



Prince Edward Island

Justice and
Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada CIA 7N8

Île-du-Prince-Édouard

Justice et
Sécurité publique

Services légaux
C.P. 2000
Charlottetown PE
Canada C1A 7N8

October 17, 2024

VIA EMAIL – mwalshdoucette@irac.pe.ca

Michelle Walsh-Doucette
Commission Clerk
Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket #LA24016
J. Warren and Sandra MacLean v. Minister of Housing, Land and Communities
Our File: LS 26935

1. We represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by J. Warren MacLean and Sandra MacLean (the “Appellants”) on September 18, 2024 (the “Appeal”). The Appeal arises from the Minister denying the Appellants’ June 11, 2024, application to subdivide PID# 792002 located at 11807 Shore Road – Route 4, Murray River, Kings County (the “Subject Property”) into three (3) single-unit residential lots (the “Application”).
2. The Minister’s position is that the new proposed lots on the Subject Property would abut and require access to Route 4, which is classified as a collector highway. As the Subject Property is located on a collector highway and is not an existing parcel of land, the Minister’s decision to deny the Application was in accordance with the *Planning Act*, RSPEI 1988, Cap. P-8 (the “Act”) and the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “Regulations”).

Background and Decision

3. On June 11, 2024, the Minister received the Application.
4. On completing a preliminary review of the Application, the Minister identified the following:
 - a. the proposed new lots on the Subject Property abut Route 4, which is a collector highway as prescribed by the *Roads Act Highway Access Regulations*, EC580/95 (as amended) (the “*Highway Access Regulations*”); and

- b. the Subject Property was created in 2016 as Lot 2015-2.
5. On August 6, 2024, the Department of Transportation and Infrastructure confirmed that Route 4 is a collector highway.
 6. Pursuant to subsection 25(3) of the Regulations, the requested subdivision could not be granted. Subsection 25(3) states in part “No person shall subdivide a parcel of land that abuts, and requires access to, a collector highway, unless it is an existing parcel of land”. An existing parcel of land is defined in the *Regulations* as a parcel of land or lot in existence prior to February 3, 1979.
 7. On September 3, 2024, the Minister denied the application pursuant to subsection 6(c) of the *Act* and subsections 1(h), 3(1)(a), and 25(3) of the *Regulations* (the “Decision”). As outlined in the Decision, the denial occurred as the Subject Property is located on a collector highway and is not an existing parcel of land.

Appeal

8. The Appeal is pursuant to section 28 of the *Act*.
9. The Appellants’ grounds of appeal are as follows:

My sister and I acquired a parcel of land in the late 1990’s from our parents who owned and lived on the farm from the late 1940’s. In 2016, we divided our parcel in half to give each of us our own separate deed. Both properties have access to Route 4 via separate driveways. My husband and I would like to give each of our two children an acre of land from our 5 acre parcel that had belonged to their grandfather. We do not require another driveway onto Route 4. We can all access the present land and driveway which we would widen if required by regulations.

10. The Appellants seek the following relief from the Commission:

Permission to subdivide 2 lots from our 5 acre parcel. Both lots would be used for single dwelling homes as both our children plan to downsize and move closer to us.

11. The Minister is providing the Record of the Decision to the Appellants and filing same with the Commission on the same date as the within submissions are dated.
12. The Minister’s response to the Appellants’ appeal is outlined below. Should the Appellants expand on, provide further explanation for, and/or otherwise provide submissions on their grounds of appeal, the Minister reserves the right to provide a further reply thereto.

Legislation

13. Subsection 6(c) of the *Act* provides that the Minister shall generally administer and enforce the *Act* and its *Regulations*.
14. The *Regulations* apply to all areas of the province, except those municipalities with official plans and bylaws. The Subject Property is located in Murray River, aforesaid, which is an area where land use and development are not regulated by a local official plan or zoning by-law. Therefore, the land use and development of the Subject Property is regulated by the *Act* and *Regulations*.
15. Subsection 3(1) of the *Regulations* provides:
 - “3. *General requirements - subdivisions*
 - (1) **No person shall be permitted to subdivide land where the proposed subdivision would**
 - (a) **not conform to these regulations or any other regulations made pursuant to the Act;**
 - (b) *precipitate premature development or unnecessary public expenditure;*
 - (c) *in the opinion of the Minister, place pressure on a municipality or the province to provide services; or*
 - (d) *have a detrimental impact.” [Emphasis Added]*
16. In other words, the Minister **must deny** an application that contravenes any one or more of these general requirements.
17. Subsections 1(e), 1(h), 25(3), 25(3.1), and 25(3.2) of the *Regulations* provide as follows:
 1. *Definitions*

In these regulations
... - (e) *“collector highway” means any highway that has been designated as a collector highway under the provisions of the Roads Act Highway Access Regulations;*
... - (h) *“existing parcel of land” means any parcel of land or lot in existence prior to February 3, 1979;*
...

