

IRAC Appeal

#LA2024-10

Judy Shaw vs. Rural Municipality of West River

Planning review of IRAC file documents prepared by Thayne Jenkins
January 2026

Shaw's Wharf Road, PID#818500

Purpose of the rezoning is to allow future subdivision of 34 acres into 13 residential lots in the Rural Residential RR zone.

Amendments to the Future Land Use Plan map and Land-Use Bylaw (zoning) map.

- Official Plan Amendment #2024-02 and Land-Use Bylaw Amendment #2024-03.
- Land-Use Bylaw rezone from Rural Area (RA) to Rural Residential (RR).

1. Introduction

I was retained by Iain McCarvill at Key Murray Law on behalf of his client Mr. Sterling Buchanan. I was asked to provide a professional planning review of IRAC Appeal #LA2024-10. As a professional land-use planner, my review examines “*sound planning principles*” in regard to the following question.

- *Does the decision made by the council for the Rural Municipality of West River have merit based on sound planning principles in the field of land use planning and as enumerated in the Official Plan and Bylaw?*

After reviewing the IRAC appeal record, my professional planning opinion is that the Rural Municipality of West River satisfied sound planning principles as contained in the 2022 Official Plan and Land-Use Bylaw #2022-04, as further detailed in my report below.

2. Applicable documents

- IRAC appeal file #LA2024-10;
- PEI *Planning Act* R.S.P.E.I. 1988, Cap P-8;
- Rural Municipality of West River *2022 Official Plan*;
- Rural Municipality of West River *Land-Use Bylaw #2022-04*;
- PEI *Heritage Places Protection Act* R.S.P.E.I. 1988, Cap. H-3.1.

3. Background

Ms. Judy Shaw (appellant) appealed the Rural Municipality of West River Council decision to approve an application to rezone PID #818500, of 34 acres located west of Shaw's Wharf Road. The applicant Mr. Buchanan had applied to rezone his property from Rural Area (RA) to Rural Residential (RR) zone so he could in future propose to subdivide the subject property into 13 residential building lots under Rural Residential (RR) zoning.

4. Sound Planning Principles (land-use)

An official plan is a high-level document with general statements of land-use goals, objectives, policies and action statements that help manage and guide future long-term community growth and development. An official plan's policies are implemented through technical

documents such as a land-use bylaw or more commonly referred to as a zoning bylaw. The zoning and subdivision development standards are contained in the West River Land-Use Bylaw 2022-04.

Rural Municipality of West River 2022 Official Plan

Sound planning principles are contained in the official plan policies. My review included a review of the Official Plan and its policies, including the Future Land-Use Plan map.

Rural Municipality of West River Land-Use Bylaw #22-04

Again, sound planning principles are in the Land-Use Bylaw development standards. Section 12.3(4) of the Land-Use Bylaw provides several criteria that the Planning Board and Council shall consider reviewing applications for land-use amendments. These criteria apply to Mr. Buchanan's application.

Development Officer Planning Report (IRAC record, pp 90-97)

The Development Officer provided a planning report, and included the background of the application, and stating the criteria the Planning Board and Council shall consider. Each of the criteria under Section 12.3(4) of the Land-Use Bylaw #22-04 were reviewed against Official Plan policies and bylaw criteria applicable to this application. A presentation with several slides was presented at the public meeting.

The Development Officer report provided an analysis, comments and recommendations. In my opinion, this was a balanced planning report with some comments presented as negative or positive, taking into consideration the Official Plan and the Land-Use Bylaw. The proposed amendments are to the Future Land-Use Plan map and Zoning Bylaw map and are not text amendments. The proposal for 13 residential lots was not a subdivision technical analysis at this point in the process, as the map amendments, from Rural Area (RA) to Rural Residential (RR) are the first major steps requiring a Council decision. Subdivision approval will be a future step/ process for West River staff, Planning Board and Council.

