



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**
Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA07001
Order LA07-06**

IN THE MATTER of an appeal by Pan
American Properties Inc. of decisions of the
Town of Stratford, dated November 22, 2006
and December 13, 2006.

BEFORE THE COMMISSION
on Tuesday, the 26th day of June, 2007.

Maurice Rodgerson, Chair
Weston Rose, 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 Pan American Properties Inc. of decisions of the Town of Stratford, dated November 22, 2006 and December 13, 2006.

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IN THE MATTER of an appeal by Pan American Properties Inc. of decisions of the Town of Stratford, dated November 22, 2006 and December 13, 2006.

Appearances & Witnesses

Written submissions filed by:

1. For the Appellant

Tim Banks

2. For the Respondent

Counsel:

J. Gordon MacKay, Q.C.

IN THE MATTER of an appeal by Pan American Properties Inc. of decisions of the Town of Stratford, dated November 22, 2006 and December 13, 2006.

Reasons for Order

1. Introduction

[1] Pan American Properties Inc. (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 March 2, 2007 via email.

[2] This appeal concerns the November 22, 2006 decision of the Town of Stratford (the Respondent) to amend its Official Plan and the December 13, 2006 decision of the Respondent to enact a new Zoning and Subdivision Control (Development) Bylaw #29 and Zoning Map (the bylaw).

[3] On March 6, 2007, the Appellant submitted an email to Commission staff for the Commission's consideration. On March 19, 2007 the Commission received a copy of the Respondent's file concerning this matter. In a letter dated April 4, 2007, Commission staff referred to the potential issue of jurisdiction and set a deadline of May 11, 2007 for the filing of written submissions on the jurisdictional issue. The deadline for any rebuttal submissions was May 25, 2007. On May 11, 2007 the Commission received the Respondent's written submission on the jurisdictional issue. No further submissions were received.

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

2. Discussion

Appellant's Submissions

[5] In a March 6, 2007 email to Commission staff, Tim Banks, on behalf of the Appellant, provided a brief submission and attached earlier email correspondence exchanged between persons acting on behalf of the Appellant and the Respondent.

[6] The pith and substance of the Appellant's position appears to be that the Appellant understood that changes to the zoning bylaw or the official plan would not occur until the Respondent's Council or Planning and Heritage Committee met with the Appellant's representatives. Mr. Banks met with the Respondent's Mayor in early December 2006 and understood that a meeting would be held in early 2007. However, the Respondent's Council went ahead and approved the new bylaw on December 13, 2006.

[7] In a March 5, 2007 email to the Respondent's Mayor, Mr. Banks notes in part:

Robert [Hughes, Respondent's Chief Administrative Officer] sent me an email on December 14th notifying me that Council had second reading but also acknowledged my bylaw concerns and there would be 60 days before they would be implemented and the planning committee would be meeting with me first. I now realize that his December 14th email meant that this was the "final" meeting and the changes were adopted in spite of my asking Council for a delay on the Nov. 21st, in spite of your email commitment on the Nov. 24th, in spite of our discussion on Dec. 7th, and in spite of a couple of Councilor's giving me assurances that the process was being delayed, when in fact you approved it on December 13th. I didn't see the public notice for these approved amendments and I didn't understand they were valid until I was presented with a copy of the order on Friday.

Respondent's Submissions

[8] The Respondent, in its written submission, submits that the Appellant had both actual and constructive knowledge of the Respondent's decisions of November 22, 2006 and December 13, 2006. However, the Appellant's Notice of Appeal was not filed until March 2, 2007, well beyond the twenty-one day appeal period set out in subsection 28(1) of the **Planning Act**. The Respondent submits that the Commission is without jurisdiction to hear the Appellant's appeal.

3. Findings

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

[10] The Commission finds that it does not have the jurisdiction to hear this appeal. The reasons follow.

[11] 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)*

[12] As the Respondent's decisions were dated November 22, 2006 and December 13, 2006, and the Appellant filed the Notice of Appeal on March 2,

2007, *prima facie* [at first appearance] the appeal was filed well beyond the statutory appeal period.

[13] However, the Commission must first consider the adequacy of the notice given to the Appellant concerning these decisions. Inadequate or absent notice may justify a delay in the commencement of the statutory twenty-one day appeal period.

