

RECEIVED

AUG 18 2022

The Island Regulatory
and Appeals Commission



PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

National Bank Tower
5th Floor, 134 Kent St.
P.O. Box 577, Charlottetown, PE C1A 7L1
Tel: 902-892-3501 / PEI toll free: 1-800-501-6268
Fax: 902-566-4076
appealinquiries@irac.pe.ca

Commission Case Number
(Commission Office Use Only)

Date Stamp
Appeal Received by the Commission

Notice of Appeal

(Pursuant to Section 28 of the Planning Act)

Under Section 28. (6) of the **Planning Act**, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be. In addition, the Commission requires the Appellant to provide the Notice of Appeal to any parties directly affected by the Notice of Appeal on the same date the municipal council or Minister is notified.

Please review each section of the form carefully and fill out all relevant sections. Kindly note that if a Notice of Appeal is deficient it may not be accepted for filing.

Information on this Form is collected pursuant to the **Planning Act** and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at appealinquiries@irac.pe.ca.

Section 1 – Contact Information**NOTE: Fill out a separate contact information sheet for each individual appellant if applicable**

Appellant Information			
Last Name: Dawe		First Name: Stephen	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number: 902-393-4952		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number: 88	Street Name: Heritage Dr.	P.O. Box:
City / Town / Community Cornwall	Province: PEI	Country Canada	Postal Code C0A 1H5
Signature of Appellant / Legal Counsel (if applicable): Stephen Dawe			

Representative Information (If applicable)			
<input type="checkbox"/> I hereby authorize the named individual(s) to represent me.			
Last Name:		First Name:	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community	Province:	Country	Postal Code
<input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Legal Profession Act</i> and I have provided my written authorization (attached) to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time.			
Signature of Appellant:			
Signature of Representative:			

Section 1 – Contact Information**NOTE: Fill out a separate contact information sheet for each individual appellant if applicable****Appellant Information**

Last Name: <i>Kingston</i>		First Name: <i>Morley</i>	
Company Name or Association Name (if applicable):			
Email address: <i>MK4258@mun.ca</i>			
Daytime Telephone Number: <i>902-960-6624</i>		Alternative Telephone Number:	
Mailing Address <i>90 Black Creek Road</i>			
Unit Number:	Street Number: <i>90</i>	Street Name: <i>Black Creek Road</i>	P.O. Box:
City / Town / Community <i>Vine Mill Creek</i>	Province: <i>PEI</i>	Country <i>Canada</i>	Postal Code <i>C0A-1H2</i>
Signature of Appellant / Legal Counsel (if applicable): <i>Morley Kingston</i>			

Representative Information (If applicable)

<input type="checkbox"/> I hereby authorize the named individual(s) to represent me.			
Last Name:		First Name:	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community	Province:	Country	Postal Code
<input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Legal Profession Act</i> and I have provided my written authorization (attached) to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time.			
Signature of Appellant:			
Signature of Representative:			

Victor Vamthul

902-314-0523

3321 West River Road →

Against it all

V. Vamthul

Section 1 – Contact Information

NOTE: Fill out a separate contact information sheet for each individual appellant if applicable

Appellant Information

Last Name: <u>Livingston</u>		First Name: <u>Margo</u>	
Company Name or Association Name (if applicable):			
Email address: <u>macrae margo@gmail.com</u>			
Daytime Telephone Number:		Alternative Telephone Number: <u>902-569-8514</u>	
Mailing Address			
Unit Number:	Street Number: <u>71</u>	Street Name: <u>Black Creek Rd.</u>	P.O. Box: <u>C</u>
City / Town / Community: <u>nine mile creek</u>	Province: <u>PEI</u>	Country: <u>Canada</u>	Postal Code: <u>C0A-1H2</u>
Signature of Appellant / Legal Counsel (if applicable): <u>Margo Livingston</u>			

Representative Information (If applicable)

<input type="checkbox"/> I hereby authorize the named individual(s) to represent me.			
Last Name: <u>Vamthul</u>		First Name: <u>Victor</u>	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community:	Province:	Country:	Postal Code:
<input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Legal Profession Act</i> and I have provided my written authorization (attached) to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time.			
Signature of Appellant:			
Signature of Representative:			

Section 1 – Contact Information**NOTE: Fill out a separate contact information sheet for each individual appellant if applicable**

