appropriate balance between deference and independent decision-making⁶. It is unreasonable for the Commission to substitute its decision for that of the Minister where the Commission does not identify any substantive or procedural error on the part of the original decision maker⁷. The Commission usually extends deference to underlying decisions that are properly made and accord with procedural fairness⁸. The Commission cannot substitute its own decision simply because it disagrees with the end result reached by the Minister⁹.

¹ [Island Regulatory and Appeals Commission \(Re\)](#), 1997 CanLII 4578 (P.E.I.S.C.A.D.) [Reference] at para. 9.

² [Ibid.](#) at para 10.

³ [Doiron v. Prince Edward Island \(Island Regulatory & Appeals Commission\)](#), 2011 PECA 9 at para 20.

⁴ [Ibid.](#)

⁵ [Charlottetown \(City\) v. Prince Edward Island \(Island Regulatory and Appeals Commission\)](#), 2013 PECA 10 [Charlottetown] at para 31.

⁶ [Ibid.](#) at paras. 32 and 40.

⁷ [Stanley Bridge \(Resort Municipality\) v. Prince Edward Island \(Island Regulatory and Appeals Commission\)](#), 2014 PECA 19 [Resort Municipality] at para. 19.

⁸ [Charlottetown](#), *supra* note 5, at para. 40.

⁹ [Reference](#), *supra* note 1, at para. 10; [Resort Municipality](#), *supra* note 7, at para. 20.

Issues Raised on Appeal

14. Did the decision to issue the permit accord with procedural fairness?

- a. In an application for a development permit, members of the public are entitled to notice of approved permits in accordance with section 23. 1 of the *Planning Act*. The printout included at Tab 5 of the Appellant's Record of Decision supports sufficient notice being provided in accordance with that provision. Adequate notice was provided. The Minister's decision was procedurally fair.

15. Was the decision to issue the permit properly made?

- a. The decision to issue the Permit is appropriate. The application for the Permit is consistent with the use anticipated at the time of subdivision approval in 2004. The Minister permitted the sale of the individual lots in 2004 on that basis. It is just and proper for the Minister to work with Banks to facilitate his use of the Lot for its intended purpose while also respecting the underlying conditions of approval.

Concerns Raised by the Appellant

16. The Appellant raised a number of points in its submitted materials. Curiously, considering the nature of its organizational mandate, the Appellant's concerns focuses on legislative interpretation and procedure rather than environmental impacts. This response will address those interpretative and procedural issues in the order they are raised by the Appellant.

Planning Act and Subdivision and Development Regulations

17. The Appellant's position ignores the conditions to the Permit approval. Those conditions preserve the integrity of the underlying conditional subdivision approval while at the same time avoiding an effective stalemate in respect of the subject property.

18. Section 3(1) of the *Subdivision and Development Regulations* (the "*Regulations*") does not apply as the subdivision occurred close to twenty years ago¹⁰.

¹⁰ [Subdivision and Development Regulations](#)

19. The Permit does not offend subsections 3(2)(a)(b) or (d) of the *Regulations*¹¹. The Appellant points to subsection 5(a) of the *Regulations* as an example of a precondition established under subsection 8(1)(h) of the *Planning Act*. The Appellant submits the Permit offends subsection 5(a) of the *Regulations* and thus also offends subsection 3(2)(a) of the *Regulations*.
20. Section 5(a) of the *Regulations* is triggered in situations where the Minister directs an environmental assessment in accordance with sections 9(2)(b) and 9(3) of the *Environmental Protection Act*¹². There is no information to suggest there has been any such direction in respect of the Lot. Failing such a direction, subsection 5(a) of the *Regulations* is not engaged and as a result has no application¹³.
21. There is no information to suggest any detrimental impact. If there is any opportunity for an organization such as the Appellant to add value to this process, it may be in relation to any suggested detrimental impact. The Appellant has chosen not to engage on that point. There is no information before the Commission to suggest the Permit would have a detrimental impact contrary to subsection 3(2)(d) of the *Regulations*.
22. The Appellant, not only takes an interest in making sure the conditions for subdivision approval are satisfied, but they also take specific issue with them being satisfied by an individual lot owner as opposed to the subdivision owner. The Appellant seems to suggest the development is premature contrary to subsection 3(2)(b) of the *Regulations* because the St. Peter's Estates Ltd. failed to fully satisfy the conditions of approval. Further, the Appellant takes issue with the conditional approval because it downloads responsibility from the defunct St. Peter's Estates Ltd. to the Lot owner, Banks.
23. Any objection to placing the burden of satisfying the condition on the Lot owner, would be the Lot owner's to raise. He is not doing so. The Appellant should take comfort in knowing the conditions will be satisfied rather than getting hung up on who is satisfying them.

¹¹ [Ibid.](#)

¹² [Environmental Protection Act](#), R.S.P.E.I. 1988

¹³ [Regulations](#)

Alleged Procedural Errors

24. Fortunately, any discrepancy regarding the deadline to appeal was discovered well in advance. Had it not, an appropriate remedy may have been to extend the date for filing the appeal. In the absence of a suggestion any discrepancy prevented other 'would-be' appellants from filing, it is of no consequence and should not factor into this Commission's ruling.
25. There were two separate applications submitted regarding the Lot. It is again fortunate that any potential confusion associated with the dual processes did not prevent the Appellant from participating in this process. Tab 5 of the Appellant's Record of Decision supports the notice requirements being satisfied with respect to the process being challenged by the Appellant.
26. The Lot owner commends the Department for taking the time to consider the unique circumstances relating to the Lot and working with him to identify a path forward that achieves all competing objectives. The email referenced in the Appellant materials is a reflection of those collaborative efforts.
27. The quality improvement points raised by the Appellant relating to notice, public participation, and time to file are noted.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 24th day of January, 2024.



SCOTT M. BARRY
STEWART MCKELVEY
65 Grafton Street
P.O. Box 2140
Charlottetown, PEI
Canada C1A 1B9
Telephone: 902.892.2485
Facsimile: 902.566.5283
Lawyer for Timothy R. Banks