



Date Issued: June 8, 2026
Docket: LA24010
Type: Planning Act Appeal

INDEXED AS: Judy Shaw v. Rural Municipality of West River
2026 PEIRAC 34 (CanLII)

Order No: LA26-09

BETWEEN:

Judy Shaw

Appellant

AND:

Rural Municipality of West River

Respondent

Sterling Buchanan

Developer

REASONS FOR DECISION

Panel Members:

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

Pamela J. Williams, K.C. Chair
Gordon MacFarlane, Commissioner
Murray MacPherson, Commissioner

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Appearances & Witnesses

1. For the Appellant, Judy Shaw:

Counsel:

Melanie McKenna, Cox & Palmer

Witnesses:

Judy Shaw

Chrystal Fuller, MCIP, LPP

2. For the Respondent, Rural Municipality of West River:

Counsel:

Curtis Doyle, Stewart McKelvey

Witness:

Susan Morse, CAO, Rural Municipality of West River

3. For the Developer, Sterling Buchanan:

Counsel:

Iain McCarvill, Key Murray Law

Witnesses:

Sterling Buchanan

Thayne Jenkins

1. INTRODUCTION

1. This is an appeal of the decision of the Rural Municipality of West River to adopt an amendment to the Municipality's 2022 Land Use Bylaw, Schedule A Zoning Map to rezone a 34-acre parcel of land on Shaw's Wharf Road (PID 818500) from the Rural Area (RA) zone to the Rural Residential (RR) zone. The Developer sought the rezoning in order to eventually subdivide the parcel into 13 residential lots.
2. The Appellant, Judy Shaw, has asked the Commission to overturn the approval of the rezoning on the basis of both procedural errors committed by the Municipality and the failure of the Municipality to consider sound planning principles. The Appellant's appeal raises issues of land use conflicts between her neighbouring farm land and the proposed residential development and the loss of agricultural land.

2. BACKGROUND

3. On September 21, 2023, the Developer applied to the Rural Municipality of West River (the "Municipality") to rezone his property located on Shaw's Wharf Road (PID 818500) (the "Subject Property"). The Subject Property is a 34-acre parcel presently zoned Rural Area (RA) and is used for farm land. The Developer sought to rezone the parcel to Rural Residential (RR) for the purpose of eventual subdivision of 13 lots for single-family dwellings, and maybe one duplex for his daughter (the "Rezoning Application").
4. The Subject Property borders the Appellant's property.
5. The requested zoning amendment also required a consequential amendment to the Municipality's Official Plan to amend the Future Land Use Map, which also designated the Subject Property as Rural Area.
6. On January 9, 2024, the Rezoning Application came before the Municipality's Planning Board for consideration. Planning Board unanimously recommended to Council that the application be authorized to proceed to a public meeting.
7. A public meeting was scheduled for February 29, 2024,¹ to seek public feedback on the Rezoning Application. Notice of the meeting was provided to nearby landowners and advertised The Guardian newspaper. A sign was also placed on the Subject Property directing interested people to contact the Municipality for specific details.
8. At the public meeting, the Municipality's development officer presented the Rezoning Application. Twenty people attended the public meeting to ask questions and give feedback on the proposal.
9. At the Municipality's Planning Board meeting on March 12, 2024, Planning Board recommended Council approve the Rezoning Application.
10. On March 19, 2024, the Rezoning Application was considered at Council's regular meeting. Council unanimously voted to amend the Official Plan. Council also unanimously

¹ The meeting had originally been scheduled for February 15, 2024, but was cancelled and rescheduled due to inclement weather.

voted in favour of the Zoning Map amendment, and read and approved the amendment for a first time. The rezoning amendment to the Land Use Bylaw Zoning Map was unanimously adopted at a regular Council meeting on April 25, 2024.

