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VIA EMAIL – mwalshdoucette@irac.pe.ca

Michelle Walsh-Doucette
Commission Clerk
Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket # LA25020
Valley Grove Enterprises Ltd. v. Minister of Housing, Land and Communities
Our File: LS 27929

INTRODUCTION

1. We represent the Minister of Housing, Land and Communities (the “**Minister**”) in relation to the above noted appeal filed by Valley Grove Enterprises Ltd. (the “**Appellant**”) on October 23, 2025 (the “**Appeal**”).
2. The Appeal arises from the Minister’s decision (the “**Decision**”) to deny the Appellant’s application, dated August 27, 2025, requesting a change of use for PID# 82040, located at 1073 Blue Shank Road, Rte. 107, Prince County (the “**Subject Property**”), from resource – agricultural (storage/warehouse) to industrial (recycling facility) (the “**Application**”).
3. The Minister’s position is that:
 - (a) the Subject Property is located within the Summerside Region Special Planning Area (the “**SRSPA**”);
 - (b) the only permitted uses for the Subject Property are those listed in section 63 of the *Planning Act Subdivision and Development Regulations*, PEI Reg EC693/00 (the “**Regulations**”); and

- (c) as the Appellant's proposed use of the Subject Property is not permitted under section 63 of the Regulations, the Minister denied the Application accordingly.

BACKGROUND AND DECISION

4. The Subject Property is currently designated for resource (agricultural) use only.
5. The Appellant submitted the Application to the Minister on August 27, 2025, seeking to change the use of the Subject Property from resource (agricultural – storage/warehouse) to industrial (recycling facility), to allow the Appellant to operate a recycling business on the Subject Property.
6. The Appellant described its proposed recycling business on page 2 of the Application as follows:

“We are going to rent dumpsters for collection of household debris. When the dumpster is picked up, it will be taken to the site and placed inside where it will be sorted. Anything that can be recycled will be sorted (metal, cardboard, cans/bottles, electronics). Waste is taken to landfill and recyclables stored on site until enough to make a required combination of product. All stored indoors. Only empty dumpsters stored outside.”¹

7. On August 29, 2025, Karen MacInnis, Permit Coordinator with the Land Division of the Department of Housing, Land and Communities, requested further information from the Appellant with respect to the Application.² On the same date, the Appellant responded with the requested information.³
8. On October 2, 2025, the Minister denied the Application.⁴

APPEAL

9. The Appellant filed the Appeal on October 23, 2025, pursuant to section 28 of the *Planning Act*, RSPEI 1988, c P-8 (the “**Act**”).⁵
10. In its Notice of Appeal, the Appellant argues that the Minister:

¹ Appeal Record, Tab 3, page 11

² Appeal Record, Tab 5B, pages 28 and 29

³ Appeal Record, Tab 3, page 14

⁴ Appeal Record, Tab 1, pages 4 and 5

⁵ Appeal Record, Tab 2

- “1. *failed to identify the application as a change of use application rather than an application for the subdivision of land;*
2. *in light of the above error, incorrectly applied s 63(4) and (4.11) of the Subdivision and Development Regulations to the application;*
3. *In the alternative, if the cited provisions of the Subdivision and Development Regulations do in fact apply, failed to consider the application in accordance with objectives, intents and purposes of the legislative scheme and in accordance with sound planning principles; and*
4. *any further grounds as may become apparent and as the Island Regulatory and Appeals Commission may permit.”⁶*

11. The Minister’s response to the Appeal is set out below. Should the Appellant expand on, provide further explanation for, or otherwise provide submissions on her grounds of appeal, the Minister reserves the right to provide a further reply thereto.

