



## Rural Municipality of West River Planning Board Committee Minutes

<b>Meeting No</b>	2024-12	<b>Time</b>	6:00 PM
<b>Session</b>	Regular - Public	<b>Date</b>	Thursday, September 12, 2024
<b>Chair</b>	Helen Smith-MacPhail - Mayor	<b>Location</b>	Afton Community Centre
<b>Adoption status</b>	Approved	<b>Contact Person</b>	Susan Morse – Interim CAO
<b>Attendance</b>	Mayor Helen Smith-MacPhail, Councillor Aaron MacEachern, Councillor John Yeo, Councillor Lillian MacCannell, Councillor Steve Pollard, Susan Morse – Interim CAO		
<b>Regret</b>	Deputy Mayor Shaun MacArthur		
<b>Guest</b>			

- **Call to Order**

Mayor Helen Smith-MacPhail called the meeting to order at 6:00 PM. Mayor Smith-MacPhail welcomed the audience and introduced the Council Members and CAO. She informed the audience that there is currently a vacant seat on the Council and that a byelection will be held in the next few months.

- **Adoption & Approval of Agenda**

Mayor Smith-MacPhail requested the order of the agenda be amended to move Mayor's Update – Hennebury Rd, Rice Point Subdivision prior to Questions from the Audience and Public Input as she anticipated that the majority of the audience questions would be concerning that agenda item.

The agenda was approved as circulated, including the change proposed by Mayor Smith-MacPhail. It was moved by Councillor Steve Pollard, seconded by Councillor John Yeo, and unanimously carried.

- **Declarations of Conflict of Interest**

Nil

- **Recommendation Items**

- **PLB.24.12.1** – Mayor’s Update – Hennebury Rd, Rice Point Subdivision

**Decision Type:** Information

**Status:** Received

**Description:**

Mayor Smith-MacPhail explained that IRAC order LA-23-04 (Appendix A) was made on May 12, 2023. The Rural Municipality of West River’s Land Use Bylaw and Official Plan was approved on July 20, 2023. Therefore, the Municipality did not have authority to approve subdivision of land at the time the IRAC order and it has been established that the Province has jurisdiction over the approval of the subdivision and it is being considered as a pre-existing approved subdivision that existed before the Municipality’s Official Plan and Land Use Bylaw was approved and the lots that do not conform to the minimum lot size of the bylaw would be considered pre-existing non-conforming lots.

Mayor Smith-MacPhail described the process for rezoning land per the Municipality’s Land Use Bylaws. She explained that the Bylaw has a process for approving development on pre-existing non-conforming lots and that there are many exist in the Municipality.

- **Questions from the Audience and Public Input**

Mayor Smith-MacPhail opened the floor for questions and comments from the audience. The following questions all pertain to IRAC Order LA-23-04.

Q1: Who is responsible for issuing Building Permits?

Response Provided: Building permits are issued by the Province. The Municipality issues development permits. It is a two step process. The development permit says what is going on the piece of land, the building permit says that what is being proposed will be built in accordance with the Building Code. RMWR has an official plan and a Land Use Bylaw which outlines the requirements for development. All Planning decisions are posted for the public on the Municipality’s website and on PEI Planning Decisions website. All decisions can be appealed within 21 days of the decision.

Q2: The IRAC report mentions the proposed subdivision is for 25 lots. The IRAC order is for 19 lots. How many lots will there be? Under Provincial regulations a second phase of subdivision and

development would have to wait until half of the 19 lots are sold. Is there a second phase?

Response Provided: The IRAC order is for 19 lots. Any further subdivision will need to be approved by the Municipality.

Q3: The IRAC ruling is based on multiple distortions of the truth. It was done in such a way and in such a timeline that prevented and denied citizens the ability to appeal it. Is there any authority above IRAC that could overturn the IRAC ruling?

Response Provided: It would have been up to the province to challenge the ruling by requesting a judicial review.

Q4: Is there further recourse to challenge the ruling?

Response Provided: That would be a question for the province.

Q5: Its been a year since the time the appeal was approved how come if you guys knew about it we are just hearing about it now? No one was ever told.

Response Provided: The Municipality was not a presenter at the IRAC appeal, this was between the province and the landowner. IRAC orders are made public. All of our Planning Board Meetings are public.

Q6: We are all dependent on wells. This development is going to place significant pressure on that. Would that be a reason why the Municipality could deny development.

