



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA07007  
Order LA07-10**

**IN THE MATTER** of an appeal by David  
T. Ruddell et al of a decision of the  
Community of Victoria, dated June 4, 2007.

**BEFORE THE COMMISSION**  
on Thursday, the 8th day of November, 2007.

Brian J. McKenna, Vice-Chair  
Weston Rose, Commissioner  
Anne Petley, Commissioner

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# Order

Compared and Certified a True Copy

(sgd.) Philip J. Rafuse

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Land and Appeals Officer  
Land, Corporate and Appellate Services Division

**IN THE MATTER** of an appeal by David  
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# **Appearances & Witnesses**

## **Written Submissions Filed**

1. **For the Appellant**  
**Wanda Wood**
  
2. **For the Respondent**  
**Counsel:**  
**Perlene J. Morrison**

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# Reasons for Order

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## 1. Introduction

[1] David T. Ruddell, Sheila Latham, David Latham, Vincent Keough, Ruth Keough, Donald Wood, Wanda Wood, Lillian Elliott, Myron Mitten and Heather McBeath (the Appellants) have 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 Appellants' Notice of Appeal was received on July 18, 2007.

[2] This appeal concerns the June 4, 2007 decision of the Community of Victoria (the Respondent), to accept the amended building plans for the Victoria Harbour Inn from the MacArthur Group (the Developer) and grant the proposed variances of elevation and square footage for the proposed Inn pursuant to Sections 6.2.3 and 14.1 of the Community of Victoria Official Plan and the Zoning and Subdivision Bylaw.

[3] The Commission provided the parties with an opportunity to file written submissions on the issue of jurisdiction with a deadline of September 19, 2007. The Commission received written submissions on behalf of the Appellants and the Respondent within the deadline. No submissions were received from the Developer or its legal counsel.

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

## 2. Discussion

### Appellants' Position

[5] The Appellants' written submission may be briefly summarized as follows:

- The wording of the motion made at the June 4, 2007 meeting of the Respondent's Council is vague. The motion stated in the June 4, 2007 Council minutes is "an ambiguous half-sentence of confusion". Throughout June 2007, the Appellants believed that the Respondent was holding the Developer to the seven conditions cited in its September 4, 2006 Council minutes. Prior to the July 10, 2007 meeting of the Respondent's Council, the Appellants had no understanding of the intent of the June 4, 2007 motion. The Appellants submit that they filed the appeal within twenty-one days of July 10, 2007.
- The Appellants had no reason to delay the appeal and nothing to gain by doing so. Had the Appellants understood that the Respondent believed it had the authority to issue a permit on the basis of the June 4, 2007 resolution without regard for conditions, an appeal would have been filed with the Commission in June 2007. The Respondent's actions in July 2007 "suggest a betrayal of its written commitment to the required conditions; we cannot imagine how we might have reacted sooner".
- The Respondent's stated conditions for a permit have not been met. These conditions were spelled out at the September 4, 2006 Council meeting and were reinforced by nine conditions listed in the February 5, 2007 Council minutes.
- Residents' questions were not answered. Several Appellants had asked questions of the Respondent's Council by email, letter and orally during the months of July and August 2007. No answers were forthcoming.
- Adjacent property owners were not informed of the Respondent's decision. The property owners adjacent to the proposed development were not given notice that the issue was to be discussed, nor were they advised that a decision had been made on June 4, 2007. In addition, there was not posted notice that the Developer would demolish the old lobster factory on June 26, 2007. There is no evidence that the Respondent granted a demolition permit or a development permit for the demolition of the old lobster factory.

[6] The Appellants submit that they filed their appeal well within twenty one days of July 10, 2007 - the date they first learned the true intent of the Respondent's June 4, 2007 resolution. Accordingly, the Appellants submit that the Commission has the jurisdiction to hear this appeal.

## Respondent's Position

[7] The Respondent's written submission may be summarized as follows:

- The Respondent submits that the resolution approved by its Council was a decision within the meaning of subsection 28(1) of the **Planning Act**.

- The Respondent submits that the Appellants had notice of the June 4, 2007 meeting of the Respondent's Council. In *Booth and Peake v. Island Regulatory and Appeals Commission* 2004 PESCAD 18 (October 4, 2004) (Booth and Peake), the Appeal Division of the Supreme Court of Prince Edward Island required either public notice or specific notice of a decision which could be appealed under subsection 28(1) of the *Planning Act*. The Respondents submit that the Appellants had both public and specific notice on June 4, 2007. The June 4, 2007 Council meeting was a public meeting, thus providing public notice. Mr. Ruddell, one of the Appellants, was present at that meeting thus providing the Appellants with specific notice. The limitation period for filing an appeal expired on June 25, 2007 – twenty-three days before the appeal was filed.
- Under *Booth and Peak*, any delay on the part of the Appellants that may have resulted from their trying to understand the nature of the decision or to formulate a response to the decision is not relevant.
- The burden lies on the Appellants who seek to avoid the statutory limitation period to prove that they did not know or could not have reasonably known the material facts necessary within the statutory limitation period.