25.
...
Collector Highways

- (3) *No person shall subdivide a parcel of land that abuts, and requires access to, an collector highway, unless it is an existing parcel of land, in which case*
- (a) *where the parcel has a frontage of less than 1,320 feet (402.3 metres), no more than one lot may be approved;*
 - (b) *where the parcel has a frontage of 1,320 feet (402.3 metres) or more, one lot may be allowed for every 660 feet (201 metres) of frontage;*
 - (c) *one lot in addition to those permitted in clauses (a) and (b) may be approved provided*
 - (i) *that the proposed lot contains an existing farm dwelling served by an existing highway access, and*
 - (ii) *that no development permit shall be issued for a dwelling on the remainder of the subdivided parcel.*

Effect of infilling designation

- (3.1) *Subsection (3) does not apply to a parcel of land along a portion of a collector highway that is designated for infilling under the regulations made under the Roads Act.*

Connecting roads

- (3.2) *Notwithstanding the restrictions on subdivision specified in clause (3)(b), a person may subdivide additional lots from an existing parcel of land that abuts, or requires access to, a collector highway if the person has applied for and obtained approval of a plan of subdivision that includes approval for a road connecting to and within the subdivision to serve all the lots that meets the requirements of these regulations respecting road standards.*

18. The *Highway Access Regulations* provide in part as follows:

14. *Collector highways*

All highways or parts of highways described in Schedule B are designated as collector highways.

...

SCHEDULE B-1
COLLECTOR HIGHWAYS

6. *The following highways and parts of highways are designated as collector highways with effect from March 23, 2024:*

(1) *Route 4 commencing at the intersection of Route 1 in the Community of Wood Islands to the intersection of Route 17 in the Town of Three Rivers.*

Test

19. In Order LA17-06 ("*Stringer*")¹, the Commission outlines the applicable test for Ministerial decisions made under the *Act* and *Regulations*, namely:
- a. whether the land use planning authority, in this case the Minister, followed the proper process and procedure as required in the *Regulations*, in the *Act* and in the law in general, including the principles of natural justice and fairness, in making a decision on an application for a development permit, including a change of use permit; and
 - b. whether the Minister's decisions with respect to the applications for development and the change of use have merit based on sound planning principles within the field of land use planning and as identified in the objects of the *Act*.

Test Application

20. In this case, the Minister followed the proper process as set out by law, applied sound planning principles, and, therefore, the Decision requires deference.
21. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, and the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice.
22. Subsection 25(3) of the *Regulations* prohibits subdivision of a parcel that abuts, and requires access to, a collector highway, unless it is an existing parcel of land. Subsection 1(h) of the *Regulations* defines existing parcel of land as any parcel of land or lot in existence prior to February 3, 1979.
23. In this matter, Property Development Officer, Dean Carroll, sent the details of the Application to the Department of Transportation and Infrastructure for confirmation that the Subject Property abuts a collector highway.
24. The Department of Transportation and Infrastructure confirmed that the Subject Property is located on a collector highway outside of an area designated for infilling pursuant to the *Highway Access Regulations*.

¹ *Stringer (Re), Donna Stringer v Minister of Communities, Land and Environment*, Order LA17-06 ("*Stringer*") at para 52.

25. It was reasonable for the Property Development Officer to rely on the Department of Transportation and Infrastructure's determination that the Subject Property is located on a collector highway in denying the Application.
26. In light of the classification of Route 4 as a collector highway, the Application could only be approved by the Minister if the Subject Property was an existing parcel of land. As the Subject Property was created in 2016, it is not considered an existing parcel of land.
27. As a result of the classification of Route 4 and the Subject Property not being an existing parcel of land, the Property Development Officer denied the Application having properly considered subsection 6(c) of the *Act* and subsections 1(h), 3(1)(a), and 25(3) of the *Regulations*.
28. The Minister also met the second part of the test as the Decision is supported by objective and reliable evidence, and is based on the *Act*, the *Regulations*, and sound planning principles. The Commission states in *Stringer* that "*sound planning principles require regulatory compliance*".²
29. Given the Application's lack of regulatory compliance, the Decision meets both steps in the test.

Conclusion

30. For the reasons outlined above, the Minister submits that this appeal must be dismissed.
31. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact us.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Christiana Tweedy
Mitchell O'Shea
Lawyers for the Minister of
Housing, Land and Communities

² *Stringer* at para 64.