Response Provided: I would recommend that you ask the department of environment.

Q7: Would that apply to questions about the swale, the beach and the cliffs?

Response Provided: Yes.

Q8: Was there any sort of environmental study done?

Response Provided: We have only seen documents in the IRAC order and the Implementation Order. Buffer zones are defined by the Department of Environment. Mayor Smith MacPhail referred to the IRAC implementation order section 10.d regarding Coastal Hazard Assessments and section V.iii re Buffer Zones.

Q9: There is a claim that this Subdivision will help solve the housing crisis by building more homes, however we are looking at houses of a certain financial value. Does the Municipality have the authority to prevent the short term rental of the houses to prevent property grabbing and make sure the development is used for residences?

Response Provided: According to our land use bylaw Short term rentals are allowed in single

detached dwellings there is not a restriction on the size of the dwelling. We are currently reviewing the Land Use Bylaw for proposed amendments.

Q10: Does the Municipality have any control over what can be approved regarding development permits?

Response Provided: The Bylaw is a law and the Municipality must abide by it when determining if a permit can or can not be issued.

Q11: I'm wondering about the bank swallows that live in the area. They are a protected species. I'm concerned their habitat is being disturbed.

Response Provided: That would once again be a question for the department of environment.

Q12: Does the Municipality have authority on street lighting?

Response Provided: The Municipality has a bylaw concerning light pollution, but it does not specify street lighting. Section 4.15 - No person shall install any outdoor light in such a way as would cause a nuisance to adjacent property owners or a safety hazard to the motoring public.

Q13: What about protection for property owners? What is our recourse? There is dust, noise, our houses are shaking from the work. There has got to be something in your bylaw that says noise is an issue. What do we have at this stage to control what they're doing right now?

Response Provided: We apologize that we do not have an answer. We are trying to find answers to your questions.

Q14: In my opinion the IRAC approval does not exempt the developer from abiding by the Land Use Bylaw.

Response Provided: Because the IRAC order was made prior to the Official Plan being approved this subdivision is considered to be a pre-existing development. RMWR's land use bylaws are applicable to each lot for development permits?

Q15: I think what people are asking for is that something needs to be done and it's not that IRAC approved this and our hands are tied. We have bylaws in place that should be speaking for the people.

Response Provided: IRAC said the subdivision had to be built according to Provincial Standards on May 12, 2023. The Road is part of the IRAC order. The development of each lot that comes off the road is when the Municipality will be involved in the process.



Q16: Will the developer be making a presentation of what their plans are?

Response Provided: The developer came to a Planning Board Meeting in July and presented their plans to the committee.

Q17: What is the zoning of the lots?

Response Provided: At the time of the Official Plan development lots that were approximately one acre or less in size were designated as Rural Residential. Larger portions of land were designated as Rural Area. This property was not subdivided when the zoning was being completed and it was zoned Rural Area. The lots will be considered as pre-existing lots as they were approved prior to the Official Plan and Council will need to assess the situation to correct the zoning of the lots. It is likely that they will be designated as Rural Residential Zone to reflect the intentions of the Official Plan and Land Use Bylaw.

Q18: At the time the IRAC order was made, the Bylaws were written and there was an intention of how the Municipality wanted to operate. Why didn't IRAC consider the Municipality's intentions?

Response Provided: The matter was between the province and the developer.

Q19. Is it possible to add a height restriction to the bylaw?

Response Provided: That's a good suggestion, please engage with us when we are making bylaw amendments.

Q20: How long between proposed amendments and the amendments becoming legally binding?

Response Provided: The last time it took 8 months.

Q21. There is a swale that goes through the road that's being built. How are they dealing with it?

The swale affects other properties, water from the swale is already being diverted to Hennebury Rd – Water was being pumped/sumped Monday evening.

Response Provided: Management of the Swale would be determined by the province in this. Our office will reach out to the DOTI regarding the water in the ditch on Hennebury Rd.

- Mayor Smith-MacPhail thanked the residents for their comments.

- **Recommendation Items**

- **PLB.24.12.2 – Planning Applications for Review**

**Decision Type:** Information

**Status:** Referred

**Description:**

The committee heard from Robert MacArthur, agent for Doug MacNevin regarding a proposal to subdivide PID 218354 which historically had been defined as two separate parcels and presently has one PID - Appendix B. Mr. MacArthur spoke of the Provincial Subdivision requirements which waive survey requirements for parcels of land in excess of 10 acres. Mr. MacArthur also spoke of Land Use Bylaw section 13.1.2) Notwithstanding subsection (1), where a parcel is naturally subdivided into two or more units by a street, a watercourse, or other body of water, each of the units shall be treated as a separate parcel. The committee recommends that this application be referred to the development officer to determine the subdivision requirements.