11. The Appellant appealed Council's decision to the Commission on May 15, 2024. The Appellant's Notice of Appeal raised concerns about the loss of prime agricultural land, environmental concerns and incompatibility of land uses, as examples.
12. The parties participated in mediation, facilitated by Commission staff, in November 2024. By May 2025, the parties had exhausted possible resolution discussions and agreed the matter would proceed to a public hearing. Due in part to difficulties scheduling the matter at a mutually agreeable date for all parties, the Commission eventually set the matter down for hearing on Tuesday, December 9, 2025.
13. On November 25, 2025, the Commission agreed to a request by Appellant's counsel to postpone the scheduled hearing, upon consent of the Municipality and Developer.
14. By agreement of the parties, the hearing was rescheduled to February 3, 2026, and the Commission heard the appeal at a public hearing on that date.

3. ISSUES

15. In keeping with the Commission's well-established two-part guideline, an appeal pursuant to the *Planning Act* raises two main questions for the Commission:
 - The first question is procedural and asks the Commission to determine whether the Municipality followed the proper procedure as required by its 2022 Land Use Bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness, in adopting the Zoning Map amendment; and
 - Second, the Commission must consider whether the decision made by the Municipality to adopt the Zoning Map amendment was made in accordance with the Municipality's Official Plan and 2022 Land Use Bylaw, and was based on sound planning principles.
16. The specific grounds of appeal raised under each part will be addressed in detail in the Analysis section of these reasons.

4. DISPOSITION

17. The appeal is dismissed. For the reasons that follow, the Commission is satisfied that the Municipality's decision to permit the Developer's Rezoning Application was procedurally fair and was consistent with the Land Use Bylaw, sound planning principles, and the Official Plan.

5. EVIDENCE

18. The Appellant submitted expert opinion evidence from Chrystal Fuller ("Fuller"), LPP, MCIP. Fuller is the Principal of Brighter Community Planning and Consulting in Windsor,

Nova Scotia, and prepared a report in respect of her opinion. Fuller also testified to the findings in her report at the hearing.

19. The Appellant also testified at the hearing, giving evidence with respect to her perspective as a neighbour of the Subject Property and the issues surrounding the process and procedures which led to the Municipality's decision to approve the Rezoning Application.
20. The Municipality's documentary evidence consisted of an Appeal Record, totalling over 300 pages and a Supplementary Appeal Record, totaling approximately 200 pages. The two appeal records included (but were not limited to): the Developer's permit application, agendas and minutes from Planning Board and Council meetings, and copies of the bylaws and resolutions approving the Rezoning Application (and associated Official Plan amendment).
21. At the hearing, the Municipality called one witness: the Municipality's CAO, Susan Morse.
22. The Developer testified personally at the hearing with respect his application to rezone the Subject Property, as well as his plans for the ultimate subdivision of the Subject Property. The Developer also called as a witness Thayne Jenkins ("Jenkins"), a professional land use planner. Jenkins has more than 30 years of experience as a professional planner, and was the Planning Officer at the City of Summerside until his retirement in January 2025. Jenkins prepared a report in respect of his opinion and testified to the findings in his report at the hearing.

6. ANALYSIS

23. As a preliminary matter, in November 2023, the *Planning Act* was amended to introduce a requirement that prospective appellants be "aggrieved persons" as defined by section 27.1 of the *Planning Act*. Neither the Municipality nor the Developer challenged the Appellant's standing as an aggrieved person. On the Commission's review of the Appellant's Notice of Appeal and accompanying submissions, the Commission was satisfied that the Appellant meets the standard of an "aggrieved person" and demonstrated that she, in good faith, believes this decision to allow the Rezoning Application will adversely affect the reasonable enjoyment of her property.

A. Authority and Guideline

24. It is well-established that appeals before the Commission pursuant to the *Planning Act* are heard *de novo*. Generally speaking, this means that the Commission is not limited to reviewing the record of the planning authority. Rather, the Commission may, as the context requires, review the record, receive new evidence, and entertain new legal arguments on appeal. When exercising its appellate authority under the *Planning Act*, the Commission considers a two-part guideline:²
 - i. Whether the planning authority followed the proper procedure as required by its bylaw, the *Planning Act* and the law in general, including the duty of procedural fairness; and

² See, for example: Order LA23-03, *New Homes Plus v. City of Charlottetown*, at para 34; Order LA22-07, *Landfest Company Ltd. v. Town of Stratford*, at para 32 [*Landfest*]; and Order LA17-02, *APM Construction Services Inc. v. Community of Brackley*, at para 21.