The criteria under Section 12.3(4) are as follows (excerpt from land-use bylaw):

4) 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*
- j. other planning matters as considered relevant by the Planning Board or Council.*

I reviewed the IRAC record to determine if these criteria were satisfied, specifically with criteria a., b., c., and d. My comments below review each of these criteria. I did not provide comments on criteria f. to i. as I'm not an expert on those criteria.

Criteria a. *conformity with the Official Plan.*

A map amendment to the Official Plan Future Land-Use Plan map is required. In addition to this map amendment, the amendment must also consider the applicable Official Plan text policies. The Official Plan goals, objectives, policies and plan actions throughout the document must be considered in context of this application.

Excerpts from the Official Plan:

Policy RU-1: Designation and Zoning

It shall be the policy of Council to protect agricultural and other resource-related land uses from the intrusion of conflicting land uses. Further, the largescale conversion of primary resource lands into non-resource uses will be discouraged by identifying and designating areas primarily for agricultural and resource uses, along with compatible rural land uses.

Plan Actions:

- a. The Future Land Use Map shall designate all resource land and lands not currently approved for development as Rural Area.
- b. The Land Use Bylaw shall zone as Rural Area (RA) all lands currently in resource and residential uses, with the exception of smaller existing residential lots. Within this zone, primary resource activities shall be given priority and protected. The RA Zone shall also be applied to all existing institutional properties adjacent to underlying RA uses.
- c. The Land Use Bylaw shall establish criteria and standards for resource-based uses, including agriculture, fishing, and forestry sectors, as well as resource commercial and resource industrial uses, in the Rural Area Zone.
- d. Additional uses compatible with primary resource activities may be permitted in the RA Zone, including limited residential development and small-scale commercial uses.

Policy RU-2: Protections for Agricultural and Other Resource Uses

It shall be the policy of Council to promote the overall protection of resource lands and activities and to manage the level of unserviced development within the Municipality, with the exception of areas identified as community nodes, through limits on the creation of new parcels based on the permitted uses within each zone.

It shall further be the policy of Council to support the rights of farmers in the Municipality to conduct appropriate farming practices without harassment and, while recognizing that the Municipality has no direct role in the regulation of agricultural practices such as spraying, crop rotation, cultivation methods, and fencing of livestock, to work with the farming community and the Province to encourage responsible agriculture and forestry practices and to foster a better level of understanding between residents and farmers.

Plan Actions:

- a. The impact of the conversion of resource land into non-resource uses on farming and other resource operations in the area shall be considered by Council in relation to applications to transition Rural Area lands to non-resource zones.
- b. The Municipality will include a caveat on all subdivision approvals and development permits stating that the Municipality is a rural community and property owners are therefore notified that they will be subject to exposure to agricultural odours, slow moving farm equipment, noise and dust from cultivation, agricultural chemicals and other normal farm activities.
- c. The Land Use Bylaw shall require buffers between resource and non-resource land uses to minimize land use conflicts, in the form of expanded building setbacks.

Policy RU-3: Subdivision of Primary Resource Land

It shall be the policy of Council to limit the number of parcels that can be severed from primary resource land or other parcels in the Rural Area (RA) Zone and to require lots of a larger size in order to minimize and discourage the fragmentation of primary resource activities and to promote development patterns more suitable to a rural landscape.

Plan Actions:

- a. The Land Use Bylaw shall establish criteria for the number of lots that may be subdivided from any parcel. The Land Use Bylaw shall specify the zones and conditions in which this may occur.
- b. The Land Use Bylaw shall limit the subdivision of lots to parcels in existence at the effective date of this Official Plan and shall limit the number of lots that may be subdivided in the RA Zone to a maximum of 4 lots, of which no more than 2 lots may be approved for commercial or industrial uses.
- c. The Land Use Bylaw shall establish minimum lot size requirements for the RA Zone that exceed provincial minimum lot size standards.