- **PLB.24.12.3** –Civonus Project Planning – Municipal Survey Results

**Decision Type:** Information

**Status:** Deferred

**Description:**

This item was deferred to the next meeting.

- **PLB.24.12.4** –Bylaw Amendments

**Decision Type:** Information

**Status:** Recommended

**Background:**

The committee has identified areas of the bylaw that require amendments.

**Description:**

The Interim CAO presented information about the areas of the bylaw that have been identified as requiring amendments. The committee set a time to workshop bylaw amendments.

- **Informational Items**

- **PLB.24.12.5** - IRAC Appeal Rezoning PID 818500

**Decision Type:** Information

**Status:** Received

**Description:**

There is no update on this matter at this time.

- **PLB.24.12.6** - Permit Reports

**Decision Type:** Information

**Status:** Received

**Description:**

The CAO presented a summary of permits issued from July 2024 by RMWR.

- **PLB.24.12.6** - Enforcement Officer Report

**Decision Type:** Information

**Status:** Received

**Description:**

The CAO presented a summary of the Enforcement Officer Report from August 2024.

- **Meeting Closed**

Councillor John Yeo, motioned for the meeting to be closed. It was seconded by Councillor Aaron MacEachern and unanimously carried.

- **In Camera Items**

- **PLB.24.12.8** - Pursuant to the Municipal Government Act Section 119(1)g

- **PLB.24.12.9** - Pursuant to the Municipal Government Act Section 119(1)f

- **Meeting Opened**

Councillor John Yeo, motioned for the meeting to be opened. It was seconded by Councillor Aaron MacEachern and unanimously carried.

- **Adjournment**

- Councillor Aaron MacEachern motioned to adjourn the meeting at 8:25 PM.
- The Next Meeting will be October 10, 2024.

Helen Smith-MacPhail

Susan Morse

Mayor \_\_\_\_\_

Interim Chief Administrative Officer \_\_\_\_\_

## Appendix A



Date Issued: May 12, 2023  
Docket: LA21-024  
Type: Planning Appeal

### INDEXED AS:

Lucas Arsenault, Jennie Arsenault and L&J Holdings Inc. v. Minister of Agriculture and Land,  
2023 PEIRAC 4 (CanLII)

Order No: LA23-04

### BETWEEN:

Lucas Arsenault, Jennie Arsenault, and L&J Holdings Inc.

**Appellants**

### AND:

Minister of Agriculture and Land

**Respondent**

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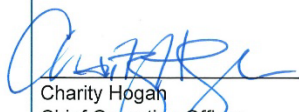
### ORDER

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Panel Members:

J. Scott MacKenzie, K.C., Chair  
M. Douglas Clow, Vice-Chair  
Erin T. Mitchell, Commissioner

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Charity Hogan  
Chief Operating Officer  
Prince Edward Island Regulatory  
and Appeals Commission

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**Appearances**

**For the Appellants, Lucas Arsenault, Jennie Arsenault,  
and L&J Holdings Inc.**

**Counsel:**

David Hooley, K.C. and Melanie McKenna

**For the Respondent, Minister of Agriculture and Land**

**Counsel:**

Mitchell O'Shea and Jessica Gillis

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### 1. INTRODUCTION

1. This is an appeal of the decision of the Minister of Agriculture and Land (the "Minister") by letter dated September 17, 2021, to deny an application by Lucas Arsenault, Jennie Arsenault, and L&J Holdings Inc. (the "Appellants") to subdivide PIDs 20300 and 808154 (the "Property") to permit a 19-lot subdivision for residential use (the "Application").
2. The Appellants filed a Notice of Appeal under Section 28 of the *Planning Act* (the "Act") on October 7, 2021.
3. The appeal was heard by the Commission on May 16, 17 and 18, 2022.
4. The Commission heard oral testimony from eight witnesses. Five witnesses testified on behalf of the Appellants: Lucas and Jennie Arsenault; Peter Joostema, FEC, P. Eng., CESA; Todd Stokes, AACI, P. App; and Jennifer Tsang, MCIP, LLP. Counsel for the Minister called three witnesses: Tobin Stetson, P. Eng; Alex O'Hara; and Eugene Lloyd.
5. Final written closing submissions were received by the Commission on June 30, 2022.

