



Prince Edward Island

Justice and
Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada C1A 7N8

Île-du-Prince-Édouard

Justice et
Sécurité publique

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

August 31, 2023

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 #LA23-016
Robert and Judi Gosbee v. Minister of Housing, Land and Communities
Our File: LS25622

-
1. I represent the Minister of Housing, Land and Communities (the “Minister”) in relation to the above noted appeal filed by Robert and Judi Gosbee (the “Appellants”) on July 4, 2023 (the “Appeal”). The Appeal arises from the Minister denying the Appellants’ June 5, 2023, application to subdivide PID#896787 located at 9633 Normans Road, Murray River, Kings County (the “Subject Property”), into two (2) lots (the “Application”). The Appellants are trying to sell one lot that contains a residence and retain the other that contains a boat building.
 2. The Minister’s position is that the Subject Property abuts a collector highway as prescribed by the *Roads Act Highway Access Regulations*, EC580/95 (as amended) (the “*Highway Access Regulations*”). Pursuant to the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (as amended) (the “*Regulations*”) for such a property to be subdivided, it must have been in existence as of February 3, 1979. As the Subject Property was created in 2001, the Minister’s decision to deny the Application was in accordance with the *Planning Act*, RSPEI 1988, Cap. P-8 (the “*Act*”).

Background and Decision

3. On June 5, 2022, the Minister received the Application.
4. On completing a preliminary review, the Minister identified that the Subject Property was located on a collector highway, as prescribed by the *Highway Access Regulations*.

5. On June 19, 2023, the Minister denied the Application pursuant to subsection 6(c) of the *Act* and subsections 3(1)(a) and 25(3) of the *Regulations* (the "Decision"). As outlined in the Decision, the denial occurred as the Subject Property is:
 - a. located on a collector highway; and
 - b. not an existing parcel of land, that is it was not in existence on February 3, 1979.

Appeal

6. The Appeal is pursuant to section 28 of the *Act*.
7. The Appellants' grounds of appeal are outlined at Tab 2, on page 2 of the Record and provide in part as follows:

"There is nothing about this that explains/justifies the denial other than old regulations on paper from the 1970s. There are no plans for further development/driveways on either proposed lots. There are no sight line issues. Each building on the lot has had its own driveway for years without issue.

The speed limit is 50 km/hour in front of our property, as it is throughout the community of Murray River, which is designated infilling."

8. The Appellants seek the following paraphrased relief from the Commission:
 - a. The Decision be overturned; and
 - b. The Department of Transportation and Infrastructure designate the section of the collector highway that abuts the Subject Property as infilling to facilitate quashing the denial in the Decision.
9. The Minister is providing the Record of the Decision to the Appellant and filing same with the Commission on the same date as the within submissions are dated.
10. The Minister's response to the Appellants' grounds of 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.

The Legislation

11. Subsection 6(c) of the *Act* provides that the Minister shall generally administer and enforce the *Act* and its *Regulations*.

12. 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*.

13. 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]**

14. In other words, the Minister *must deny* an application that contravenes any one (or more) of these general requirements.

15. Subsections 1(h), and 25(3) of the *Regulations* provide as follows:

"1. *Definitions*

In these 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, a 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.”*

The Test

16. 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 *Planning 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*.

Applying the Test

17. In this case, the Minister followed the proper process as set out by law, applied sound planning principles, and therefore, the Decision requires deference.
18. The Minister met the first part of the test. The Decision and supporting evidence demonstrate 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.
19. Subsection 25(3) of the *Regulations* prohibits subdivision of a parcel that abuts a collector highway and requires access thereto, unless said parcel is an “*existing parcel of land*” as defined by the *Regulations*, and meets a number of other conditions. As the Subject Parcel is located on a collector highway but is not an “*existing parcel of land*”, the subdivision contemplated by the Application is prohibited by the *Regulations*.

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

20. Given the foregoing, the Property Development Officer denied the Application having properly considered subsection 25(3) of the *Regulations*.
21. 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
22. Given the Application’s lack of regulatory compliance, the Decision meets both steps in the test.
23. In both the Notice of Appeal in the Record at Tab 2, page 2, and in the email thread between Judi Gosbee and Sarah MacVarish in the Record at Tab 7A, the Appellants state their displeasure with the *Regulations* effect on the Application. However, at the same time the Appellants effectively acknowledge that the *Regulations* prohibit the Subject Property’s subdivision as requested in the Application.

Conclusion

24. For the reasons outlined above, the Minister submits that the Appeal must be dismissed.
25. In respect of the alternative relief sought by the Appellant, the Minister submits that the Commission does not have the jurisdiction in the Appeal to make such an Order but encourages the Appellants to discuss same with the Department of Transportation and Infrastructure.
26. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact me.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Richard A. Collier
Lawyer for the Minister of
Housing, Land and Communities

RAC/cc

² *Stringer* at para. 64