4.2 PHYSICAL OBJECTIVES AND POLICIES**4.2.1 Land Use Forms**

The general goal of land use planning in rural areas is to manage development in an efficient and effective way that meets the growth needs and desires of the community while protecting environmental services (water recharge areas, sensitive habitats) and preventing land use conflicts.

Policy PHY-3: Ribbon and Strip Development

It shall be the policy of Council to limit further development of residential properties along major roadways to limit ribbon development and the fragmentation of resource uses. The clustering of new lots and the creation of new subdivision roads will be promoted to service new lots and minimize the number of direct accesses along major roadways.

Residential Policies

Policy R-1: Designation and Zoning

It shall be the policy of Council to designate sufficient residential land to accommodate the projected housing needs in the Municipality during the Official Plan period. Residential development shall be permitted in the Rural Area, Rural Residential, and Commercial Industrial zones. It shall be the policy of Council to zone existing residential lots of less than 2 acres as Rural Residential, and new multi-lot (five lots or more) residential subdivisions may only proceed via bylaw amendment (rezoning) applications where larger subdivisions are not permitted in the existing zone. It shall further be the policy of Council to permit only limited residential developments in the Rural Area zone, using the Rural Residential zone to direct multi-lot subdivisions to locations where they are less likely to create conflicts with established farming operations, where the site is appropriate for long term on-site services, and where the safety and efficiency of the road network will not be negatively affected.

Plan Actions:

- a. Parcels of less than 2 acres where the primary use is residential shall be designated as residential on the Future Land Use Map.
- b. Parcels where the primary use is seasonal or year-round residential shall be zoned Rural Residential (RR) in the Land Use Bylaw.
- c. Certain limited accessory uses shall be permitted in the RR Zone, where they will not conflict with residential uses.
- d. The Land Use Bylaw shall permit the subdivision of a limited number of new lots in the Rural Area Zone, subject to proof of site suitability for on-site services, appropriate setbacks from adjacent farming activities, and appropriate road access.
- e. Consideration of new major residential subdivisions developments of more than 4 lots shall proceed via a rezoning application where multi-lot subdivisions are not permitted in the existing zone and shall be subject to an assessment of the overall subdivision's ability to accommodate the projected on-site services, and subdivision design consideration to limit the increase of residential development along major roadways.
- f. A change in the designation of land zoned Rural Area to Rural Residential shall only be permitted in accordance with Policies PR-2 and PR-3, and where the transition will not pose a significant risk of increased land use conflicts with adjoining agricultural uses.

Criteria b. *conformity with all requirements of this Bylaw.* I did not find anything missing at this point in the process. The record shows a public meeting was advertised, letters mailed, a Planning Board public meeting was held, and public comments were included in the Minutes. Subdivision review and approval would be a later step in the process with a detailed technical analysis.

Criteria c. *suitability of the site for the proposed development* is satisfied in my opinion. Shaw's Wharf Road will need to be extended as a public road. Eight (8) proposed lots will be developed from a new cul-de-sac connecting to Shaw's Wharf Road (refer to map #2 on page 10) near the

West River. Two lots (each approx. 8 acres each in size) will be developed directly abutting (and behind) the appellant's property.

The overall layout of lots is not ribbon/strip development, as most of the lots front and access off a new proposed cul-de-sac street. The proposed subdivision pattern is comparable to cluster housing, as defined in the Land-Use Bylaw. However, it does not meet the bylaw definition as the proposed lots will be individually owned. Cluster housing is defined as multiple dwellings situated on one parcel.

A final few comments are the minimum lot size in both the RA and RR is the same under the Land-Use Bylaw which is a minimum 1-acre lot area. The RA zone allows as-of-right residential land use for single-detached, duplex and semi-detached homes. The RR zone by comparison allows the land-uses mentioned and additionally allows townhomes and apartment buildings. In my opinion, townhomes and apartments are not compatible land uses for this property but are allowed as-of-right under RR zoning. Mr. Buchanan is not proposing town homes or apartments.

