

March 19, 2024

VIA EMAIL

Island Regulatory & Appeals Commission
5th Floor, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Attention: Jessica M. Gillis & Philip Rafuse

Dear Ms. Gillis and Mr. Rafuse:

RE: LA23021 – Currie & Currie v. Minister of Housing, Land & Communities

Please accept this correspondence as the Appellants' rebuttal submissions in response to the Minister's submissions dated March 15, 2024.

First and foremost, the Appellants rely on their original submissions dated March 8, 2024 to establish that the Minister does have jurisdiction to hear this appeal and the Minister has not lost jurisdiction to process the Appellants' subdivision application ("Original Submissions"). For ease of reference, reference to any defined terms herein are as defined in Original Submissions.

Question 1:

The Appellants find the current position of the Minister difficult to reconcile with their past position.

On the one hand, the Department, on behalf of the same Minister, advised the Appellants that if they did not accept the Minister's decision regarding lack of jurisdiction to approve or deny the Application, then they could appeal to the Commission within 21 days from the date of the Letter and on the other hand, the Minister now takes the position that the Commission does not have jurisdiction to hear this matter. These are two conflicting positions that make this confusing situation that the Appellants are faced with even more challenging.

Question 2:

The Minister argues that the legislation, in combination with the principles of statutory interpretation, establish that the Minister lost jurisdiction as soon as the RMWR Official Plan and Bylaw were adopted and contends that this is true because the legislation overrides any vested rights the Appellants has

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in the *Planning Act* and Regulations. The contention is, in effect, that ‘procedural’ changes are permissible. The Appellants contend that their vested rights are substantive and transcend an allegedly mere procedural change in who is the authority having jurisdiction (“AHJ”). The subdivision rules under the *Planning Act* and Regulations administered by the Minister as AHJ are substantively more favourable to the Appellants than the rules to be administered by the RMWR. Respectfully, there is no argument to support the argument that this was a mere procedural change and this is particularly true given the several instances referred in the Minister’s Supplementary Record where the Appellants’ current circumstances were contemplated by the Department.

The Minister outlines three dates, on page 13 of his submissions, to rebut the presumption against interference with the Appellants’ vested rights in this case. Respectfully, the Commission releasing a report recommending the creation of the RMWR and an Order-in-Council authorizing the RMWR to be a planning authority are wholly insufficient events to rebut that presumption. The Appellants don’t dispute that these events took place but do submit that there was insufficient detail from a planning and development perspective for the Appellants to understand the extent or effect that the creation of the RMWR would have on their rights.

The Original Submissions clearly establish the Appellants’ vested rights in the *Planning Act* and the Regulations and in the Appellants’ submission, as the Minister is the appropriate authority for administered the *Planning Act* and Regulations, there is no doubt that the Minister maintains jurisdiction over the Application. The Appellants submit that contrary to the position taken by the Minister, that their vested rights are at the forefront of the question of the Minister’s jurisdiction and as there are no legislative provisions informing who the applicable planning authority is when an individual has a crystallized vested right, it is only reasonable to find that the Minister’s jurisdiction remains.

In the alternative, if there is effectively a new AHJ in RMWR, then they are obliged to apply the rules in effect at the time the Appellants submitted the Application.

We trust the foregoing to be of assistance and look forward to direction from the Commission.

Yours very truly,



David W. Hooley, K.C. & Melanie McKenna
DWH/MM

cc. Richard A. Collier & Caroline Davison, Lawyers for the Respondent