LEGISLATION – THE ACT AND THE REGULATIONS

12. Clause 6(c) of the Act provides that the Minister shall generally administer and enforce the Act and its Regulations.⁷
13. The Regulations apply to all areas of the province, except those municipalities with official plans and bylaws.⁸ The Subject Property is located in Wilmot Valley, an area that does not have an official plan or bylaws. The Regulations, therefore, apply to the Subject Property.
14. In addition, as the Subject Property is located within the SRSPA, the provisions of section 63 of the Regulations apply to the Subject Property.⁹
15. The Regulations recognize the following standard classes of use for a parcel of land: “...*residential, commercial, **industrial, resource (including agriculture, forestry and fisheries), recreational and institutional...***”.¹⁰ [emphasis added]
16. The Regulations define “*industrial use*” and “*resource use*” as follows:

⁶ Appeal Record, Tab 2

⁷ *Planning Act*, RSPEI 1988, c P-8, <https://canlii.ca/t/5652r>, at clause 6(c)

⁸ *Subdivision and Development Regulations*, PEI Reg EC693/00, <https://canlii.ca/t/56gjr>, at subsection 2(1)

⁹ *Ibid*, at subsection 63(2)

¹⁰ *Ibid*, at clause 1(d)

(j.1) “**industrial use**” means the use of a building or lot for the storage, distribution, processing, assembly or recycling of wholesale products, goods or materials, or for activities relating to transportation, extraction, manufacturing, construction, warehousing, assembly or general repair;

...

(r.2) “**resource use**” means the use of land or buildings for the production and harvesting or extraction of any agricultural, forestry, or fisheries product;¹¹

17. The Regulations prohibit any deviation from an existing land use unless an application for a change of use has been submitted to, and approved by, the Minister. Subsection 29(1) of the Regulations states:

29. Change of use

(1) No person shall deviate from an existing land use or an approved plan of subdivision, including changing the use of a lot from the approved use, unless a revised plan of subdivision, where applicable, and an application for a change of use has been submitted to, and has been approved by, the Minister.¹²

18. The Act defines “development”, in part, and “development permit” as follows:

(d) “**development**” means

...

(iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;

...

(e.12) “**development permit**” means a permit issued for a development under the regulations or pursuant to a bylaw but does not include a building permit issued under the Building Codes Act;¹³

19. An approval of a change of use granted by the Minister would therefore be, by definition, a “development permit”.
20. Subsection 63(7) of the Regulations sets out the circumstances in which the Minister may issue a development permit, including for a change of use, within the SRSPA, and states:

¹¹ *Ibid*, at clauses 1(j.1) and (r.2)

¹² *Ibid*, at subsection 29(1)

¹³ *Planning Act*, supra note 7, at clauses 1(d) and (e.12)

Development permits

(7) Pursuant to the uses and limitations contained in subsection (4), (4.01), (4.1), or (5.02), development permits may be approved for

- (a) existing parcels of land;
- (b) subdivisions approved prior to July 9, 1994;
- (c) subdivisions approved pursuant to subsections (4), (4.1), (4.01), (5) and (5.1) and remnant parcels resulting from such subdivisions;
- (d) subdivisions approved pursuant to clause (5)(c) and subsection (5.1), where an irrevocable agreement has been signed between the developer and the municipal sewerage utility, municipal water utility or both of them to provide central sewerage service, central water service, or both of them, to the approved subdivision prior to commencement of construction or location of dwellings or buildings on any of the lots;
- (e) subdivisions approved for lands owned by the Slemon Park Corporation pursuant to subsection (6), where an irrevocable agreement has been signed between the Slemon Park Corporation and the developer to provide central sewerage and water service to the approved subdivision prior to commencement of construction or location of dwellings or buildings on any of the lots.¹⁴ [emphasis added]

21. This is the legislative framework through which the Minister received and considered the Application.

THE TEST

22. In Order LA25-02, the Commission outlined the appropriate two-part test (the “**Test**”) to be applied when exercising its appellate authority under the Act in relation to a decision of the Minister:

- “i. Whether the Minister followed the proper procedure as required by the Planning Act, the Regulations and the law in general, including the duty of procedural fairness, in making the decision; and

¹⁴ *Subdivision and Development Regulations*, supra note 8, at subsection 63(7)

- ii. *Whether the Minister's decision was made in accordance with the Planning Act, the Regulations and was based on sound planning principles in the field of land use planning.*"¹⁵