Criteria d. *compatibility of the proposed development with surrounding land uses, including both existing and future uses as per the Zoning Map.* My review of Google maps aerial photo (refer to map 3 on page 11), shows an existing subdivision to the east of Shaw's Wharf Road. It is near the area of the proposed rezoning and is subdivided into what appears to be approximately 14 lots. The area is already partially developed with residential homes and is zoned Rural Residential RR.

The rezoning of PID #818500 is compatible in my opinion with the pattern of subdivision development for low-density, and comparable to the existing subdivision east of Shaw's Wharf Road as single-detached, duplex and semi-detached. Ms. Shaw's property is zoned Rural Area (RA). I understand it has been used continuously for agricultural cropping (non-intensive farming) for many years.

Further, with respect to residential intensification or density, the Rural Area RA zone allows up to a maximum of four (4) residential subdivided lots, and the Rural Residential RR zone does not limit the maximum number of new residential lots. The proposed size of two lots behind the Ms. Shaw's property, is in keeping with the character of the RA zone for larger rural residential lots, i.e. each is proposed to be eight (8) acres in lot area.

5. Additional planning issues raised in the notice of appeal

a. No appeal of official plan amendment

The appellant Ms. Shaw did not appeal the Official Plan Future Land Use map amendment. In any case, a stand-alone rezoning amendment must consider and satisfy the Official Plan requirements.

b. Heritage recognition

Ms. Shaw notes her property (residential home) is a Provincially “**registered** heritage property” known as The Shaw House at Strathnairn Farm. It was Provincially registered in 2021. My comment is that the *PEI Heritage Places Protection Act* has two levels of heritage recognition. The first is a “**registered** heritage property” and the second is a “**designated** heritage property”. In both types of recognition, the property is registered on the National Historic Places website called historicplaces.ca. The difference between the two is that a “**registered** heritage property” has no restrictions under legislation and a “**designated** heritage property” has protected status. Ms. Shaw’s property is a “registered heritage property” and thus does not have the protected status of a designated property under the Act. It is my conclusion the heritage **registration** applies only to Ms. Shaw’s property and not to abutting properties.

The Official Plan - **Section 4.2.2 Natural and Heritage Landscapes** refers to cultural heritage, but it does not specify how or where this will apply. The Land-Use Bylaw criteria noted earlier do not refer to heritage review. Lastly, the proposed rezoning will not have a negative impact on the “**heritage registration**” of the Shaw property, since most of the lots (8) are proposed to be developed off the cul-de-sac street near the waterfront and not directly abutting the heritage registered Shaw home.

Excerpt from PEI Heritage website:

<https://www.princeedwardisland.ca/en/information/fisheries-tourism-sport-and-culture/provincial-heritage-places-recognition-program>

In Prince Edward Island there are two levels of recognition for historic properties:

- **Designated** heritage place is the highest level of recognition and requires approval of the minister responsible for heritage. Places of outstanding or exceptional historic significance are protected under the Heritage Places Protection Act and associated regulations. Legal restrictions are placed on heritage character-defining elements of the place. Proposed changes may require a **heritage permit**.
- **Registered** heritage place recognizes the historic values of a place yet **does not** place any restrictions on the property owner. A registered heritage place is any site or structure that has been researched and has been deemed to be a provincial heritage resource.

c. Scenic vistas

This was raised as an issue in the appeal. The West River 2022 Official Plan provides the Council with the authority to regulate scenic vistas, **Policy PHY-7**. I’m not aware if West River Council has specifically identified or preserved scenic vistas on the subject property PID#818500, the watercourse (West River) or Shaw’s Wharf Road. The policy is broad in intent, as excerpted below.

4.2.2 Natural and Heritage Landscape

The rolling landscape and coastal features combined with local history have shaped the Municipality and the Municipality respects the unique characteristics of the traditional communities within its boundary. Integral to the community is the concept of rural culture, which celebrates existing heritage buildings, sites, and landscapes. However, it is recognized that flexibility is required to preserve community character while adapting to modern needs and trends.