Appellant Information			
Last Name: <i>MACRAE</i>		First Name: <i>Kenny</i>	
Company Name or Association Name (if applicable):			
Email address: <i>Kenny.Macrae@93at9mail.com</i>			
Daytime Telephone Number:		Alternative Telephone Number: <i>902-620-1685</i>	
Mailing Address			
Unit Number:	Street Number: <i>71</i>	Street Name: <i>Black Creek Rd.</i>	P.O. Box:
City / Town / Community: <i>nine mile creek</i>	Province: <i>PE</i>	Country: <i>Canada</i>	Postal Code: <i>C0A-1H2</i>
Signature of Appellant / Legal Counsel (if applicable): <i>[Signature]</i>			

Representative Information (If applicable)			
<input type="checkbox"/> I hereby authorize the named individual(s) to represent me.			
Last Name:		First Name:	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community:	Province:	Country:	Postal Code:
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Signature of Appellant: <i>[Signature]</i>			
Signature of Representative:			

Section 1 – Contact Information**NOTE: Fill out a separate contact information sheet for each individual appellant if applicable****Appellant Information**

Last Name: <i>MacRae</i>		First Name: <i>John</i>	
Company Name or Association Name (if applicable):			
Email address: <i>johnmacrae10@gmail.com</i>			
Daytime Telephone Number: <i>902 393 9412</i>		Alternative Telephone Number:	
Mailing Address <i>90 Black Creek Road Nine Mile Creek</i>			
Unit Number:	Street Number: <i>90</i>	Street Name: <i>Black Creek Road</i>	P.O. Box:
City / Town / Community <i>Nine Mile Creek</i>	Province: <i>PE</i>	Country <i>Canada</i>	Postal Code <i>C0A 1H2</i>
Signature of Appellant / Legal Counsel (if applicable): <i>John MacRae</i>			

Representative Information (If applicable)

<input type="checkbox"/> I hereby authorize the named individual(s) to represent me.			
Last Name:		First Name:	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community	Province:	Country	Postal Code
<input type="checkbox"/> I certify that I understand that my representative is not licensed under the <i>Legal Profession Act</i> and I have provided my written authorization (attached) to my representative to act on my behalf with respect to this matter. I understand that my representative may be asked to produce this authorization at any time.			
Signature of Appellant:			
Signature of Representative:			

Section 1 – Contact Information**NOTE: Fill out a separate contact information sheet for each individual appellant if applicable**

Appellant Information			
Last Name: <u>McCourt</u>		First Name: <u>Riley</u>	
Company Name or Association Name (if applicable):			
Email address: <u>mccourt.riley@gmail.com</u>			
Daytime Telephone Number: <u>902-626-6613</u>		Alternative Telephone Number:	
Mailing Address <u>4703 Ste 19</u>			
Unit Number: <u>4703</u>	Street Number:	Street Name: <u>Ste 19</u>	P.O. Box:
City / Town / Community: <u>Nine Mile Creek</u>	Province: <u>PE</u>	Country:	Postal Code: <u>COA 1H2</u>
Signature of Appellant / Legal Counsel (if applicable): <u>Riley McCourt</u>			

Representative Information (If applicable)			
<input type="checkbox"/> I hereby authorize the named individual(s) to represent me.			
Last Name:		First Name:	
Company Name or Association Name (if applicable):			
Email address:			
Daytime Telephone Number:		Alternative Telephone Number:	
Mailing Address			
Unit Number:	Street Number:	Street Name:	P.O. Box:
City / Town / Community:	Province:	Country:	Postal Code:
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Signature of Appellant:			
Signature of Representative:			

This Appeal is in response to the preliminary subdivision approval on PID 111137 Black Creek Road File # 56447, decision posted 28/07/2022 last Appeal Date 18/08/2022

Section 2 – Appeal Information

Appeal Reasons and Specific Information

Municipal Reference Number(s) (if applicable):

List the reasons for your appeal in accordance with the provisions of Section 28.(5) of the **Planning Act** (if more space is required, kindly fill out a separate sheet and attach it to this form):

The following are the grounds of appeal for the proposed subdivision on PID 111137:

Pursuant to section 2.1(1) of the Provincial Planning Act it is the responsibility of the Minister of Agriculture and Land to consider Provincial Interests in relation to planning and development matters. It appears that the following items of Provincial Interest were not considered when granting preliminary approval of the subdivision:

1. "The protection, conservation and management of resource lands"

The lands impacted by the proposed subdivision are agricultural (farmland), subdividing for residential lots will result in the loss of viable farmland.

