



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA06007
Order LA06-09**

IN THE MATTER of an appeal by
Parnell Garland of a decision of the Town of
Stratford concerning the rezoning of a parcel
of land located on the west side of the Mason
Road.

BEFORE THE COMMISSION

on Thursday, the 9th day of November, 2006.

Brian J. McKenna, Vice-Chair
Kathy Kennedy, Commissioner
Anne Petley, 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 an appeal by Parnell Garland of a decision of the Town of Stratford concerning the rezoning of a parcel of land located on the west side of the Mason Road.

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IN THE MATTER of an appeal by Parnell Garland of a decision of the Town of Stratford concerning the rezoning of a parcel of land located on the west side of the Mason Road.

Appearances & Witnesses

1. **For the Appellant**
Written submissions filed by Parnell Garland

2. **For the Respondent**
Written submissions filed by John K. Mitchell, Q.C.

3. **For the Developer**
James C. Travers, Q.C.

IN THE MATTER of an appeal by Parnell Garland of a decision of the Town of Stratford concerning the rezoning of a parcel of land located on the west side of the Mason Road.

Reasons for Order

1. Introduction

[1] Parnell Garland (the Appellant) has filed an appeal 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**). The Appellant's Notice of Appeal was received on June 22, 2006. The appeal concerns a decision of the Town of Stratford to rezone a parcel of land located on the west side of the Mason Road (the subject property) from Single Family Residential (R1) to Planned Unit Residential Development (PURD).

[2] The Appellant did not know the date the purported rezoning of the subject property was approved by the Respondent and wrote in an appendix to his Notice of Appeal that "...there is doubt that the Town of Stratford gave formal approval to a rezoning of the property to PURD".

[3] On July 13, 2006 the Respondent's planner filed a letter submitting that the rezoning took place in the summer of 1997 as a result of the approval of the 1997 Town of Stratford Official Plan and General Land Use Plan and the Stratford Zoning and Subdivision Control (Development) Bylaw and Zoning Map.

[4] In a letter dated July 19, 2006 which was received on July 25, 2006, counsel for the Respondent submitted that the Appellant's appeal "...is substantially out of time".

[5] In a letter dated July 19, 2006, Commission staff raised the potential issue of jurisdiction, advised that the scheduled hearing would be postponed, and set a deadline of August 11, 2006 for the filing of written submissions on the jurisdictional issue. On August 9, 2006, the Appellant filed a written submission on the jurisdictional issue. On August 10, 2006, further information was filed by the Respondent. Commission staff requested further documentation from the Respondent and documentation, including two zoning maps, was filed on September 15, 2006. Commission staff provided copies of these two maps to the parties and invited them to file any additional submissions not later than September 27, 2006. No further submissions were received.

[6] The present Order deals with the jurisdictional matter only.

2. Discussion

Appellant's submissions

[7] In his August 9, 2006 submission, the Appellant noted a lack of supporting documentation to establish the Respondent's contention that the subject property was rezoned in 1997. The Appellant submits that the Respondent did not direct its attention to the rezoning of the property and did not approve a rezoning of the property from R1 to PURD. The Appellant concludes:

Concerning the issue of jurisdiction, it is submitted that the provisions of s. 28 of the Planning Act are not applicable in the present instance. Evidence of a decision and, more specifically, the date of a decision by a council are prerequisites for making a decision concerning the time limitation for submitting an appeal. The Town of Stratford did not provide evidence concerning the date on which the subject property was rezoned.

[8] The Appellant requests that the Commission issue an Order stating that the property is zoned R1.

Respondent's submissions

[9] The Respondent submits that the property was rezoned as part of the implementation of a new Official Plan and Zoning bylaw in 1997. The Respondent requests that the Commission find that it has no jurisdiction to hear this appeal as the appeal was filed long after the twenty-one day appeal period expired.

3. Findings

[10] The Commission has considered the documents on file and the written submissions of the parties.

[11] The Commission finds that it does not have the jurisdiction to hear this appeal. The reasons for these findings follow.

[12] 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)*

[13] The key issues in this appeal may be summarized as follows:

1. Was the subject property actually rezoned from R1 to PURD?
2. If the subject property was rezoned as noted above, when did this occur?

[14] The Appellant expressed doubt that the purported rezoning ever occurred. The Respondent submitted that the subject property was rezoned when the 1997 Official Plan and Zoning Bylaw were approved in July 1997.

[15] In the initial documentation filed with the Commission, it was not clear that there was objective supporting documentation for the Respondent's position. Further documentation from the Respondent still did not provide the necessary documentation to establish the Respondent's position.

[16] However, on September 15, 2006, the Respondent filed two zoning maps with the Commission. The first map was a July 1997 Town of Stratford Consolidated Zoning Map. This map showed the existing zoning in the Town of Stratford **prior** to the approval by P. Mitchell Murphy, then Minister of Community and Cultural Affairs, of a new Official Plan and Zoning and Subdivision Control (Development) Bylaw on July 30, 1997. On this map, the indicated zoning for subject property was R1. The second map is a Town of Stratford Zoning Map indicating the zoning for the subject property as PURD. On this second map is noted in handwriting "P. Mitchell Murphy July 30, 1997".

[17] In the absence of any submissions to the contrary, the Commission finds that the second map was, in fact, the zoning map approved and signed by the Minister on July 30, 1997.

[18] The Commission therefore finds that the subject property was, in fact, rezoned from R1 to PURD with Ministerial approval of the new zoning map effective July 30, 1997. The present appeal was filed well beyond the twenty-one day appeal period set out in subsection 28(1) of the **Planning Act** and, accordingly, the Commission has no jurisdiction to hear this appeal.

4. Disposition

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

IN THE MATTER of an appeal by Parnell Garland of a decision of the Town of Stratford concerning the rezoning of a parcel of land located on the west side of the Mason Road.

Order

WHEREAS Parnell Garland (the Appellant) on June 22, 2006 filed an appeal of a decision by the Town of Stratford (the Respondent) to rezone a parcel of land located on the west side of the Mason Road in Stratford;

AND WHEREAS the Commission identified a possible issue of jurisdiction and invited the parties to file written submissions on the issue of whether the appeal was filed within the statutory timeframe set forth in subsection 28(1) of the *Planning Act*;

AND WHEREAS the parties filed written submissions on the jurisdictional issue;

AND WHEREAS the Respondent filed additional documentation to support its position in this appeal and the parties were given an opportunity to file further submissions;

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 9th day of November, 2006.

BY THE COMMISSION:

Brian J. McKenna, Vice-Chair

Kathy Kennedy, Commissioner

Anne Petley, 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.*

IRAC141A(99/2)