- ii. Whether the decision made by the planning authority has merit based on sound planning principles in the field of land use planning and as enumerated in its official plan and bylaw.

25. In any *Planning Act* appeal, after conducting this two-step analysis, the Commission determines whether to exercise its discretion to substitute its own decision for the decision made by the initial planning authority. The Commission has long held that it does not lightly interfere with decisions made by a planning authority.³ The Commission usually shows deference to planning decisions that are properly made, and will generally be reluctant to interfere with a decision on the basis that it is not consistent with sound planning principles where that decision is supported by objective and reliable evidence. This evidence must come from planning professionals confirming that the decision is based on the applicable official plan and bylaw, and sound planning principles.⁴

B. Procedural Issues

26. In this appeal, with respect to the first part of the Commission's two-part guideline, the Appellant submits that the Municipality acted arbitrarily and violated the duty of procedural fairness when assessing the Rezoning Application.

27. First, the Appellant submits that Council did not have the Rezoning Application reviewed by a planning professional prior to making its decision. Appellant's counsel submitted at the hearing that such a failure is not a standalone ground of appeal; however, nevertheless points out that this was a discretionary decision of Council, which the Commission has previously said should be subject to review by a professional planner.⁵ In the present case, the Appellant submits that the Municipality's development officer who was consulted before Council's decision was not a professional land use planner.

28. The Appellant also argues that Council did not consider specific, relevant sections of the Land Use Bylaw in their decision-making. The Appellant points to several sections of the Land Use Bylaw that require a zoning amendment to be consistent with the Official Plan (e.g. sections 12.1.2 and 12.3.4.a) and submits that there is no evidence before the Commission that either Planning Board or Council considered the Official Plan policies in coming to this decision.

29. Finally, the Appellant submits that the Council failed to provide sufficient reasons for its decision to rezone the Subject Property. The Appellant submits this is especially problematic given the feedback received at the public meeting and the written comments received from residents. As support for this ground of appeal, Appellant's counsel points to previous decisions of the Commission that have held that a council must provide thorough, cogent and thoughtful reasons – based on sound planning principles – to justify its decision when evaluating planning applications.⁶

³ *Landfest* at para 32.

⁴ Order LA18-02, *Queens County Condominium Corporation No. 40 v. City of Charlottetown*, at para 41. [QCC No. 40]

⁵ See: Order LA17-06, *Stringer v. Minister of Communities, Land and Environment*, at para 64; and Order LA23-04, *Arsenault v. Minister of Agriculture and Land*, at paras 44-45.

⁶ Order LA23-05, *Deborah Dennis v. City of Charlottetown*, at para 50.

30. On the whole, the Appellant's position is that the evidence before the Commission is insufficient to demonstrate if and how Council carefully evaluated their decision to ensure it was based on sound planning principles. For these reasons, the Appellant submits that the decision was procedurally deficient and should be set aside.
31. In response, the Municipality has conceded that its documentary record in this matter was not perfect. However, they submit that according deference to the Municipality's decision is not an all or nothing proposition. Rather, the Municipality submits that the process followed by the Municipality was generally compliant with the Land Use Bylaw: public notice was given, a public meeting was held, Planning Board considered the Rezoning Application and made a recommendation to Council, and Council voted to adopt the rezoning. At the hearing, the Municipality's CAO, Susan Morse, took the Commission through the Appeal Record and Supplementary Appeal Record and a review of the documentary evidence and meeting agendas and minutes for each procedural step.
32. With respect to the reasons of Council, the Municipality agrees that its reasons on the record are insufficient to earn substantial deference from the Commission. However, the Municipality submits that this defect goes only to the question of deference, and not the substantive merits of the Rezoning Application. The Municipality submits that this kind of defect can be cured by a fair *de novo* hearing before the Commission.
33. The Municipality also submits that the Appellant's argument that the Municipality failed to consult a professional planner is without merit. The Municipality submits that, despite the Commission's precedent, there is no "mandatory" prescribed procedural step under the *Planning Act* for planning authorities to consult a professional planner. Further, the Municipality submits that a recognized professional accreditation does not equate to expertise. Rather, they submit that expertise may be developed by any combination of training, study and practical experience.⁷
34. For his part, with respect to the alleged procedural defects, the Developer submits that he applied for – and received – a rezoning amendment for his Subject Property after a fair and public process. He submits that the Appeal Record demonstrates that the Municipality's development officer, Planning Board and Council were all in favour of the Rezoning Application.
35. With respect to the procedural issues raised by the Appellant, the Commission dismisses these grounds of appeal. First, the Commission makes note that Fuller's report generally seems to comment positively on the process followed by the Municipality in assessing the Rezoning Application.
36. Next, the Commission acknowledges its past precedent and findings in orders LA17-06 and LA23-04 with respect to the expectation that planning authorities consult a planning professional, particularly when considering a discretionary land use application (such as a rezoning). However, the Commission has also recently commented in Order LA25-02 that a "professional planner" can be considered someone with education in the area of land use planning. Building off of this, the Commission agrees with the submission of Counsel for the Municipality that land use planning expertise may sometimes be developed by any combination of training, study and practical experience. The Commission takes note that this may be especially true in some smaller municipalities