2. "The protection, conservation and management of ecological systems"

The associated construction and roadwork (which began with the removal of old growth trees on August 15th, 2022 by the Department of Transportation) with the development impacts and threatens a stream/marshland part of the Fairview watershed, which is a salt or brackish marsh. Continued development will cause more tree loss, and further negatively impact this part of the watershed.

3. "The prevention of fragmentation of land and of loss of natural habitat connectivity and biodiversity"

The associated construction and roadwork (which began with the removal of old growth trees on August 15th, 2022 by the Department of Transportation) with the development impacts and threatens a stream/marshland part of the Fairview watershed, which is a salt or brackish marsh. Continued development will cause more tree loss, and further negatively impact this part of the watershed. Further, the Black Creek Road is a rural semi-forested road that provides a habitat to a variety of PEI wildlife (fox, coyote, rabbits, bald eagles, osprey, pheasants) and PEI plants (wild roses, lady's slipper, lupins). Continued development will displace wildlife and destroy the plantlife left by the initial roadwork). ***continued on attached page***

Has a public meeting been held by the municipality? ☐ Yes ☒ No

~ No Planning Authority

Did you apply for a development permit, occupancy permit, subdivision approval, change of use amendment or bylaw amendment? ☐ Yes ☒ No

Oral / Written Submissions to Council

Did you make your opinion regarding this matter known to council / the Minister?

☐ Oral Submissions at a public meeting of council / the Minister?

☐ Written Submissions to council

☒ Not Applicable

Related Matters

Are there other appeals not yet filed with the Commission?

☐ Yes ☒ No

Are there other matters related to this appeal? (For example: **An Environmental Protection Act** Appeal)

☐ Yes ☒ No

If yes, please provide the Commission Appeal Number(s) and / or Municipal File Number(s) and / or the Provincial File Number(s) or Court Docket Number(s) for the related matters:

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West
River
is Aware

4. "The supply, efficient use and conservation of water"

Further intensive ribbon development is unsustainable and will threaten the water table.

5. "The adequate provision and efficient use of communication, transportation, **sewage and water services**, storm water management systems, **waste management systems** and other public services in relation to planning development, and the effect of planning development on those services"

All of the development will require on-site septic and well. The Rural Municipality of West River does not provide municipal water or sewage. In clustered and close developments should one on-site system fail, or one system not be properly maintained, all wells in the vicinity are at risk.

6. "The protection of viewsapes that contribute to the unique character of Prince Edward Island"

The Black Creek Road is a designated seasonal road and is an old clay road. PEI is renowned for our "red dirt roads", and they are a feature of tourism adverts and campaigns for rural areas. From the Tourism PEI website: "These narrow, red clay lanes are special places - each with a story. Spared from asphalt, these roads are no longer just avenues for getting from one place to another, but a unique part of our heritage". The associated roadwork with the development requires the road to be paved and altered (with significant work having already started on August 15th, 2022) resulting in the loss of a beloved feature that makes PEI so unique.

7. "The orderly and sustainable development of safe and healthy communities"

The development is neither orderly nor sustainable according to sound planning principles. The development is contrary to the draft official land use plan of the Rural Municipality of West River. Had the plan been in place at the time of the application, it would have been denied. The official land use plan is a plan by and for the community and does not support this type of development.

Pursuant to section 3(1)(B) of the Provincial Planning Act, Subdivision and Development Standards; "No person shall be permitted to subdivide land where the proposed subdivision would precipitate premature development or unnecessary public expenditure".

At the time of preparing this appeal, there were ^{lack of} currently 50 vacant lots for sale within the immediate area. This demonstrates the market's appetite. There is no value in the subdivision of further lots, when there is already numerous lots available. This is indicative of premature development. *Further this does not consider the hundreds of Vacant lots currently available in the wider Municipality of West River.*

The subdivision requires significant work to be done to the Black Creek Road in order to support the development. At the time of preparing this appeal, there were currently 3 residences on the road, which is an old, seasonal, clay road. On the 15th of August 2022, initial roadwork (done by

the Department of Transportation) to support the development began, starting with the widening of the road. The road will need further upgrades including paving and will need to be re-designated from being a seasonal road. The amount of public expenditure required to continue to support this development is intensive and extreme, placing an undue hardship on taxpayers who are being used to subsidize the development project.

