

BEFORE THE ISLAND REGULATORY AND APPEALS COMMISSION

IN THE MATTER OF an appeal pursuant to s.28 of the *Planning Act*, RSPEI 1988 c. P-8 by Blair Neill with respect to the denial of an application to subdivide at PID #885491 located at 3369 Brackley Point Road, Brackley Beach, Prince Edward Island

**SUBMISSIONS OF
THE MINISTER OF AGRICULTURE AND LAND**

Mitchell O'Shea
Legal Services
Justice and Public Safety
95 Rochford Street, PO Box 2000
Charlottetown, PE

Blair Neill
30 Fair Isle Lane
Brackley, PE C1E 3L6

**Solicitor for the Minister of
Agriculture and Land**

Appellant

Issue on Appeal

1. The Minister of Agriculture and Land (“Minister”) states that the Appeal raises the following issue for the Commission’s consideration:

Was the Minister’s decision to deny the subdivision Application for parcel #885491 done in accordance with the *Planning Act* and *Planning Act Subdivision and Development Regulations* (“*Regulations*”)?

2. The Minister submits that the decision followed the proper process and procedure required in making this decision, and that the decision to deny was made in accordance with the applicable legislation.

Jurisdiction

3. The Minister does not take issue with the Island Regulatory and Appeals Commission’s (“Commission”) jurisdiction to consider this appeal. Pursuant to section 28(1)(c) of the *Planning Act* anyone who is dissatisfied with a decision of the Minister with respect of the final approval of a subdivision may appeal the decision to the Commission.
4. An appeal must be commenced within 21 days of the date of the decision of the Minister. The decision of the Minister was made on July 7, 2022. The notice of appeal was received by the Commission on July 28, 2022. The Minister does not take any issue with the timing of the appeal.

Decision

5. Blair Neill (“Appellant”) takes the position that the Minister erred in the interpretation of section 6(c) of the *Planning Act* and sections 3(1)(a) and 25(3) of the *Regulations* as other nearby parcels of land have been recently approved to be subdivided.
6. On May 25, 2022 the Appellant submitted an Application to subdivide their parcel of land, parcel #885491, located at 3369 Brackley Point Road.
7. Parcel #885491 was created in 2000 when it was subdivided from parcel #132548 and then deeded to the Appellant. The deed specifically notes that the property conveyed to

the Appellant was approved for a single-family dwelling use only and that no new highway access would be granted.

8. The Minister denied the subdivision Application July 7, 2022.
9. The Minister denied the Application based on section 6(c) of the *Planning Act* and sections 3(1)(a) and 25(3)(b) of the *Regulations*.

6(c) The Minister shall generally, administer and enforce this Act and the regulations,

3(1) No person shall be permitted to subdivide land where the proposed subdivision would

- (a) not conform to these regulations or any other regulations made pursuant to the Act;

25(3) No person shall subdivide a parcel of land that abuts, and requires access to, a collector highway, unless it is an existing parcel of land, in which case:

[Emphasis added]

10. Brackley Point Road is a “collector highway” as defined by the *Roads Act Highway Access Regulations*¹. Parcel #885491 is not an “existing parcel of land”² as it was not in existence prior to February 3, 1979.
11. The subdivision Application cannot be approved because the parcel of land was not in existence before February 3, 1979, it abuts and requires access to a collector highway and none of the exemptions pursuant to section 25(3) of the *Regulations* are applicable.

Response to Appellant’s Submissions

12. The Appellant makes the following points in their Notice of Appeal:
 - A. The property to the north was recently approved to be subdivided;
 - B. The property to the east was recently approved to be subdivided; and

¹ *Roads Act Highway Access Regulations*, PEI Reg ____, at Schedule B-1 1(8).

² *Planning Act Subdivision and Development Regulations*, PEI Reg EC93/00 at s. 1(h).

C. Several other properties along Brackley Point Road have been recently approved to be subdivided.

13. With respect to the Appellant, what has or has not been recently approved for subdivision in the surrounding area is not applicable to this appeal. Each subdivision application is considered in relation to whether it can or can not be approved subject to the legislation.
14. This appeal is not dissimilar to a previous decision of the Commission in *Dale Mahar v Minister of Communities, Cultural Affairs and Labour*, Order LA10-01, wherein the Commission found that other developments in the nearby area were not the subject of the appeal and determined that there was no error in the Minister's application of the legislation.
15. The decision to deny the subdivision application in this instance is not a discretionary decision which has been made by the Minister but rather one of statutory interpretation in applying the facts.

Conclusion

16. In conclusion, it is submitted that the decision of the Minister was made in compliance with the *Planning Act* and Regulations. On that basis, the Minister requests that the Commission dismiss the Appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of September, 2022.



Mitchell O'Shea
Departmental Solicitor

Schedule of Authorities

1. *¹Roads Act Highway Access Regulations*, PEI Reg EC580/95.
2. *Subdivision and Development Regulations*, PEI Reg EC93/00.
3. *Dale Mahar v Minister of Communities, Cultural Affairs and Labour*, Order LA10-01