Objectives

- To protect strategic views and vistas
- To encourage the protection and/or redevelopment of existing heritage buildings

Natural and Heritage Landscape Policies

Policy PHY-7: Scenic Vistas

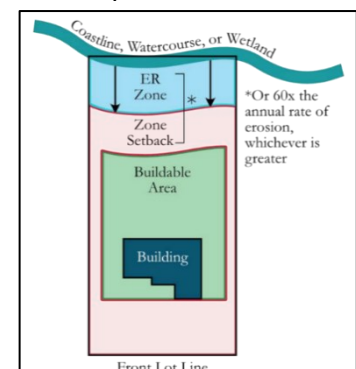
It shall be the policy of Council to seek to preserve and enhance the scenic vistas valued by the community as a whole, built on an approach to regulation appropriate to a rural community.

Plan Action:

- Council may explore the identification and designation of strategic viewsapes and protection tools, such as height limits for new structures, that might be implemented over time.
 - Council may explore options for the purchase of development rights, including legal mechanisms and funding mechanisms, to preserve strategic viewsapes and open space networks where appropriate, particularly as land is considered for removal from active farm or other resource uses.
 - Council shall encourage sensitive subdivision and site planning in the application review process to integrate new developments into the surrounding natural and built landscape and to minimize the removal of established vegetation, including hedgerows.
 - Council may explore the development of a dangerous and unsightly premises bylaw, which imposes controls on such matters as may detract from the general appearance of the community.
- d. Environmental Risk (ER) zone (Official Plan Policy PHY-6 and Land-Use Bylaw, Section 10)**
The West River Land-Use Bylaw has a zoning designation for coastline, watercourse and wetlands along the West River, including the watercourse frontage of the subject property. The preliminary subdivision plan indicates a 15m (50-foot) setback from the high-water mark, as per the Province's Dept of Environment minimum requirement.

Excerpt of diagram from Bylaw: 10.6 SETBACKS FROM WATERCOURSES, EMBANKMENTS AND WETLANDS

At the time of a subdivision application and/or development permit, a coastal hazard assessment is required, in accordance with Official Plan policy **PHY-6 c.** and Sections 4.5; 10; 13 of the Land Use Bylaw.



e. Open space

Parkland was not identified by the developer in his application. This will need to be reviewed at the time of a subdivision application review before planning board and council, as either a land dedication or cash-in-lieu.

f. Extension of Shaw's Wharf Road

I reviewed Google and Streetview on-line maps to understand the location of PID #818500 using an on-line aerial satellite image and a street view perspective. I note Shaw's Wharf Road appears to be only developed as a public street to Firedance Ridge Lane (refer to Map#3 on page 11). The record does not indicate if discussion with the province to extend Shaw's Wharf Road had occurred. This is a technical review item at subdivision review.

6. Conclusions

My conclusion is the subject property PID#818500 should be rezoned from Rural Area (RA) to the proposed Rural Residential (RR) zone for the following reasons:

(1) The proximity to an existing developed RR zoned subdivision to the east of Shaw's Wharf Road (shown as map #3 on page 11).