Pursuant to section 3(1)(C) of the Provincial Planning Act, Subdivision and Development Standards; "No person shall be permitted to subdivide land where the proposed subdivision would in the opinion of the Minister, place pressure on a municipality or the province to provide services".

The Rural Municipality of West River, in which the development is located, has indicated through the drafts of their official land use plan that this development would not be supported by the Municipality.

Further public expenditure will be needed to support the development. The Black Creek Road will require additional work at the expense of taxpayers, including paving and will need to be re-designated from being a seasonal road. This will require all of the maintenance associated with year-round Provincial roads. *Placing Pressure on the Province to Financially Support the development.*

Pursuant to section 3(1)(D) of the Provincial Planning Act, Subdivision and Development Standards; "No person shall be permitted to subdivide land where the proposed subdivision would have a detrimental impact".

The development will and has (through the supporting roadwork by the Department of Transportation) already had, a detrimental impact on other residents, landowners, and the environment in the area. This is not including the detrimental impact it will have on taxpayers who will be supporting the construction and maintenance costs associated with the development. Further, the precedent set by this development will have a detrimental impact on other and future planning decisions. It is likely that should this development be allowed to continue, and be supported, by the Provincial Government that further unsustainable development, that is contrary to sound planning principles will happen.

Pursuant to Section 13 of the Provincial Planning Act, Subdivision and Development Standards; "Subdivision designs shall be based on sound planning, engineering, and environmental principles, and shall demonstrate that the proposed subdivision is suited to the intended use, having due regard for..."

1. "compatibility with surrounding uses"

Further intensive residential development will not be compatible with the surrounding uses, which is rural residences and farmland.

2. “wastewater management”

Should the lots not meet minimum lot size standards for the appropriate and accurate soil category, any on-site septic systems could fail. Failure of on-site septic systems can cause significant issues to any residences in the vicinity.

3. “water supply”

Should the lots not meet minimum lot size standards for the appropriate and accurate soil category, any on-site septic systems could fail. Failure of on-site septic systems can cause significant issues to any residences in the vicinity. Further development threatens the water table, and availability of water in the area for current residences.

4. “natural features”

Many mature trees on the Black Creek Road have been taken down by the Department of Transportation (starting on August 15th, 2022) to complete roadwork needed to support the development. These trees are gone and will take many years to be replaced. A stream/marshland part of the Fairview watershed is also impacted by the development. Continuing with the development will result in the further environmental destruction of the area, and result in a loss of the natural beauty.

Pursuant to Section 14(5) of the Provincial Planning Act, Subdivision and Development Standards; “Incremental Subdivision” – “All provisions of these regulations for subdivisions of six or more lots shall apply where a parcel has been subdivided incrementally so as to bring the number of lots created since June 12, 1993 to six or more”.

The parcel the development is on has already been subdivided 3 times. 5 more lots out of the same parcel will result in 8 lots, contributing to “creeping” development, also known as strip or ribbon development which is noted for being highly unsustainable. Have the provisions for subdivisions of six or more lots been applied? If not, not only is this in contravention to the regulations, but it sets a dangerous precedent; developers can simply apply for 5 or less lots at a time, rather than be transparent with the true intentions of the development.

Pursuant to section 25(5) of the Provincial Planning Act, Subdivision and Development Standards; “Seasonal Highway” – “No person shall subdivide a parcel of land that abuts, and requires access to, a seasonal highway, unless an entrance way permit, where required, has been issued by the Minister responsible for the Roads Act Highway Access Regulations.”

Have permits for these entrances been issued? Though outside the scope of a planning appeal, it should be recognized that under Section 34 of the Roads Act, Highway Access Regulations (“No Change of Designation”) – “Issuance of an entrance way permit pursuant to this Part shall not change the designation of a seasonal highway. Designation to be stated (2) An entrance

way permit issued pursuant to this Part shall indicate that the entrance way is to a seasonal highway”.

Regardless of permits being issued, the Black Creek Road is still a seasonal highway, until as stated in section 29 the Roads Act; the Lieutenant Governor in Council may, by notice published in the Gazette, change the designation. At the time of filing this appeal, no notice has been published in the Gazette. Again, though beyond the scope of a planning appeal, it begets the question if it is appropriate to subdivide on rural seasonal roads that are not already equipped or set up for any proposed development. Especially when considering the current availability of vacant land already available for development.

