

Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)



RECEIVED: September 06, 2023

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

NOTE:

Appeal process is a public process.

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 N/A (name of City, Town or Community) on the 16 day of August, 2023, wherein the Minister/Community Council made a decision to determine that it lacks jurisdiction to approve or deny Application Case 56807 and that the Rural Municipality of West River is the appropriate Authority Having Jurisdiction.

(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)
see Appendix "A"

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)
see Appendix "A"

EACH APPELLANT MUST COMPLETE THE FOLLOWING: (print separate sheets as necessary)

Name(s) of Appellant(s): Kris & Carl Currie
Please Print

Signature(s) of Appellant(s): Melvin Lebrun
for the Appellants

Mailing Address: Cox & Palmer - 97 Queen Street

City/Town: Charlottetown

Province: Prince Edward Island

Postal Code: C1A 4A9

Email Address: dhooley@coxandpalmer.com

Telephone: 902-628-1033

Dated this 6 day of September, 2023.
day month year

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 or the Minister as the case may be.

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 info@irac.pe.ca.

NOTICE OF APPEAL (continued)
Pursuant to section 28 of the *Planning Act*

TAKE NOTICE that Kris and Carl Currie (the “Appellants”) hereby appeal the decision of the Minister responsible for the administration of various development regulations of the *Planning Act* (the “Minister”) on the 16th day of August 2023, wherein the Minister determined that it lacks jurisdiction to approve or deny Application Case 56807 (the “Application”).

AND FURTHER TAKE NOTICE that in accordance with section 28(5) of the *Planning Act*, the grounds for this appeal are as follows:

- the Minister erred in finding that it lacks jurisdiction to approve or deny the Application;
- the Minister erred in finding that as of July 20, 2023, the Application must be determined by the Rural Municipality of West River (the “Municipality”) in accordance with its Official Plan;
- the Minister erred in providing the Appellants two options, both of which fail to consider the common law principle of vested rights, which dictates that the Application must be determined by the applicable law in force at the time the Application was made (see: *Ottawa (City) v Boyd Builders Ltd.*, [1965] SCR 408 and *Dikranian v. Quebec (Procureur général)*, 2005 SCC 73);
- the Minister failed to provide sound reasons for their decision;
- the Minister acted arbitrarily and violated its common law duty of procedural fairness and the principles of natural justice; and,
- such further or other grounds as may be revealed upon review of the full record as produced by the Minister

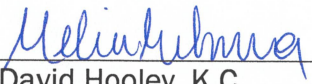
AND FURTHER TAKE NOTICE that in accordance with section 28(5) of the *Planning Act*, the Appellants seeks the following relief:

- the Appellants request that the Commission allow this appeal and remit the Application back to the Minister to decide said Application in accordance with the *Planning Act* and Regulations;

or, in the alternative,

- the Appellants request that if the Commission determines that the Municipality has jurisdiction over the Application, that the Municipality shall apply the *Planning Act* and Regulations to the Application, and more specifically, the Municipality shall not apply its Land Use Bylaw and Official Plan.

DATED this 6th day of September 2023.

for 
David Hooley, K.C.
Cox & Palmer
97 Queen Street, Suite 600
Charlottetown, PE C1A 4A9
dhooley@coxandpalmer.com



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Logement, Terres
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Île-du-Prince-Édouard
Canada C1A 7N8

August 16, 2023

Kris Currie / Carl Currie
40 Quest lane
Afton PE.
COA1H2

Dear Applicant:

Re: Action Required Property # 201509/201517, Community of Afton, Subdivision Case # 56807

In accordance with subsections 8(1) and 9(1) of the *Planning Act*, subsection 2(1) of the *Planning Act* Subdivision and Development Regulations, and subsection 1(1) of the Province-Wide Minimum Development Standards, as of July 20, 2023, the Rural Municipality of West River is now the authority having jurisdiction over your application to change the use of a property located in the Community of New Dominion.

What does this mean?

Upon Ministerial approval of a new municipal official plan for a Municipality, all planning and development Authority is transferred from the Minister of Housing, Land and Communities ("Minister") to the Municipality. Once the official plan is approved, the Minister no longer has any legislated authority to make land use decisions within the municipality's boundaries.

Application case #56807 is located in the Rural Municipality of West River. The Municipality's Official Plan was approved by council of the Municipality on October 6, 2022 and approved by the Minister on July 20, 2023. Once the Official Plan is approved, the ability of the Minister to make a decision on the land ceases and the Municipality takes over.

As such, the Minister no longer has the legislated authority to either approve or deny your application for subdivision. This authority now rests with the Municipality.



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What happens next?

In an effort to make this change of responsibility as smooth as possible, the Minister offers the two following options:

1. The Municipality shall require submission of a new application and applicable fees paid. Upon receipt of the new application and fees paid to the Municipality, the Department of Housing, Land and Communities will forward any pertinent information contained in our file for case # 56807 to the Municipality for review based on their new Official Plan and associated bylaws. The application fees paid to the Province will be refunded, in accordance with the Department's refund policy.
2. Withdraw application case #56807 from the Department of Housing, Land and Communities and the application fees will be refunded, in accordance with the Department's refund policy. You may then apply to the Municipality at your own convenience.

Should you not accept the Minister's decision regarding the lack of jurisdiction to either approve or deny the application, then you may appeal the matter to the Island Regulatory and Appeals Commission. An appeal must be filed with the Island Regulatory and Appeals Commission within 21 days of the date of this letter. For more information about commencing an appeal, please contact the Island Regulatory and Appeals Commission directly.

If you have any questions regarding the above, please contact Dean Lewis at dhlewis@gov.pe.ca or (902) 838-0650.

Yours sincerely,

Dean Lewis
Senior Development Officer



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Name: Kris Currie & Carl Currie

Property #: 201509/201517

Option 1:

_____ I(We) instruct you to submit application case #56635 to the Municipality as described in option 1. In doing so, I (we) expressly acknowledge that my (our) personal information may be disclosed and where applicable we consent to its disclosure for this purpose.

OR

Option 2:

_____ I(We) hereby withdraw application case #56635 as described in option 2.

Dated this _____ day of _____ 2023.

Signature(s): _____

Name(s) (Print): _____

Please email this completed form as soon as possible to the Land Division at: