



Prince Edward Island Île-du-Prince-Édouard

Justice and
Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada C1A 7N8

Justice et
Sécurité publique

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

November 3, 2021

Via Email

Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street
Charlottetown, PE

Dear Mr. Rafuse:

Re: Appeal #LA21012 Gallant et al. v Minister of Agriculture and Land

This submission is made by the Minister of Agriculture and Land ("Minister") in response to the Amended Notice of Appeal submitted by the Appellants on October 27, 2021.

Upon a review of the Amended Notice of Appeal it appears that the grounds upon which the Appellants now rely are: that there will be a detrimental impact based on the increase in noise pollution, that the decision is not compliant with paragraphs 30 and 35 of Order LA14-02 and that there was a change to the application without notice to the surrounding residents.

As of the date of these submissions there has been no evidence provided by the Appellants to support the above noted grounds.

In addition to these submissions, the Minister continues to rely on their previously filed submission, with respect to what may still be relevant.

Noise

The Appellants have not brought any evidence before the Commission with respect to increased noise at the property in question. There are no noise level regulations enacted with respect to the *Planning Act*.

Throughout the application process the Developer (Atlantic Aqua Farms Ltd.) submitted that there would not be any change to the hours of operation for the business nor would there be any increased noise levels due to the expansion.

Order LA09-02 addressed noise at a motocross track/off road vehicle facility. In that matter there were noise level tests which were conducted and evaluated against the noise level regulations in Ontario. Ultimately the Commission concluded that while “the noise associated with the facility has a very real negative impact”¹ on the surrounding residents “the impact of the noise of the facility falls short of the degree and level associated with detrimental impact as defined in the regulations.”²

In 2010 there was an appeal brought before the Commission with respect to the establishment of a shooting range. In that matter, no noise testing was conducted as there were no complaints received with respect to noise. Again, the Commission found that there were negative impacts on residents associated with the noise. However, the evidence before the Commissions did not rise to the level of creating a detrimental impact.³

Finally, a 2015 matter brought before the Commission addressed “dust and noise, including the sound of banging truck tailgates.”⁴, at an undeveloped property. The noise was described as three or four “crash-bang[s]” per truck and there sometimes upwards of 80 trucks per day⁵. In that Order the Commission found that, “The evidence before the Commission in the present appeal suggests that noise and dust do have an effect on neighbouring properties. However, this evidence falls short of that necessary to establish detrimental impact.”⁶

The Minister submits that no noise testing was conducted as the Developer does not expect the noise level or frequency to increase with the expansion. The concerns raised during the consultations did not rise to the level which necessitated noise testing.

There is no evidence before the Commission that the noise on the property in question is creating a detrimental impact on the surrounding residents.

The Department submits that the noise which may be present on the property is likely to be less than the noise described in any of the above noted Orders and thus it does not rise to a degree as to constitute a detrimental impact.

McClure Decision⁷

The Minister submits that it is not clear what relevance the McClure matter has with respect to the current matter before the Commission. Paragraphs 30 and 35 of the McClure Order deal with appending one to another lot. The decision being appealed in the present matter is for granting a permit to “construct an Addition onto an existing

¹ Order LA09-02, *Reid v Minister of Communities, Cultural Affairs and Labour* at para 25.

² *Ibid.*

³ Order LA10-12, *Rolfe and Labchuck v Minister of Finance and Municipal Affairs* at paras 22-23.

⁴ Order LA15-05, *O’Halloran v Community of Miltonvale* at para 23.

⁵ *Ibid* at para 20.

⁶ *Ibid* at para 53.

⁷ Order LA14-02, *McLure v Minister of Finance, Energy and Municipal Affairs*.

Resource Industrial (Shellfish Processing/Nursery & Dry Storage of Juvenile Shellfish) Structure on Provincial Parcel Number 416693...", not to append or consolidate two parcels together.

The Minister requests the ability to reply to submissions of the Appellants with respect to this matter if it becomes more clear what relevance the Appellants believe exists between the present appeal and the 2014 McClure matter.

Conclusions

In conclusion, it is submitted that the decision of the Minister was made in compliance with the *Planning Act* and the Regulations. Further it is submitted that the Minister's decision was made pursuant to its legislative authority. On that basis, the Respondent requests that the Commission deny the Appeal.

Yours truly,



Mitchell O'Shea
Departmental Solicitor

CC: David Hooley and Melanie McKenna, Counsel for the Atlantic Aqua Farms Ltd.
Andy Gallant, for the Appellants