### 2. DISPOSITION

6. For the reasons that follow, the appeal is allowed. The decision made by the Minister is quashed. The Commission orders that the Property be consolidated and subdivided to permit a 19-lot subdivision for residential use.

### 3. ISSUE

7. The main issue before the Commission is whether the Minister's decision to deny the subdivision application was made in accordance with the *Planning Act*, the *Planning Act Subdivision and Development Regulations*, and sound planning principles.

### 4. AUTHORITY

8. Standards dealing with the subdivision of land are set out in Part III of the *Planning Act Subdivision and Development Regulations*. The Regulations describe general requirements for the subdivision of land. A subdivision is not allowed if the proposed subdivision would precipitate premature development or unnecessary public expenditure, place pressure on a municipality or have a detrimental impact<sup>1</sup>. These standards place a degree of interpretative discretion on the Minister. However, such discretion must be made in accordance with sound planning, engineering, and environmental principles<sup>2</sup>.

<sup>1</sup> Regulations, s. 3(1)(b)-(d)

<sup>2</sup> Regulations, s. 13



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9. When considering a subdivision application, the Minister must consider numerous factors, including but not limited to the compatibility with surrounding uses and natural features of the subject property.<sup>3</sup>
10. Parties dissatisfied by the Minister's decision relating to a request to subdivide land may appeal to the Commission by filing a notice of appeal with the Commission<sup>4</sup>.
11. When tasked with determining the merits of an appeal, the Commission has the authority to substitute its decision for one made by the Minister. The Commission does not lightly interfere with such decisions and has developed guidelines for exercising its appellate authority.<sup>5</sup>
12. The Commission has previously set out a two-part test used in consideration of an appeal in Order LA17-06<sup>6</sup>. The Commission has described the test, in the context of Ministerial decisions, as:
  - i) Whether the Minister, as the land use planning authority, followed the proper process and procedure as required in the Regulations, in the *Planning Act* and in the law in general, including the principles of natural justice and procedural fairness, in deciding on an application; and
  - ii) Whether the Minister's decision with respect to the application has merit based on sound planning principles within the field of land use planning.
13. In this case, the Appellants do not take issue with the procedure followed by the Minister<sup>7</sup>. The Commission will determine this appeal based on the second part of the test, being whether the Minister's decision to deny the Appellants' application has merit and is grounded on sound planning principles.

### 5. ANALYSIS

14. The Appellants applied to consolidate two parcels (PIDs 808154 and 203000) and then subdivide the new 44-acre parcel into a 19-lot subdivision for residential use located in Rice Point. At the time of the application, the Property was used for agricultural use. Todd Stokes and Tobin Stetson gave lengthy testimony on whether this Property consisting of agricultural land was prime agricultural land. It was acknowledged that the Property had not been used for agricultural purposes for years. It was suggested this was due to a swale running down the middle of the Property that made farming more difficult. In Todd Stokes' opinion it was, therefore, not prime agricultural land. Tobin Stetson was of the opinion that the soil on the Property was good agricultural soil and, notwithstanding the swale and suggested problems of not being able to cross it with farm machinery, he was of the opinion that it was prime agricultural land. Regardless the type of farmland, that is not determinative on the Application.

<sup>3</sup> Regulations, s. 13(a) and (j)

<sup>4</sup> Act, s. 28

<sup>5</sup> See, for example, Order No. LA23-01, *McLaine v. Rural Municipality of Miltonvale Park*, at para. 11

<sup>6</sup> *Stringer v. Minister of Communities, Land and Environment LA17-06*

<sup>7</sup> Amended Notice of Appeal, at para 2.