Part 1 of the Test – Process

23. The Minister met the first part of the test. The Decision and supporting evidence demonstrate that the Minister followed the proper process and procedure, as well as the applicable legislation. The Decision was not overly broad or arbitrary and was grounded in the principles of natural justice, as well as the Act and the Regulations.
24. Upon receipt of the Application, the Minister initially determined that the Application was incomplete and requested that the Appellant provide the missing requisite information.¹⁶
25. After receiving the requested information, the Minister reviewed the Application in full and completed a Pre-Development and Subdivision Inspection Report. In doing so, the Minister determined that the Subject Property was located within the SRSPA.¹⁷
26. After determining that the Appellant's proposed change of use for the Subject Property would not be permitted under the provisions in the Regulations relating to the SRSPA, the Minister advised the Appellant in writing that the Application was denied as the proposed change of use would not comply with various provisions in section 63 of the Regulations.¹⁸
27. For these reasons, the Minister submits that the first part of the Test is satisfied.

¹⁵ *Parry Aftab and Allan McCullough v. Minister of Housing, Land and Communities*, 2025 PEIRAC 16 (CanLII), <https://canlii.ca/t/kbjgk>, at para. 27

¹⁶ Appeal Record, Tab 5B

¹⁷ Appeal Record, Tab 4

¹⁸ Appeal Record, Tab 1

Part 2 of the Test – Section 63 of the Regulations

28. The Minister also satisfied the second part of the Test, as the Decision was made in accordance with the Act and the Regulations.
29. As mentioned above, the Subject Property has been approved for resource (agricultural) use only.
30. Pursuant to subsection 63(7) of the Regulations, the Minister may only issue a development permit (including for a change of use) for a property located within the SRSPA “...*pursuant to the uses and limitations contained in...*” subsections 63(4), (4.01), (4.1) or (5.02).¹⁹
31. Although subsections 63(4), (4.01), (4.1) and (5.02) of the Regulations all speak to the purposes for which a parcel may be *subdivided* within the SRSPA, subsection 63(7) of the Regulations provides that the same limitations and conditions apply to an application for a development permit, including an application for a change of use.
32. Of the provisions referred to in subsection 63(7) of the Regulations, only clause 63(4)(b) and subsection 63(4.1) refer to “*industrial use*”. These provisions state:

Approval of one lot per parcel

(4) An existing parcel of land may, on approval, be subdivided into not more than one lot for one of the following purposes:

...

(b) resource-commercial or resource-industrial use, where the lot is intended for agricultural, forestry or fisheries purposes;

...

Non-resource commercial or industrial

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

(a) the subdivided land is to encompass or contain an existing commercial use, or be appended to or consolidated with land that was approved for a non-resource related commercial or industrial use by the Minister prior to October 12, 2019;

(b) in the opinion of the Minister, that use has not been discontinued or abandoned; and

¹⁹ *Subdivision and Development Regulations*, supra note 8, at subsection 63(7)

(c) the proposed expansion does not violate the intent and purpose of these regulations, with particular regard for sections 3 and 13.²⁰ (emphasis added)

33. Therefore, there are only two scenarios in which the Minister has the authority to permit a change of use for a property within the SRSPA where the proposed use is industrial:
- (a) the proposed use is resource-industrial, and the property is intended for agricultural, forestry or fisheries purposes; or
 - (b) the property
 - i. encompasses or contains an existing commercial use, or is to be consolidated or appended to a property that was approved for non-resource related commercial or industrial use prior to October 12, 2019,
 - ii. the Minister is of the opinion that this commercial or industrial use has not been discontinued or abandoned, and
 - iii. the proposed expansion does not violate the intent and purpose of the Regulations, with particular regard for sections 3 and 13.
34. As the Application met neither of these standards, the Minister had no choice but to deny the Application.

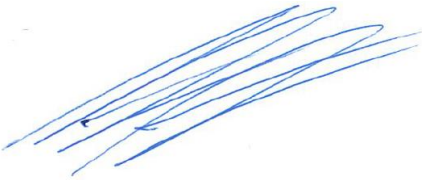
²⁰ *Ibid*, at clause 63(4)(b) and subsection 63(4.1)

CONCLUSION

35. For the reasons outlined above, the Minister submits that the appeal must be dismissed.
36. Trusting the foregoing is satisfactory; however, if you have questions about these submissions, please do not hesitate to contact the undersigned.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Yours truly,



Stephen Flanagan
Lawyer for the Minister of
Housing, Land and Communities