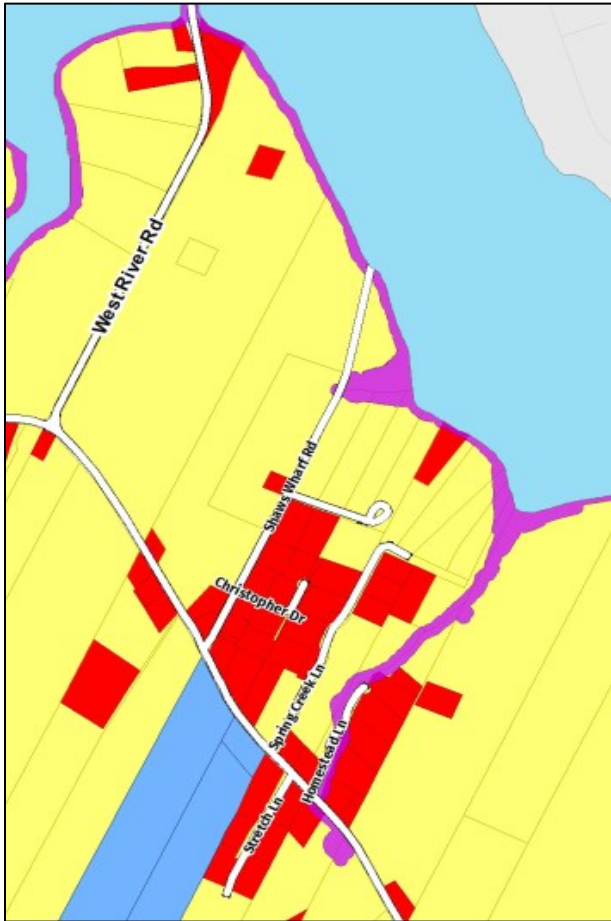
(2) Many of the proposed lots will be developed off a future cul-de-sac at the end of Shaw's Wharf Road near the waterfront.

(3) Two lots directly abutting behind the Ms. Shaw's property will be approximately eight (8) acres each in size.

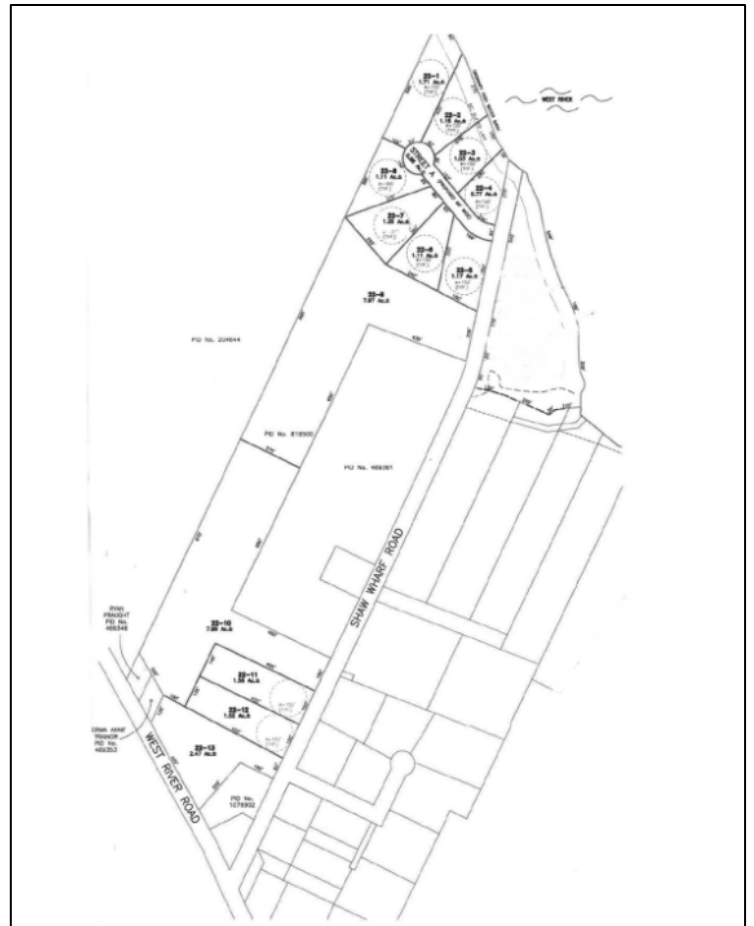
(4) The Official Plan has broad general statements with respect to scenic vistas and heritage. I'm not aware from the reading IRAC record if the West River has specifically taken steps to identify and protect scenic views/vistas and heritage landscapes, as per **Policy PHY-7**.

(5) Many of the issues raised during the public rezoning process and in this appeal must be reviewed at the subdivision application step, in accordance with the requirements of the Official Plan and Land Use Bylaw.