⁷ In support of their position, the Municipality cites: *R v. Marquard*, [1993] 4 SCR 223, at p 243.

without dedicated resources for “professional” consultations. Further, the Commission notes that more complex applications or decisions may warrant more expertise, depending on the circumstances.

37. The Commission did not hear any specific evidence about the “expertise” of the development officer in this case; however, the Commission has reviewed the report prepared and provided to Planning Board. On a review of that report, it appears to the Commission that the development officer prepared a well thought out report that is grounded in the provisions of the Official Plan and Land Use Bylaw. The development officer appears to have reviewed the Rezoning Application through a planning lens and the report includes a table that identifies relevant criteria from both the Official Plan and Bylaw. The table includes direction to Planning Board about what criteria were consistent, inconsistent or required weighing. The report also includes a summary of the public feedback expressed at the public meeting. On the whole, the Commission is of the opinion that this report establishes that the Planning Board had a planning consultation before them when making their recommendation to Council.
38. Finally, with respect to the reasons of Council to approve the Rezoning Application, the Commission is satisfied that the record as a whole demonstrates why Council approved the application. Appellant’s Counsel is correct that the Commission has articulated many times what it expects from municipal councils in respect of sufficient reasons. In this case, the Municipality does not have verbatim minutes to review and consider. However, the Commission has said in the past that the record as a whole can be considered when determining whether reasons are sufficient.⁸ In this case, Council adopted the recommendation of Planning Board, and Planning Board’s decision was consistent with the development officer’s recommendation in his report. The record includes the meeting packages and minutes of the public meeting, Planning Board meeting, and Council meeting where the Rezoning Application was considered. The Municipality’s CAO, Morse, testified that all members of Council are also members of the Planning Board. The Commission notes that four members of Council were present at the public meeting to hear the feedback of residents.
39. In conclusion, on a review of the record as a whole, the Commission is not satisfied that the Municipality’s reasons are insufficient to a degree that the decision should be overturned. This Commission does not give effect to this ground of appeal.

C. Sound Planning Principles

40. The second consideration in the Commission’s two-step guideline asks whether the decision made by Council has merit based on sound planning principles in the area of land use planning and as enumerated in the Official Plan and Land Use Bylaw. In order to uphold the decision on appeal, it well-settled that the Commission must be satisfied that the final decision made by Council was animated by sound planning principles.

i. Appellant’s position

41. The Appellant submits that the Municipality’s decision must fail the second step of the Commission’s two-part test because it was not made in accordance with sound planning principles, or the Municipality’s Land Use Bylaw or Official Plan.

⁸ See, for example, LA17-08 *Pine Cone Developments Inc. v. City of Charlottetown*, at para 60.