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15. The Minister denied the application pursuant to subsections 3(1)(b) and (d), and 13(a) and (j) of the Regulations<sup>8</sup>.
16. The Minister determined that because the subject property was in an area used primarily for agricultural resource with some residential and small cottage development, the proposed subdivision would be incompatible for the area and would precipitate premature development<sup>9</sup>. Todd Stokes testimony confirmed there has been quite a lot of residential development adjacent to and closed to the Property.
17. In support of the reasons for denial, the Minister attached a two-page analysis prepared by Alex O'Hara, Land Use Planning Act Specialist, dated September 17, 2021<sup>10</sup>. This analysis lists three main areas of concern being 1) premature land subdivision, 2) development of prime agricultural land, and 3) coastal development.
18. Prior to the hearing of this matter, the Minister filed with the Commission a report entitled "*Additional Information Hennebury Road Planning Decision*" prepared by Alex O'Hara (the "Report"). This report did not form part of the Minister's Record of Decision, rather it was created after the Notice of Appeal was filed by the Appellants as an after-the-fact justification for the decision made by the Minister.
19. The Report, which can be summarized as a largely subjective analysis of various planning concepts, is helpful in understanding some of the analysis and considerations used to guide the Minister's decision in this case; however, it is not without significant flaws. Many of the papers, recommendations, statements, and policies relied upon in the Minister's Report are not anchored in Act, Regulations, or sound planning principles. The authorities cited are reports and white papers that have been developed by or submitted to Government over decades. They consist of multiple land use reviews by various lay person panels who made proposals for future land use policy. They contain blue sky proposals and desires that amount to wishes, not law.
20. The Minister relies on certain interests, priorities, and objectives; however, many of these items were actually not found in the Act at the time of his decision. They were added to the Act after this decision. Additionally, some of the analysis in the Report is grounded by provisions of the Act or the Regulations that came into effect after the decision at issue<sup>11</sup> and do not have any force or effect in law when dealing with the Application or this Appeal.
21. Noting the significant issues with the Minister's Report, the Commission has placed very little evidentiary weight on it, and the related oral testimony of its author.

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<sup>8</sup> Record, pg. 5

<sup>9</sup> Record, pg. 6

<sup>10</sup> Record, pgs 8-18

<sup>11</sup> See section 2.4, 3.1, 4.2 and 5.3 of the Report. These sections cite ss. 2(b), 2.1(1)(b), 2.1(1)(j), 2.1(1)(k), 2.1(1)(l) and 2.1(1)(n) of the Planning Act – each of which was added to the Planning Act by Royal Assent on November 17, 2021 (SPEI 2021, c. 42).

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22. The Minister relies on various papers, recommendations, statements, and policies; however, missing is where these statements have actually been enacted into law in the Act or Regulations, or formally adopted as policy by the Lieutenant Governor in Council in accordance with the legislation.
23. Decisions of the Minister must be rooted in and made in accordance with the legislation. Discretionary provisions in the legislation must be interpreted using sound planning principles.
24. The Appellants filed a report prepared by Jennifer Tsang, MCIP, LPP<sup>12</sup> to rebut the Minister's decision. Jennifer Tsang was qualified and accepted by the Commission as an expert in land use planning. Ms. Tsang file a comprehensive expert report on the development. She provided expert oral opinion evidence to the Commission. The Commission finds Ms. Tsang's evidence to be credible and persuasive.
25. The Commission will comment on the four specific reasons for denial as set out in the Minister's decision being, premature development, detrimental impact, compatibility with surrounding uses, and natural features.

### Precipitate Premature Development

26. The Minister describes premature development as occurring when a landowner subdivides land into lots for sale in an area with an oversupply of approved lots<sup>13</sup>. Premature development is noted as a concern of the Minister's as it can have a "significant detrimental impact on the Island via inflated property market values<sup>14</sup>". In the Minister's opinion, the proposed development will precipitate premature development in the area. This conclusion was reached based on a review of the number of approved, undeveloped lots in the nearby area<sup>15</sup>.
27. Ms. Tsang characterizes the Minister's interpretation of "premature development" as being in isolation, without using "unnecessary public expenditure" to guide its analysis, as open ended and subjective. In Ms. Tsang's opinion, unnecessary public expenditure must be used as a guide for what is considered premature development. Ms. Tsang testified that this approach aligns with sound planning principles – new development is prioritized in areas where there is already municipal infrastructure, or near existing infrastructure, to minimize public expense.
28. Ms. Tsang provided evidence that when analyzing a proposal to determine how "premature" should be measured, sound planning principles would consider factors such as the location and character of the area. Certain considerations may include development pressures and housing needs in the area; a comparison of the of available vacant residential lots in the immediate and surrounding area; and how many landowners and/or developers are marketing those lots to avoid creating overpriced lots. Judgment calls about the market based solely on the

<sup>12</sup> Land Use Planning Opinion Report by Jennifer Tsang, MCIP, LPP dated April 16, 2022

<sup>13</sup> Record, pg. 9.