Map #1 (Future Land Use & Zoning Map)

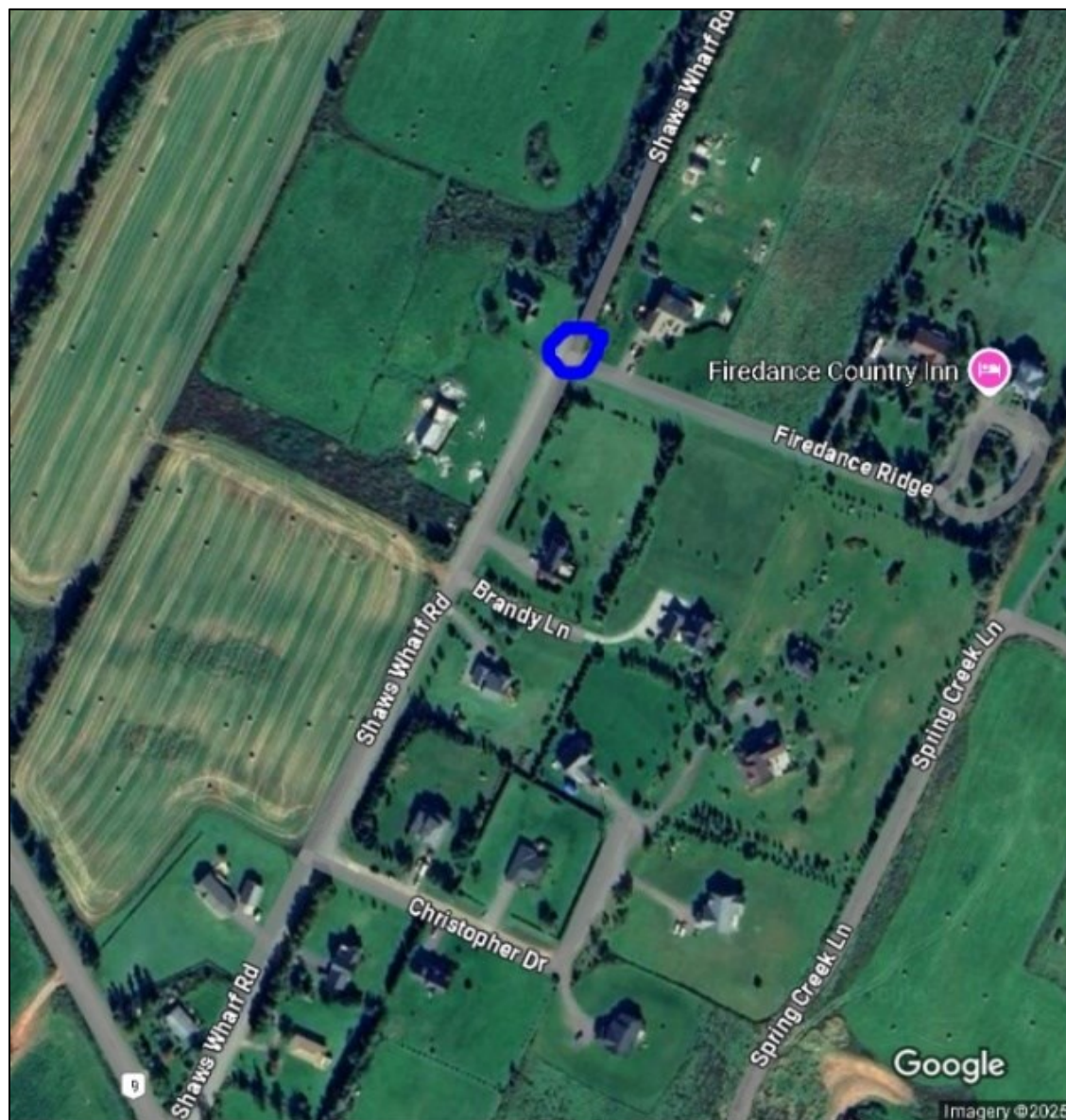


Map #2 (preliminary subdivision lot layout)



Map #3 (Google aerial photo)

(blue circle on map indicates approximate end of paved portion of Shaw's Wharf Rd)



Curriculum Vitae (CV)

Thayne Jenkins

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Retired as Planner with the City of Summerside in Jan 2025

OBJECTIVE

To facilitate land-use developments in a progressive municipal planning department.