42. The Appellant's property borders the Subject Property. At the hearing, she testified that her land is currently farmed by two different farmers, one being the Developer himself, Sterling Buchanan. The upper portion of the Appellant's property is rotated between grain and forage hay, while the Developer farms the lower portion (that borders the Subject Property) on a 3-year potato rotation. The Appellant testified that she feels very strongly about agriculture in Prince Edward Island and is concerned about the loss of valuable agriculture land to residential developments. The Appellant is also concerned that a residential subdivision next door to her farm property will impact her right to farm "without harassment". She said she is aware of the issues that can arise when people live beside farm fields, and she is concerned about the incompatibility of those two land uses.
43. With respect to the Rezoning Application, the Appellant submits that sections 12.1.2 and 12.3.4 of the Land Use Bylaw both require that amendments to the Zoning Map must be consistent with the Official Plan. The Appellant submits that the decision to approve the Rezoning Application is inconsistent with many policies in the Official Plan and, therefore, inconsistent with the Land Use Bylaw. In particular, the Appellant submits that the Official Plan policies and objectives, which include the desire for the Municipality to protect the long-term viability of farming, retain the rural character of the community, and minimize land use conflicts, were not considered by the Municipality when the decision was made. The Appellant has also submitted that the Municipality did not give adequate consideration to the public feedback heard at the public meeting.
44. To support her position, the Appellant sought the planning opinion of Chrystal Fuller, LPP, MCIP ("Fuller"). Fuller is a professional land use planner and was accepted by the Commission as an expert. Fuller prepared a written report and testified before the Commission at the hearing. The Commission notes that Fuller's opinion was qualified on the premise that the Official Plan amendment was also appealable to the Commission. This will be discussed in more detail later in these reasons.
45. Fuller's main findings can be summarized as follows:
- Official Plan policy RU-1 states that Council will protect agricultural and other resource land uses from the intrusion of conflicting land uses and that large-scale conversion of primary resource lands into non-resource lands will be discouraged. On the record, there is no agricultural impact assessment, land evaluation and site assessment, or comparable evidence justifying removal of this parcel from the Rural Area designation for a multi-lot residential subdivision.
 - The Official Plan's growth management approach relies on "community nodes". The Subject Property is outside a community node and is not intended to be a community node, yet the approval enables a 13-lot subdivision outside the node framework. In Fuller's opinion, this is a contradiction.
 - Staff identified insufficient information on development constraints and flood risk policy directions (Official Plan policies PHY-5 and PHY-6). In Fuller's opinion, a Rural Residential re-designation is a policy-level decision that presumes basic suitability for residential density. Approving the re-designation without resolving staff-identified information gaps was premature.

- The Official Plan’s Rural Area policies emphasise maintenance of rural character and support for agriculture and primary resources, while Rural Residential is intended for low-density residential development in suitable areas.
 - In Fuller’s opinion, the presence of these inconsistencies and unresolved information gaps is material to the Commission’s step-two analysis of whether the Official Plan amendment and rezoning are supported by sound planning principles.
46. Fuller’s report comments that Council’s decision does not consider the cumulative impacts of the conversion of agriculture land and the land use compatibility issues created by residential development next to agricultural activities. At the hearing, Fuller described the cumulative effects of rezoning resource land to residential as “death by a thousand cuts”. She said that having an agricultural impact assessment to consider the potential impact of conversion to residential development would have been a helpful tool for Council.
47. Fuller testified that best practice in the planning world is to look at the constraints of land and to put development where there are no significant development constraints. For example, she says the Official Plan contemplates that Rural Area (RA) zoned land will be primarily for agriculture and resource uses and there are better places to put more intense housing developments – e.g. the Rural Residential (RR) zone and community nodes. Fuller acknowledged that the RA zone does permit some residential subdivision, as of right (4 lots), but commented that would still preserve the *primary* use of the land as agricultural, whereas rezoning to RR would change the primary use of the land to residential.
48. In conclusion, Fuller’s report concluded that the Municipality’s decision to amend the Official Plan and Land Use Bylaw and rezone the Subject Property from Rural Area to Rural Residential “was unsound and contrary to good planning principles.”

ii. Municipality’s position

49. The Municipality is of the opinion that the appeal should be dismissed and the decision of Council to permit the Rezoning Application should be confirmed by the Commission.
50. With respect to the planning report prepared by the Municipality’s development officer, the Municipality’s counsel submits that it is possible to overstate the inadequacies of that report. At the hearing, Morse testified to the version of the report that was included in the Planning Board’s package before the March 12, 2024, meeting. The Municipality’s counsel points out that the report includes a summary of the application and rezoning process, as well as an assessment of the Rezoning Application and a table that notes applicable criteria from the Official Plan and Land Use Bylaw. The table assesses the Rezoning Application against that criteria and notes whether it is consistent, inconsistent, or requires weighing. The development officer’s report also includes a record of the public feedback received at the public meeting and a recommendation to Planning Board on the outcome of the Application.
51. Further, at the hearing, Susan Morse testified that all members of Council are also members of Planning Board. The Appeal Record shows that four members (including the Mayor) were present at the public meeting where public feedback was received.

