



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA07003
Order LA07-04**

IN THE MATTER of a Request for
Review of Commission Order LA07-03 by
David Kent and Brenda Boutilier.

BEFORE THE COMMISSION
on Monday, the 11th day of June, 2007.

Maurice Rodgerson, 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 Request for
Review of Commission Order LA07-03 by
David Kent and Brenda Boutilier.

Order

WHEREAS the Commission issued Order LA07-03 in this matter on May 23, 2007;

AND WHEREAS on May 31, 2007 the Commission received a request from the Appellants David Kent and Brenda Boutilier for a review of Order LA07-03 pursuant to section 12 of the *Island Regulatory and Appeals Commission Act*, R.S.P.E.I. 1988, Cap. I-11;

AND WHEREAS the Commission received written submissions via email from the Appellants dated May 31, 2007 and June 4, 2007 and written submissions via fax from the Respondent Resort Municipality dated June 1, 2007;

AND WHEREAS the Commission has fully reviewed all information presented by the parties;

AND WHEREAS the test for review was previously stated by the Commission in Order LA97-11, *In the Matter of a Request for Review of Commission Order LA97-08* by Keir Clark and Marion Clark, August 27, 1997, said test which reads as follows:

... the onus rests upon the applicant to show that a prima facie case exists which will entitle the applicant to the review. A prima facie case will be shown only where the function of review should be exercised to correct an error of the Commission or to meet changed circumstances.

Changed circumstances may encompass either a situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced. Changed circumstances will dictate a review only if they are material.

Finally, the power to review is discretionary and will be exercised sparingly.

AND WHEREAS the Commission can only consider the commencement of the twenty-one day appeal period set out in subsection 28(1) of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8 to be delayed when a council or the Minister fails to provide timely notice of its decision;

AND WHEREAS the Respondent provided written notice to the Appellants of its decision;

AND WHEREAS the Commission is satisfied based on the submissions of the parties that the Respondent mailed the written notice to the Appellants the same day it was prepared, that is to say Friday March 23, 2007;

AND WHEREAS the delay that the Appellants experienced in receiving the written notice from the Respondent was not due to any act, error or omission by the Respondent;

AND WHEREAS the Appellants did receive the written notice from the Respondent prior to the expiry of the twenty-one day appeal period;

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

IT IS ORDERED THAT

1. **There is no evidence of changed circumstances; that is to say either a situation which developed after the issuance of Order LA07-03 or new evidence which was not known or not available at the time of the issuance of Order LA07-03;**
2. **There is no evidence of an error in Order LA07-03.**
3. **The request for review of Order LA07-03 is hereby denied.**

DATED at Charlottetown, Prince Edward Island, this 11th day of June, 2007.

BY THE COMMISSION:

Maurice Rodgeron, 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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