SUMMARY

A responsible and dedicated individual with over thirty years of work experience in municipal land-use planning.

- Education includes an undergraduate bachelor's degree in Urban & Regional planning from Toronto Metropolitan University TMU (formerly Ryerson University) in 1991.
- Worked with the City of North York Planning Department (Toronto) in the Committee of Adjustment (land-use variances) and Zoning Bylaw review 1989-1992.
- Worked with Phil Wood & Associates in Charlottetown 1995-1996.
- Worked at the City of Summerside as a Development Officer and Planning Officer 1996-2025.
 - A team player providing customer service to our residents, development community, planning board, heritage board and council.
 - Administration and interpretation of various municipal policies and bylaws concerning development applications, including official plan and rezoning amendments, subdivisions, variances, site plan reviews, heritage amendments and other permit applications.
 - Research and policy development, including, the Summerside official plan, zoning bylaw, parks & green spaces plan subdivision and site development bylaw and heritage plan and bylaw.
 - Witness on behalf of the City concerning land use appeals at the Island Regulatory & Appeals Commission [IRAC].

City of Summerside Planning Officer

Sept 2013 - Jan 2025

Responsible for facilitating land use and policy review of an official plan, zoning bylaw, subdivision bylaw, parks & green spaces plan and heritage plan and bylaw.

- City witness providing expert opinion at IRAC land-use appeal hearings.
- Provided customer service to the public and development community concerning development applications for variances, official plan and re-zoning amendments, subdivisions, heritage designations and other permit applications.

City of Summerside Development Officer

Oct 1996 - Aug 2013

Responsible for facilitating land use development through the administration of an official plan, zoning, subdivision, and heritage plan and bylaws.

- Provided customer service to the public and development community concerning development applications for building permits, variances, official plan and rezoning amendments, subdivisions, heritage designations and other permit applications.
- City witness at IRAC land-use appeal hearings.
- Wrote public hearing notices, agendas, planning reports, recommendations, resolutions and presentations to planning/ heritage boards and council concerning development applications.
- Provided technical support for the development of a new City official plan and zoning bylaw; subdivision bylaw and heritage plan and bylaw.

EDUCATION

Bachelor of Urban and Regional Planning -Toronto Metropolitan University TMU (formerly Ryerson University), June 1991

PROFESSIONAL & VOLUNTEER

- Eligible for full membership in the Canadian Institute of Planners.
- Member of Summerside Y-Service Club, 2004- present.
- Y's Service Clubs International - Area President Canada and an International Council member 2011-13.
- Maritimes Region Director 2015-16.
- YMCA PEI Board President 2012-14.

PRINCE EDWARD ISLAND
ISLAND REGULATORY AND APPEALS COMMISSION

Docket No. LA24010

BETWEEN:

JUDY SHAW

APPELLANT

AND:

MUNICIPALITY OF WEST RIVER

RESPONDENT


ACKNOWLEDGMENT OF EXPERT'S DUTY

I, Thayne Jenkins, of Summerside, Prince County, in the Province of Prince Edward Island, **MAKE OATH AND SAY:**

1. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
 - (c) to provide such additional assistance as the Commission may reasonably require, to determine a matter in issue.
2. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

SWORN TO before me at Summerside,
in the Province of Prince Edward
Island, this 15th day of January,
2026.

A Commissioner for Administering
Oaths and Taking Affidavits In the
Supreme Court of Prince Edward
Island


THAYNE JENKINS