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NOTE:
Appeal process is a public process.

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.

TO: The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501, 134 Kent Street
P.O. Box 577, Charlottetown PE C1A 7L1
Telephone: 902-892-3501 Toll free: 1-800-501-6268
Fax: 902-566-4076 Website: www.irac.pe.ca

TAKE NOTICE that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the *Planning Act* or the Municipal Council of Marshfield (name of City, Town or Community) on the 8th day of October, 2021, wherein the Minister/Community Council made a decision to deny the application for a proposed change of use from an approved single-unit residential lot to an industry use winery.

(attach a copy of the decision).

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows: (use separate page(s) if necessary)

please see attached document outlining the grounds for this appeal.

AND FURTHER TAKE NOTICE that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I/we seek the following relief: (use separate page(s) if necessary)

by reversing the decision and approving the application for change of use from an approved single-unit residential lot to an industrial use winery.

Name(s) of Appellants Monica Kelly, Marilyn Kelly, Glen Kelly, Debra Kelly

Please Print

Mailing Address 423 Jenkins road
Province Prince Edward Island
Email Address ekelly.ma@gmail.com ; kelly.monica.j@gmail.com

Signature(s) of Appellant(s) Monica Kelly, Marilyn Kelly, Glen Kelly, Debra Kelly

City/Town Marshfield
Postal Code c1c 0j7
Telephone 902-388-8644 ; 902-314-5631 ; 902-628-1322

Dated this 29 day of October, 2021
Day month Year

Service of the Notice of Appeal is the responsibility of the Appellant

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.

October 29th, 2021

For: Representatives at the Island Regulation and Appeal Commission

The following outlines the grounds for appealing the *change of use* decision, from an approved single unit residential lot to an industrial use winery, for **property #711028, Case 56723** received on October 8th 2021, located in Marshfield. The denial letter states that,

“This area of Marshfield is primarily Residential and Resource Agriculture use. This proposal would be considered incompatible for the area as industrial land uses immediately abutting or within close proximity to single-unit residential/cottage lots are deemed incompatible land uses...The proposed use is better suited where existing industrial uses already exist such as in an industrial park and/or in a community with proper land use and services in place”

The following list is the grounds for an appeal in response to the above quote in the denial letter:

(1) Wineries are normally found in semi-rural and residential areas across Canada such as in Nova Scotia (Wolfville and surrounding area), Ontario (Niagara Region, Prince Edward County), and British Columbia (Okanagan region). They are not generally situated in industrial parks. Rather, wineries are almost always located close to their associated vineyard as a complement to the agricultural production of grapes, and frequently such wineries are located in areas that are considered “Resource Agriculture use”.

(2) The proposed changes are compatible with the area, similar to semi-rural areas such as Wolfville and the Annapolis Royal. Wineries have more in common with agricultural land use than industrial land use. A winery is compatible with the community as it is directly associated with the agricultural production of grapes.

(3) The winery will not be a retail location. The use of the existing building will be to merely produce small batches of sparkling wine. The small-scale process is not comparable to a large industrial production facility.

(4) The building proposed for the winery is on the residential property of the business owners, and is merely walking distance from the vineyard. The residential property owners proposing the change of use also have title to all of the land between their residence and the vineyard. The change of use from residential to industrial will have no detrimental impact on real property value, is not in competition with existing businesses, and will not affect views. This building will be used temporarily for small-scale wine production with plans to situate the permanent winery building on the vineyard itself once funds (and required permits) have been secured (a cost of approximately 300K). The ability to use the current building will greatly shorten the time required to collect the funds necessary to grow the winery business.

(4) The community of Marshfield is not governed by a local official plan or zoning by-laws; however, this does not mean that due process should not be afforded to the community. The Department of Agriculture and Land is responsible for making decisions on behalf of the residents of Marshfield. We are concerned about the denial of applications from residents of smaller communities based on a lack of proper land use and services in place. This is

October 29th, 2021

problematic as it disadvantages small communities and their residents by hindering their economic development and prosperity in comparison to larger municipalities with more access to resources for governing purposes. We can only raise this as a concern. We are unable to address the rationale directly because the denial letter does not describe what proper land use means or the additional services that it claims will be needed by the proposed winery. Procedural fairness requires that these details be provided to enable us to prepare a fulsome appeal of the decision. The owners of the proposed winery have indicated in their application that no additional services are necessary for the facility.

(5) The decision indicates that only existing agro-industrial businesses can be developed or introduced. As young female entrepreneurs, we find this conclusion problematic as it entrenches existing and well established agro-business in the area, while hindering opportunities for emerging small businesses to participate in the economic development of our province and community.

In sum, the residents of the community of Marshfield and Jenkins rd. will see no changes whatsoever to the area, their property, or their enjoyment of their properties. At most, the production of small batches of wine from the adjacent vineyard, in this small building, may mean a few more small delivery trucks on the road each year. Transporting grapes to an industrial park would lead to more, and larger, traffic on the road than the winery. Certainly the proposed winery is less of an impact than the increase in deliveries due to COVID-19 and, keeping in mind, that large farming machinery uses the Jenkins road regularly to harvest hay, corn, and other crops.