52. In any event, the Municipality notes that the Commission has two expert reports to consider on this appeal. The Municipality urges the Commission to prefer the opinion of the Developer's expert, Thayne Jenkins, on that basis that his report engages more with the requirements of the Land Use Bylaw that involve Council's discretion.

iii. Developer's position

53. The Developer submits that there is sufficient evidence before the Commission to reasonably decide that the Developer is entitled to his requested rezoning of the Subject Property, as decided by the Municipality.

54. Developer's counsel submitted that the Municipality has chosen to adopt a somewhat mixed use in the Rural Area (RA) zone, permitting four subdivided residential lots as of right (section 13.5.1 of the Land Use Bylaw). Therefore, he submits, this rezoning would be a change from four lots for residential use, to a proposed 13 lots. The Developer submits this is not a material change that would warrant the Commission overturning the decision of the Council, in this case.

55. To support his position, the Developer sought the opinion of Thayne Jenkins ("Jenkins"), a professional land use planner. Jenkins was accepted by the Commission as having expertise in the area of land use planning. Jenkins prepared a report and testified at the hearing.

56. Jenkins' report specifically considered several of the criteria at section 12.3.4 of the Land Use Bylaw. That section of the Bylaw states, in full:⁹

Planning Board and Council shall consider the following general criteria when reviewing applications for amendments to the Bylaw, as applicable:

- a. conformity with the Official Plan;
- b. conformity with all requirements of this Bylaw;
- c. suitability of the site for the proposed development;
- d. compatibility of the proposed development with surrounding land uses, including both existing and future uses as per the Zoning Map;
- e. any comments from residents or other interested persons;
- f. adequacy of existing water supply, wastewater treatment and disposal systems, streets, stormwater management, and parks and parkland for accommodating the development, and any projected infrastructure requirements;
- g. impacts from the development on pedestrian and vehicular access and safety, and on public safety generally;
- h. compatibility of the development with environmental systems;
- i. impact on the Municipality's finances and budgets; and

⁹ At the hearing, Jenkins testified that he did not consider clauses (e) through (j), as he does not have expertise in those areas and because those factors are considered in greater detail at the subdivision or development stage.

- j. other planning matters as considered relevant by the Planning Board or Council.

57. Jenkins' specifically considered clauses (a) through (d) in his report, and made the following findings:

- Criteria (a): Jenkins' report cites five (5) specific policies from the Official Plan (RU-1, RU-2, RU-3, PHY-3, R-1). At the hearing, he testified that the Official Plan does not include a "moratorium" on residential developments, rather it speaks to "protecting" (rather than preserving) resource lands. Jenkins testified that, in his opinion, protecting can include mitigation measures such as limiting the number of residential lots or requiring land use buffers.

Jenkins also spoke to policy R-1, which states that it was the policy of Council to zone existing lots of less than 2 acres as Rural Residential (RR) and that new multi-lot subdivisions may only proceed via a rezoning application, which is what happened in the present case.

- Criteria (b): Jenkins concludes the Rezoning Application conforms with the requirements of the Land Use Bylaw.
- Criteria (c): Jenkins concludes that the overall layout of the lots cannot be considered ribbon development (which the Official Plan seeks to limit), as most of the lots will access off of a new cul-de-sac, not the main road.
- Criteria (d): Jenkins' report comments that the area is already partially developed with residential uses to the east of Shaw's Wharf Road. He concludes the rezoning of the Subject Property is compatible with the existing pattern of development for low-density. At the hearing, Jenkins testified that this proposed subdivision "mirrors" the subdivision to the east of Shaw's Wharf Road and is consistent with that existing land use pattern.