[14] In *Booth and Peake v. Island Regulatory and Appeals Commission* 2004 PESCAD 18 Justice Webber states in paragraphs 21 to 23:

[21] I find that Re Hache and Minister of Municipal Affairs (1969), 2 D.L.R. (3d) 186 (NBSCAD) applies in this province and the appeal period will begin to run when an appellant has received notice of the decision. This may be specific notice or general notice through posting or publication or by some other means. The bylaws of a community could establish the type of public notice that will be given upon the issuance of a building permit, e.g. publication in a newspaper or newsletter, posting in the community office. If the public can become aware of the decision by way of this public process then the process will likely satisfy the requirements of notice.

*[22] Where, as in this case there is no process of public notice set out in either the **Planning Act** or the bylaws of the community, then time can only begin to run when an appellant has actual notice of the decision. Just seeing the mobile home on the property would not be notice of the issuance of a building permit for that home. It might have been placed on the property without a permit.*

[23] Such notice of a decision is essential to give meaning to the appeal process. If this were not the case, the right to appeal would be illusory, rendering the statutory right of appeal meaningless. It would not be reasonable to interpret the statute in a way that renders a given right meaningless. The law does not specify the manner in which notice to the public must be given but does state that there must be some public notice of a decision—or specific notice to persons affected by the development -- before an appeal period can be said to run. That being said, an appellant could not abuse this right by deliberately delaying inquiry after he/she had been put on notice that a decision appears to have been made. In the present case, the mobile home was placed on the property and the appellants became aware of that fact on June 24, 2003. There was then some responsibility on them to inquire about whether or not a permit had been issued.

[15] In a November 23, 2006 email from Robert Hughes to Brian Gillis, copied to Tim Banks, it is noted in part:

With respect to time for input into the bylaw changes, council agreed last evening to defer 2nd reading and adoption of the new zoning bylaw until the regular Council Meeting scheduled for December 13 as requested by Tim. Now I must point out that the request for a delay came after Council passed the OP [official plan] amendments and the 1st reading of the bylaw so any changes to the OP would have to be in a further amendment.

[16] In a December 14, 2006 email from Robert Hughes to Tim Banks it is noted:

As I indicated several weeks ago, council extended the time for second reading and adoption of the new zoning and development control bylaw until the regular monthly meeting in December. That meeting was last night and Council did adopt the new bylaw at that meeting. We know you have concerns about the bylaw and the core area plan and we would like to hear those concerns. The bylaw and official plan will be amended in the new year for the core area plan which we have delayed by 60 days to allow full consultation with affected parties such as APM. Any changes that result from those consultations will be incorporated into the core area plan bylaw and official plan amendments which we will present to the public in late January or early February of next year. Mayor Jenkins and Councillor McMillan are both available to meet with you. We have also asked the planning team for the core area plan to meet with you to hear your concerns first hand. Please let me know if and when [you] are available to meet with Mayor Jenkins and Councillor McMillan.

[17] The Commission finds that the Appellant did in fact have notice concerning both the November 22, 2006 official plan amendments and the December 13, 2006 adoption of the new bylaw. While these emails are perhaps clearer with the benefit of hindsight, it should also be remembered that the Appellant's principals were actively engaged in the process. There was thus some responsibility on them to sort through the issues to determine what had been approved and what amendments were pending.

[18] For these reasons, the Commission finds that the Appellant had adequate notice pursuant to the Court's decision in *Booth and Peake v. Island Regulatory and Appeals Commission* and the Commission finds that it does not have the legal authority to delay the commencement of the twenty-one day appeal period. As the appeal period had expired by the time the Appellant filed its appeal, the Commission does not have the jurisdiction to hear this appeal.

[19] The Commission also wishes to point out that, even if the Notice of Appeal had been filed on time, it might not have the jurisdiction to hear the appeal for reasons explained below.

[20] In Order LA00-01 *Arthur Jennings et al. v. City of Charlottetown* the Commission wrote:

With the foregoing in mind, the Commission must first determine under what authority the City made its decisions on July 26 and July 28, 1999 to give first, second and third readings to pass the Bylaw and its July 26, 1999 decision to adopt the Official Plan.