Section 3 – Relief Sought

Relief Sought and Specific Information

List or describe the relief sought in accordance with the provisions of Section 28.(5) of the *Planning Act* (if more space is required, kindly fill out a separate sheet and attach it to this form):

The following relief is sought by the applicants;

1. The development be rejected, under the grounds presented as the reasons for appeal.
2. All on-going roadwork on the Black Creek Road intended to support/ associated with the development cease immediately.

Though beyond the scope of a planning appeal, the applicants also seek that the Province repair damages done to the area by the Department of Transportation during the initial roadwork that began on August 15th, 2022. This includes the replacement of the mature trees that were removed. Again, beyond the scope of the appeal but consideration should be given into protecting the road as a designated scenic heritage roads.

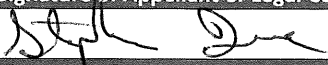
Further the applicants seek that in the future any other, similar developments on the Black Creek Road be more carefully considered.

Section 4 – Declaration

Declaration

I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete.

By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant	Signature of Appellant or Legal Counsel	Date (yyyy/mm/dd)
Stephen Dawe		22/08/17
Name of Representative (if applicable)	Signature of Representative	Date (yyyy/mm/dd)

Personal information or documentation requested on this form is collected under the authority of the *Island Regulatory and Appeals Commission Act* and the legislation under which the proceeding is commenced. All information collected is included in the IRAC case file and the public record in this proceeding. In accordance with the ***Freedom of Information and Protection of Privacy Act***, some of the information collected herein may be available to the public subject to exceptions.

Important: Under Section 28.(6) of the ***Planning Act***, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council, the Minister or the third party(ies) as the case may be. ***Service of the Notice of Appeal is the responsibility of the Appellant.***

Section 4 – Declaration

Declaration

I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete.

By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant	Signature of Appellant or Legal Counsel	Date (yyyy/mm/dd)
Marky Kingston	Marky Kingston	2022/Aug/17
Name of Representative (if applicable)	Signature of Representative	Date (yyyy/mm/dd)

Personal information or documentation requested on this form is collected under the authority of the *Island Regulatory and Appeals Commission Act* and the legislation under which the proceeding is commenced. All information collected is included in the IRAC case file and the public record in this proceeding. In accordance with the ***Freedom of Information and Protection of Privacy Act***, some of the information collected herein may be available to the public subject to exceptions.

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Section 4 – Declaration

Declaration

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By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant	Signature of Appellant or Legal Counsel	Date (yyyy/mm/dd)
Marco Livingston	Marco Livingston	2022/08/17
Name of Representative (if applicable)	Signature of Representative	Date (yyyy/mm/dd)

Personal information or documentation requested on this form is collected under the authority of the *Island Regulatory and Appeals Commission Act* and the legislation under which the proceeding is commenced. All information collected is included in the IRAC case file and the public record in this proceeding. In accordance with the ***Freedom of Information and Protection of Privacy Act***, some of the information collected herein may be available to the public subject to exceptions.

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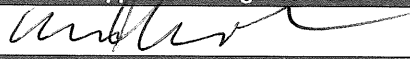
Victor Van Hyl 902-311-0523
3371 West River Road against it all

Section 4 – Declaration

Declaration

I solemnly declare that all the statements and the information provided, as well as any supporting documents, are true, correct and complete.

By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant	Signature of Appellant or Legal Counsel	Date (yyyy/mm/dd)
Kenny Neph		2022/08/17
Name of Representative (if applicable)	Signature of Representative	Date (yyyy/mm/dd)

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Section 4 – Declaration

Declaration

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By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant	Signature of Appellant or Legal Counsel	Date (yyyy/mm/dd)
John McRae		2022/08/17
Name of Representative (if applicable)	Signature of Representative	Date (yyyy/mm/dd)

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Declaration

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By signing this appeal form below, I consent to the collection of my personal information.

Name of Appellant	Signature of Appellant or Legal Counsel	Date (yyyy/mm/dd)
Riley Mount	Riley Mount	Aug 17 2022
Name of Representative (if applicable)	Signature of Representative	Date (yyyy/mm/dd)

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