Further, Jenkins' report comments that two of the proposed subdivision lots will be approximately 8 acres in area, and will be in keeping with the character of the Rural Area (RA) zone for larger rural residential lots.

58. Jenkins' report also comments on the development officer's report, finding it to be "a balanced planning report", taking into consideration the Official Plan and Land Use Bylaw.

59. With respect to the issues raised by the public during the public meeting, Jenkins' report comments that those issues are considered at the subdivision stage. Consistent with this opinion, the Developer's counsel submits that there are opportunities later in the development process to mitigate any incompatible land use conflicts.

60. Generally, Jenkins' report concluded that the Subject Property should be rezoned from Rural Area (RA) to Rural Residential (RR) based on the conclusions summarized above.

iv. Commission's analysis and decision

61. As a starting point, the Commission notes that Fuller testified that her report was premised on the assumption that Official Plan amendments can be appealed to the Commission. This is not consistent with the appeal rights prescribed by section 28(1.1) the *Planning*

Act. Nevertheless, the Commission generally accepts the premise that rezoning amendments must be consistent with the policies and objectives of the applicable official plan. Therefore, the Commission gives effect to Fuller's opinion with this in mind.

62. Generally, the Appellant's position on appeal is that the Rezoning Application is not consistent with various policies in the Municipality's Official Plan and, therefore, not consistent with the Land Use Bylaw. Upon review and consideration of all the evidence before the Commission on this appeal, the Commission cannot agree with the Appellant's position.
63. First, for the reasons put forward by the Developer, the Commission prefers the opinion evidence of Jenkins on the basis that, as stated by Counsel for the Developer, Jenkins' report engages more with the requirements of the Land Use Bylaw that involve Council's discretion rather than strictly considering certain Official Plan policies. In particular, the Commission accepts the opinion of Jenkins that the area is already partially developed with residential uses and that rezoning of the Subject Property is compatible with the existing pattern of development for low-density in the area.
64. The Commission does not disagree, necessarily, with the Appellant's submissions and Fuller's report on the ways that this Rezoning Application appears to be inconsistent with certain policies and objectives of the Official Plan that prioritize agriculture and resource land uses. However, on the Commission's review of the Official Plan, there are other policies and objectives that also contemplate and allow for residential uses within the Municipality. One example that seems to straddle both is policy RU-2(b) which says that all subdivision approvals will have a caveat stating that the Municipality is a rural community and property owners are notified they will be subject to exposure to things such as agricultural odours and noise. In the Commission's view, this is an express acknowledgment by the Municipality that land use conflicts will inherently exist in a rural Municipality.
65. The Commission also finds it compelling that the Official Plan, at section 5.1, started from a place of only designating parcels smaller than 2 acres as residential in the Future Land Use Map. It states:

Residential parcels of 2 acres or less shall be designated as Residential, except where fully encapsulated by surrounding rural area uses. Infill areas between residential areas shall not be pre-zoned for residential use, leaving those larger parcels with the flexibility in uses associated with the Rural Area zone until such time as there is a proposal for development. The change in designation and zone shall require a public official plan and bylaw amendment process.
66. The Official Plan, in other words, specifically acknowledges that larger parcels zoned as Rural Area may be subject to applications for development.
67. In considering the Appellant's grounds of appeal and rationale for bringing this appeal, the Commission is struck that many of these arguments appear to be policy-type arguments about the hierarchy of land uses. The Appellant values agriculture and resource uses, which the Commission understands. However, the Commission is satisfied that Council

appropriately exercised its discretion in this case to permit changing the use of the Subject Parcel to primarily residential.

7. CONCLUSION

68. The appeal is dismissed. The Commission is satisfied that the Municipality's decision to permit the Developer's Rezoning Application was procedurally fair and was consistent with the Land Use Bylaw, sound planning principles, and the Official Plan.

69. The Commission thanks the parties for their submissions in this matter.

8. ORDER

70. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, **June 8, 2026.**

BY THE COMMISSION:

[sgd. Pamela J. Williams, K.C.]

Pamela J. Williams, K.C., Chair

[sgd. Gordon MacFarlane]

Gordon MacFarlane, Commissioner

[sgd. Murray MacPherson]

Murray MacPherson, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.