<sup>14</sup> Minister's Report, s. 2.8

<sup>15</sup> Minister's Report, s. 2; Minister's submissions, para. 40.



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number of undeveloped lots in the area, as was done by the Minister, are not normally made by expert planners, and not based on sound planning principles.

29. Ms. Tsang further opined that the Proposal is not premature based on her professional planning analysis of the area<sup>16</sup>. The Commission agrees with Tsang's analysis and opinion.
30. The Commission finds the development would not precipitate premature development or unnecessary public expenditure in the area. The property is off an existing serviced, public local road. The developer is required to cover the cost to build the new road and there are minimal public expenditures to enable the proposal<sup>17</sup>.

### Detrimental Impact

31. The Minister's decision concludes this proposal would have a detrimental impact by causing loss or harm to the protection of the natural environment and surrounding land uses<sup>18</sup> because residential use is not compatible with the surrounding uses and the subdivision would deplete approximately 3000' of shore frontage<sup>19</sup>.
32. Ms. Tsang correctly identifies the need to review the proposal against the existing regulations in place to protect the natural environment. This includes the lot size requirements for on-site well and septic systems, as well as setbacks from the coastline to address erosion and flooding.
33. From a technical perspective, the proposed development could be approved based on the regulations<sup>20</sup>. The development meets the minimum lot size requirements, and the Department of Environment, Energy and Climate Action did not raise any concerns with coastal erosion upon its review of the proposal<sup>21</sup>. Peter Joostema, submitted an expert report and testified at the hearing. Joostema opined that changing the current use of the property from agricultural to residential, as proposed, would actually result in less erosion<sup>22</sup>. In Joostema's opinion, the detrimental impacts related to the natural environment is considered to be minimal based on the current use of the land.
34. The Commission finds the evidence supports that the proposal would not have a detrimental impact.

### Compatibility with Surrounding Uses - Development of Agricultural Land

35. The Minister references denial of the development as it would have a detrimental impact to the surrounding land uses because it would remove prime, agricultural

<sup>16</sup> Tsang Report, pg. 5

<sup>17</sup> Tsang Report, pg 4., Record, pgs. 70, 82,

<sup>18</sup> Record, pg. 6

<sup>19</sup> Minister's submissions, para. 42; Minister's Report

<sup>20</sup> Minister's submissions para 30.

<sup>21</sup> Record, pg. 58-63, pg. 65, 68; Minister's submissions para 30

<sup>22</sup> Joostema Report, pg. 4

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land from resource use. The development, in the Minister's opinion, would not be compatible with surrounding uses<sup>23</sup>. The Minister suggests that protecting agricultural land is paramount to all<sup>24</sup>.

36. Tsang provided testimonial evidence that sound planning principles require a balance between, among other things, preserving agricultural land, the need for population growth and housing needs. Tsang's expert evidence is that in the field of land use planning, agricultural land uses, and low-density residential land uses are not considered incompatible; rather, in a rural setting, low density residential would be one of the most compatible land uses with agriculture. Tsang's professional opinion is that the development is compatible with the surrounding land uses.
37. The Commission accepts and agrees with Tsang's expert opinion.
38. While the Commission recognizes the importance of preserving agricultural land in our province, denial of the application because it is "prime agricultural land" is not grounded in the Act, Regulations or sound planning principles. The proposed development is compatible with surrounding uses – evidenced by the residential subdivisions to the east and west of the subject area.

### Natural Features

39. The Minister discusses "visual amenity" and "scenic viewscapes" throughout the rationale for denial of the application. The Minister's Report cites the priority interests of the Act to include "the protection of viewscapes"<sup>25</sup>. The Minister's position is that coastal development, which includes the loss of viewscapes along the coastline, is justification for denial of the application<sup>26</sup>. The Minister also notes approval of the application would deplete approximately 3000 feet of shore frontage.
40. The Commission notes that at the material time, the definition of detrimental impact found in the Regulations specifically excluded viewscapes as a consideration<sup>27</sup>.
41. Ms. Tsang's evidence suggests the proposed development does not have any natural features that a planner would seek to protect or mitigate. She lists such features as: steep slopes, watercourses, dunes, or old growth forests<sup>28</sup>. Further, the proposed development meets the requirements for coastal development. She also counters the Minister's argument that the "proposed subdivision would deplete approximately 3000' of shore frontage<sup>29</sup>" because the shore frontage will not be depleted and will continue to exist as shore frontage after the development. The

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<sup>23</sup> Record, pg. 9

<sup>24</sup> Record, pgs. 6, 9

<sup>25</sup> Report, s. 4.2

<sup>26</sup> Record, page 9, Minister's Submissions, para. 42 and 46

<sup>27</sup> Planning Act (f.3)

<sup>28</sup> Tsang Report, pg. 17

<sup>29</sup> Tsang Report, pg. 17

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proposal will allow for appropriate setbacks from the shoreline as required by the legislation.

