



Prince Edward Island Île-du-Prince-Édouard

Justice and
Public Safety

Legal Services
PO Box 2000
Charlottetown PE
Canada C1A 7N8

Justice et
Sécurité publique

Services légaux
C.P. 2000
Charlottetown PE
Canada C1A 7N8

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VIA EMAIL – pjrafuse@irac.pe.ca

Philip J. Rafuse
Appeals Administrator
The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket LA22-012– *Willemina and Floyd Squires. v. Minister of Agriculture and Land*
Our File: LS 24543

Legal Services represents the Minister of Agriculture and Land (“Minister”) in relation to the above noted appeal filed by Willemina and Floyd Squires on June 17, 2022.

I am writing in response to the email from Philip Rafuse, Appeals Administrator, for the Island Regulatory and Appeals Commission (“Commission”) of August 12, 2022 requesting submissions on the jurisdiction of the Commission with respect to this appeal.

The Minister previously provided brief submissions on the issue of jurisdiction by way of email on July 18, 2022.

The Minister takes the position that the Commission does not have jurisdiction to hear this appeal.

The Commission gets their jurisdiction to hear appeals, in relation to decisions of the Minister, pursuant to section 28(1) of the Planning Act,

28. (1) Subject to subsections (1.2) to (4), any person who is dissatisfied by a decision of the Minister that is made in respect of an application by the person, or any other person, pursuant to the regulations for

- (a) a development permit;
- (b) a preliminary approval of a subdivision or a resort development;
- (c) a final approval of a subdivision
- (d) the approval of a change of use; or
- (e) any other authorization or approval that the Minister may grant or issue under the regulations,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

The Commission has stated in a recent order that their jurisdiction is not unlimited¹. The Commission has no “inherent jurisdiction”² to hear and decide matters like a superior court does. The Commission must be “assigned the statutory jurisdiction”³ in order to hear a matter. To hear a matter outside the Commission’s jurisdiction would be an abuse of process⁴.

The Notice of Appeal notes that the grounds for the appeal is that the “boundary line is in dispute.” The Minister does not have the authority in the regulations to make a decision about a boundary line or to settle or approve a boundary line dispute.

The Notice of Appeal has not raised any issues in relation to the procedure of the Minister in processing the application or deficiency in relation to sound planning principles.

The issue of a “boundary line dispute” does not fall within the Commission’s jurisdiction under section 28(1) of the *Planning Act*.

If the Appellant wants the boundary line issue settled, then they must bring the matter before the Supreme Court of Prince Edward Island for adjudication. As noted by the Prince Edward Island Court of Appeal in *MacKay v MacKenzie*, 2016 PECA 16 deciding a boundary is a legal issue to be decided by a court. The courts, as opposed to the Commission, have the jurisdiction to settle a boundary line dispute.

The Minister submits that the appeal must be dismissed by the Commission as they do not have jurisdiction to hear a matter related to a boundary line dispute between parties.



Mitch O'Shea
Legal Counsel for the Minister

¹ Brian R. MacKay v Minister of Agriculture and Land, Order No: LA22-03.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*