Thank-you,

Marilyn Kelly,
Monica Kelly,
Debra Kelly,
Glen Kelly



**Agriculture
and Land**

**Agriculture
et Terres**

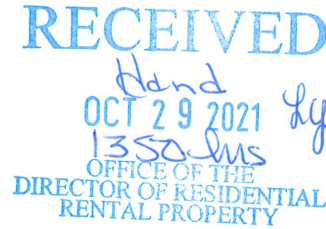


Land Division

31 Gordon Drive
PO Box 2000, Charlottetown
Prince Edward Island
Canada C1A 7N8

Division de terres

31, promenade Gordon
C.P. 2000, Charlottetown
Île-du-Prince-Édouard
Canada C1A 7N8



October 8, 2021

Valentine Gomez
Gomez Engineering Ltd.
45 Spring Park Road
Charlottetown, PE C1A 3X7

Dear Mr. Gomez:

Subject: Application for a proposed *change of use* from an approved single-unit residential lot, to an industrial use (industry, food and beverage) winery

Property ID # : 711028

Property Location: Jenkins Road, Marshfield, Queens County

Our File References: Case # 56273

The Department of Agriculture and Land has reviewed your application for a proposed *change of use* from an approved single-unit residential lot, to an industrial use (industry, food and beverage) winery from Property # 711028, Case 56273 received on April 19, 2021 located in Marshfield.

A. The Application

Subdivision: The Subject Property is currently used for Residential (Single unit dwelling) use. This proposal is to accompany a 10-acre vineyard located due west from the subject lot on PID # 140301 and is proposed to be used to produce a sparkling wine product for commercial sale.

B. Decision

The Subject Property is within a geographic area where land use and development is not regulated by a local official plan or zoning by-law. Therefore, the Subject Property falls within the jurisdiction of this Department. Land use and development are regulated by the *Planning Act* Subdivision and Development Regulations and other provincial laws and regulations.

Pursuant to clause 6(c) of the *Planning Act* and subsections 3.(2)(a) & (d), 13.(a) and 63.(4.1) & (7)(c) of the *Planning Act Subdivision and Development Regulations*, the above noted application is Denied. The reasons for this decision are explained in detail below.

C. Reasons

The *Planning Act Subdivision and Development Regulations* provide provisions for the change of use of a parcel of land under Sections 29.(1) & 31.(1)(d). This area of Marshfield is primarily Residential and Resource Agriculture use. This proposal would be considered incompatible for the area as industrial land uses immediately abutting or within close proximity to single-unit residential / cottage lots are deemed incompatible land uses. As well, Section 63.(4.1) does not permit the creation of a new commercial or industrial lot in the Charlottetown Special Planning Area, only an expansion of an existing commercial or industrial use. The proposed use is better suited for other areas where existing industrial uses already exist such as an industrial park and/or in a community/municipality with proper land use zoning and servicing in place.

Please refer to the *Planning Act Subdivision and Development Regulations* sections 3.(2)(a) & (d), 13.(a) & 63.(4.1) & (7)(c).

Planning Act Subdivision and Development Regulations

3.(2) No development permit shall be issued where a proposed building, structure, or its alteration, repair, location, or use or change of use would

- (a) not conform to these regulations or any other regulations made pursuant to the Act;**
- (d) have a detrimental impact;**

13. 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

- (a) compatibility with surrounding uses;**

29.(1) No person shall deviate from an approved plan of subdivision, including changing the use of a lot from the approved use, unless a revised plan of subdivision or an application for a change of use has been submitted to, and has been approved by, the Minister.

31.(1) No person shall, without first obtaining a development permit from the Minister,
(d) change the use of any building or structure or land, or part thereof;

63.(4.1) A parcel may be subdivided for a non-resource related commercial or industrial use where

- (a) the subdivided land is to be appended to or consolidated with land that was approved for a non-resource related commercial or industrial use by the Minister prior to July 9, 1994;**
- (b) in the opinion of the Minister, that use has not been discontinued or abandoned; and**
- (c) the proposed expansion does not violate the intent and purpose of these regulations, with particular regard for sections 3 and 13.**

63.(7) Pursuant to the uses and limitations contained in subsection (4) or (5.02), development permits may be approved for
(c) subdivisions approved pursuant to subsections (4), (5) and (5.1) and remnant parcels resulting from such subdivisions;

1.(f.3) “detrimental impact” means any loss or harm suffered in person or property in matters related to public health, public safety, protection of the natural environment and surrounding land uses, but does not include potential effects of new subdivisions, buildings or developments with regard to

(i) real property value;

(ii) competition with existing businesses;

(iii) viewscales; or

(iv) development approved pursuant to subsection 9(1) of the *Environmental Protection Act*

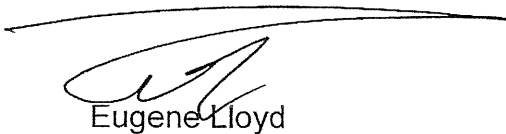
D. Right of Appeal

Notice of this decision will be posted on the PEI Planning Decisions website. We suggest typing “PEI Planning Decisions” into your internet search engine to link to the website.

Please be advised that pursuant to section 28 of the *Planning Act*, this decision may be appealed to the Island Regulatory & Appeals Commission (“IRAC”) (PO Box 577, Charlottetown, PE, C1A 7L1: <http://www.illac.pe.ca>). An appeal must be filed within 21 days after the date of this letter or the Commission is under no obligation to hear the appeal. For more information about appeals, please contact IRAC.

If you have any questions in regards to this decision, contact me at emlloyd@gov.pe.ca or (902) 368-5590.

Sincerely,



Eugene Lloyd
Manager (Acting) of Provincial Planning