42. The Commission finds the proposed development is suited to the intended use, having regard for the surrounding uses and natural features. Sound planning principles support that development would not cause a detrimental impact. The Minister erred in determining otherwise.

### Sound Planning Principles

43. Throughout the submissions advanced by both parties, reference to Commission Order LA17-06 ("*Stringer*") is made. In *Stringer*, the Commission provided commentary on the importance of sound planning principles in decision making. Specifically, the Commission stated:

"...Sound planning principles require regulatory compliance but go beyond merely insuring such compliance and require discretion to be exercised in a principled and informed manner. Sound planning principles require the decision maker to take into consideration the broader implications of their decisions. In order to ensure that sound planning principles have been followed in anomalous applications a professional land use planner must be consulted<sup>30</sup>."

44. The Commission notes that in the present case, the Minister did not consult a professional land use planner in its review of the application. Rather, the Minister consulted Alex O'Hara, Land Use and Planning Act Specialist. Mr. O'Hara does not have a recognized professional accreditation in land use planning. He is not a member of the Canadian Institute of Planners or any other professional organization for professional planners. As set out in *Stringer*, the Minister ought to have consulted a professional land use planner with respect to the subject application to weigh and balance the important considerations associated with sound planning principles – particularly when it is dealing with the interpretation of discretionary legislative provisions.
45. The Commission and the Regulations stress the importance of decisions respecting subdivision applications being grounded by sound planning principles. Sound planning principles are, as stated by Ms. Tsang, an enhancement of the existing legal framework. Sound planning principles require a balancing of many objectives – but these objectives must be grounded in sound planning, engineering, and environmental principles, not policy papers or subjective opinion. The Commission understands the Minister may not have planning professionals on staff, but when interpreting discretionary interpretive provisions of the legislation, he must solicit advice from accredited professionals to ensure decisions are made in accordance with the Act, Regulations and sound planning principles. The public are entitled to decisions that are rooted in these principles.
46. In *Stringer*, noted above, the Commission found that because the Minister's staff did not consult with a professional planner when it was prudent to do so, the Minister failed to consider sound planning principles. In this appeal, the

<sup>30</sup> LA17-06, para. 64

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Commission finds the same – the Minister ought to have consulted with a professional planner to assist with reaching his decision on this subdivision application. The Minister did not follow sound planning principles in his review of the Appellants' application. The Minister made a substantive error when he based its decision on considerations other than sound planning principles.

### 6. CONCLUSION

47. For the reasons above, the appeal is allowed, and the decision of the Minister is quashed. The Commission orders that the Property be consolidated and subdivided to permit a 19-lot subdivision for residential use.
48. The Commission thanks the Appellants and the Minister for their submissions in this matter. Counsel for Appellants were helpful and did an excellent job in presenting the Appellant's case in to the Commission. Counsel for the Minister were also helpful to the Commission and did an excellent job representing the Minister before the Commission.

### 7. ORDER

49. The Appeal is allowed. The decision of the Minister is quashed. The Commission orders that the Property be subdivided to permit a 19-lot subdivision for residential use.

DATED at Charlottetown, Prince Edward Island, May 12, 2023.

