



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA05023
Order LA06-04**

IN THE MATTER of a purported
decision of the Minister of Community and
Cultural Affairs dated September 6, 2005.

BEFORE THE COMMISSION
on Thursday, the 13th day of April, 2006.

Maurice Rodgerson, Chair
Brian J. McKenna, Vice-Chair
Weston Rose, Commissioner

Order

Compared and Certified a True Copy

(sgd.) Philip J. Rafuse

Land and Appeals Officer
Land, Corporate and Appellate Services Division

IN THE MATTER of a purported
decision of the Minister of Community and
Cultural Affairs dated September 6, 2005.

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IN THE MATTER of a purported
decision of the Minister of Community and
Cultural Affairs dated September 6, 2005.

Appearances & Witnesses

1. For the Appellant

Representative:

Donald Claude Bergman

2. For the Minister

Counsel:

Robert A. MacNevin

IN THE MATTER of a purported decision of the Minister of Community and Cultural Affairs dated September 6, 2005.

Reasons for Order

1. Introduction

[1] This is an appeal filed on September 23, 2005 with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8, (the *Planning Act*) by Wilfred Hambly (the Appellant) concerning a purported decision of the Minister of Community and Cultural Affairs (the Respondent) on September 6, 2005 to impose a “freeze” on development in what is commonly referred to as the Genge subdivision located at Desable.

[2] The Commission’s jurisdiction to hear an appeal relating to the Genge subdivision was previously considered in Order LA05-14.

[3] By email dated October 11, 2005, the Appellant authorized Mr. D.C. Bergman to represent him in the appeal.

[4] In a letter dated October 13, 2005, Counsel for the Respondent filed a written submission arguing that the appeal should be dismissed for lack of merit and that the Commission did not have the jurisdiction to hear this appeal.

[5] On October 25, 2005, the Commission invited the parties to file written submissions on the issue of jurisdiction on or before November 8, 2005.

[6] On October 28, 2005, the Appellant filed a detailed written submission on the issue of jurisdiction. No further submissions were received from the Respondent.

[7] This Order deals solely with the preliminary issue of whether the Commission has the jurisdiction to hear the appeal.

2. Discussion

Appellant’s Position

[8] The Appellant filed a very detailed written submission with the Commission. This submission contains a summary which is reproduced below.

Summary

In summary, the Appellant maintains that the first official notification received from the Province with respect to the status of the Genge subdivision was on Sept. 6, 2005 by way of the letter from Mr. Walters. Appellant's appeal of that notification of the building freeze in the Genge subdivision was well within the 21 day limit. Due to the degree of confusion that surrounded the overall status of this subdivision (ie; lack of understanding how an approved subdivision can fail to meet the approval conditions, misrepresentation of the status of the Appellant's lots with respect to use on the official approved plan, and the unexplained presence of homes within the subdivision) made any unconfirmed reports suspect. An attempt to obtain clarification by way of a letter to the Premier's Office failed due to a lack of response to the Appellant's inquiry. The appellant is therefore requesting that the Commission rule that it does have jurisdiction to hear this appeal.

Respectfully [sic] submitted by, Wilfred Hambly, Appellant

[9] The Appellant requests that the Commission find that it does have the jurisdiction to hear the appeal.

Respondent's Position

[10] In the Respondent's written submission, it was noted that, while the September 6, 2005 letter from Don Walters, Chief Development Officer, referred to a "freeze" on development in the Genge subdivision located in DeSable, this "simple and plain language" "did not accurately reflect the legal status of the Genge subdivision". The Minister did not make any decision to freeze development.

In short there is no decision of the Minister to impose "a development freeze", and as such no decision to appeal. Once all the conditions of approval are met, development permits for single-family dwelling units may be issued.

[11] The Respondent requests that the Commission find that it does not have the jurisdiction to hear this appeal.

3. Findings

[12] The Commission has considered the written submissions of the parties and finds that it does not have the jurisdiction to hear this appeal.

[13] The Commission accepts the position submitted by counsel for the Minister that the Minister did not make a decision to impose a freeze on development.

[14] Subsection 28(1) of the **Planning Act** reads as follows:

*28. (1) Subject to subsections (2), (3) and (4), any person who is dissatisfied by a **decision** of a council or the Minister in respect of the administration of regulations or bylaws made pursuant to the powers conferred by this Act may, within twenty-one days of the decision appeal to the Commission. [emphasis added]*

[15] As there is no decision of the Minister to “freeze” development, the Commission does not have the jurisdiction to hear this appeal.

4. Disposition

[16] An Order stating that the Commission has no jurisdiction to hear this appeal will therefore issue.

IN THE MATTER of a purported decision of the Minister of Community and Cultural Affairs dated September 6, 2005.

Order

WHEREAS Wilfred Hambly (the Appellant) appealed a purported decision of the Minister dated September 6, 2005;

AND WHEREAS the Minister of Community and Cultural Affairs (the Respondent) raised the issue of jurisdiction as a preliminary matter;

AND WHEREAS the Commission invited the parties to file written submissions pertaining to the issue of the Commission's jurisdiction to hear this appeal;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. The Commission does not have the jurisdiction to hear this appeal.

DATED at Charlottetown, Prince Edward Island, this 13th day of April, 2006.

BY THE COMMISSION:

Maurice Rodgerson, Chair

Brian J. McKenna, Vice-Chair

Weston Rose, Commissioner

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 Appeal Division of the Supreme Court upon a question of law or jurisdiction.

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

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