*The authority for the City to adopt an official plan is found in the provisions of the **Planning Act**, specifically Sections 11 through 14, which set out a process for holding public meetings, maintaining a public record, the contents of the official plan and the approval process.*

*The provisions for making bylaws are found in Sections 16 through 20 of the **Planning Act**, including such matters as the requirement for public meetings and the approval process.*

Having considered all of the arguments advanced by all the parties, it is the Commission's opinion that the decisions by the City in this case were

*not decisions in respect of the administration of regulations or bylaws, but were decisions made pursuant to specific statutory provisions of the **Planning Act**.*

*The City's Official Plan and Bylaw must be viewed as something greater than merely an amendment or series of amendments to those official plans and bylaws which previously existed. On the contrary, the Commission views Charlottetown and its Official Plan and Bylaw as a new City with a new Official Plan and Bylaw, albeit an amalgamation of many parts consisting of the former municipalities which had their own official plans and bylaws. Further, the Commission views the adoption of the Official Plan and the making of the Bylaw, decisions by Council under the statutory powers given to all municipalities to carry out these functions under the **Planning Act**, and not decisions within the administration of bylaws as provided in subsection 28(1) of the **Planning Act**.*

*The City's decisions to adopt the Official Plan and make the Bylaw are therefore, quite distinct from those decisions undertaken by a municipality where it decides to rezone a parcel of land or amend its bylaw. Typically, municipal bylaws specifically provide for zoning and bylaw amendments by application. The Commission is of the opinion that decisions made under a specific bylaw provision are clearly made by a municipality in the administration of its existing bylaw and, as such, are appealable to the Commission under Section 28 of the **Planning Act**. In these cases, the Commission will also consider the implications for the official plan. The Commission and its predecessor, the Land Use Commission, have a long-standing history of considering such matters.*

...

So that the conclusion arrived at herein is clear, the Commission hastens to reiterate its previous position that a dissatisfied person does have the right to appeal a decision by Council to approve or deny a rezoning or bylaw amendment because that is a decision of Council in the administration of the Bylaw. Contrary to that situation, what the Commission has found in this case is that the City developed a new Official Plan and Bylaw pursuant to statutory authority and these decisions are not appealable to the Commission.

[21] Absent changes in the law, the Commission finds that the ruling in *Arthur Jennings et al. v. City of Charlottetown* makes it quite clear that the Commission does not have the jurisdiction to hear an appeal of a municipality's decision to pass a new bylaw or its decision to adopt a new official plan.

[22] The Commission notes that *Arthur Jennings et al. v. City of Charlottetown* does not speak directly to the Commission's jurisdiction to hear an appeal of a municipality's decision to adopt amendments to an existing official plan. However, this very issue was considered in Order LA04-01 *Mark Brown v. City of Charlottetown* where the Commission stated at paragraph 23:

*[23] The Commission in Order LA00-01 [Arthur Jennings et al. v. City of Charlottetown] made it very clear that there is a right to appeal a decision by Council to approve or deny a rezoning or bylaw amendment. The **Planning Act** does not specifically give the Commission the power to hear appeals concerning amendments to an Official Plan. Absent compelling arguments and caselaw to the contrary, the Commission finds that it can only examine amendments to an Official Plan within the context of an appeal of a bylaw amendment.*

[23] Following a review of the information filed by the parties involved in this appeal, and upon consideration of previous Commission Orders, the Commission finds that it has no jurisdiction to hear this appeal, and this appeal is hereby dismissed.

4. Disposition

[24] An Order finding that the Commission is without jurisdiction to hear this appeal will be issued.

IN THE MATTER of an appeal by Pan American Properties Inc. of decisions of the Town of Stratford, dated November 22, 2006 and December 13, 2006.

Order

WHEREAS Pan American Properties Inc. (the Appellant) on March 2, 2007 appealed decisions of the Town of Stratford (the Respondent), dated November 22, 2006 and December 13, 2006;

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 Commission invited the parties to file written submissions on the issue of jurisdiction;

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 26th day of June, 2007.

BY THE COMMISSION:

Maurice Rodgerson, Chair

Weston Rose, 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.*

IRAC141AA(2006/10)