#### BY THE COMMISSION:

*(sgd. J. Scott MacKenzie)*

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J. Scott MacKenzie, K.C., Chair

*(sgd. M. Douglas Clow)*

\_\_\_\_\_  
M. Douglas Clow, Vice-Chair

*(sgd. Erin T. Mitchell)*

\_\_\_\_\_  
Erin T. Mitchell, Commissioner



## Appendix A Continued

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### 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.*

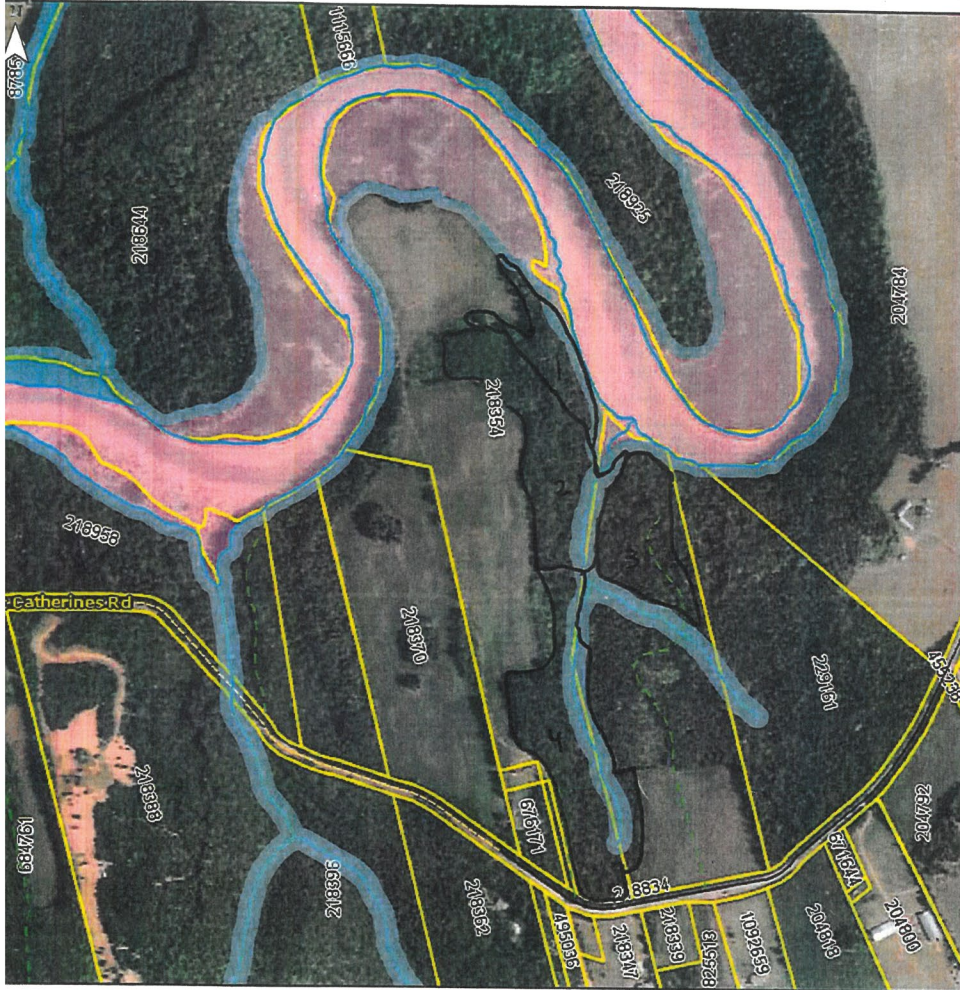
*(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.*

**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.



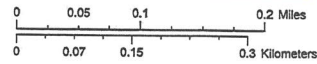
## Appendix B

### Appendix "D" Douglas MacNevin



February 3, 2023.

Scale: 1:9,028



- |  |  |   |   |
|--|--|---|---|
| <ul style="list-style-type: none"> <li>Farming Not Permitted</li> <li>• N/A</li> <li>• TRACTOR TRAILER</li> <li>• TRUCK</li> <li>• ATV</li> <li>• WALKING TRAIL</li> </ul> | <ul style="list-style-type: none"> <li>--- IMPASSABLE</li> <li>□ Forest Tech. Region</li> <li>— Forest District Line</li> <li>▨ Permission Required</li> <li>— Highway</li> <li>— Secondary</li> </ul> | <ul style="list-style-type: none"> <li>— Street</li> <li>— Unpaved</li> <li>— Watercourse</li> <li>■ LAND LOCKED POND</li> <li>■ NO OPEN WATER OR MARSH COMPONENT</li> <li>■ OPEN WATER OR MARSH COMPONENT</li> </ul> | <ul style="list-style-type: none"> <li>■ SALT OR BRACKISH MARSH</li> <li>■ SAND DUNE</li> <li>□ Property</li> </ul> |
|--|--|---|---|

map is not intended for legal description or to calculate exact land dimensions.

Statistics Canada