[8] The Respondent submits that the evidence confirms that the Appellants knew of the Respondent's decision on June 4, 2007. Accordingly, the Appellants' Notice of Appeal was filed well beyond the expiration of the twenty-one day limitation period and therefore the Commission is without jurisdiction to hear this appeal.

### 3. Findings

[9] After a careful review of the submissions of the parties and the applicable law, the Commission finds that it does not have the jurisdiction to hear this appeal. The reasons for the Commission's decision follow.

[10] The Appellants state the following in their July 18, 2007 Notice of Appeal:

*TAKE NOTICE that we hereby appeal the decision made by the Municipal Council of Victoria on the 4<sup>th</sup> day of June, 2007, wherein the Community Council made a decision to approve the revised development permit for MacArthur Holdings to construct a hotel.*  
Emphasis added.

[11] In the present appeal, the Respondent made a decision on June 4, 2007 at a regularly scheduled [first Monday of the month] public meeting of its Council. The Appellants were aware of the meeting and that a resolution concerning the proposed development was voted on. The minutes of the June 4, 2007 Council meeting read as follows:

- *MacArthur Group*  
*The following motion was moved, seconded, carried.*

*“That Council accept Planning Bd recommendation that the amended building plans for the Victoria Harbour Inn with the proposed variance of elevation and square footage as pursuant to Section 6.2.3 and 14.1 of the Community of Victoria Official Planning Act [sic] and the Zoning and Subdivision by law.*

The wording of these minutes is somewhat obscured by poor grammar. Further, the “Community of Victoria Official Planning Act” does not exist. Presumably, the minutes intended to refer to the “Community of Victoria Official Plan”, a document which does exist.

[12] Fortunately, the minutes for the May 29, 2007 meeting of Planning Board are clear:

*Robert Haggis from the MacArthur Group inc. presented the architectural renderings of the proposed Victoria Harbour Inn. He demonstrated how the building had been designed to fit with the scale of the village and to adapt to climate change (i.e. storm surges etc.).*

*It was moved and seconded to accept the amended building plans for the Victoria Harbour Inn with the proposed variances of elevation and square footage (as per section 6.23 in the Official Plan). Motion approved.*

[13] From the May 29, 2007 minutes of the Respondent’s Planning Board it is possible to decipher the June 4, 2007 minutes of Council. On June 4, 2007, Council approved the amended building plans and the variances which went hand in hand with those amended plans.

[14] A review of the February 5, 2007 minutes of Council is helpful to the Commission:

*Planning Committee: Chairman – Ben Smith  
-Minutes of the Special Planning Bd. Meeting of January 22, 2007  
-Discussion took place regarding the planning Bd. Recommendation to issue a Development Permit to the MacArthur Group to construct the Victoria Harbour Inn.  
-The following motion was moved, seconded and carried.  
“That Council accept Planning Bd.’s recommendation to grant a Development Permit to the MacArthur Group for construction of the new inn subject to a Development Permit agreement being signed by the MacArthur Group and the Community, a suggested outline of the conditions is attached”.*

[15] From this, a clear picture emerges. In February 2007 the Respondent’s Council approved the issuance of a development permit subject to a development agreement setting out conditions. In June, an amended building plan and variances were approved. The authority to issue a building permit would thus appear to stem from the February 2007 decision, not the June 2007 decision. The June 2007 decision simply approves an amended building plan and variances. The discussions in July 2007 appear to have created considerable confusion as to the meaning of the June 2007 decision. However, there is no indication that the February 5, 2007 decision, reproduced at Tab 25 of the Respondent’s Record was ever repealed and therefore said decision, and the requirement for a development permit agreement setting out conditions, still apply.

[16] While the Commission is sympathetic to the Appellants' confusion as to the meaning of the Respondent's June 4, 2007 resolution, the Appellants were aware that a decision had been made. The decision was made at a public meeting of Council. One of the Appellants was in attendance. If the meaning is unclear, the onus is on the Appellants to promptly seek clarification. If a clear and official explanation is not provided by the Respondent on a timely basis, then the Appellants ought to file their appeal promptly so that it can be received by the Commission within twenty-one days of the decision date.

[17] The Appellants argue that they did not know the meaning of the June 4, 2007 resolution until July 10, 2007. In fact, it appears to the Commission that the meaning of the June 4, 2007 resolution became distorted in July 2007 and the true meaning of the June resolution was obscured, not revealed, at the July 10, 2007 meeting of the Respondent's Council. The Court in *Booth and Peake* stated that:

*[12] The appellants' primary argument is with respect to when it can be said to have been aware of the true nature of the Community's decision. I am unable to accept that one doesn't know the true nature of a decision until one knows of a reason to challenge the validity of the decision—which is essentially what the appellants argue.*

[18] The Commission wishes to point out that the full details of a decision often do not become apparent until, at the earliest, the decision maker's file has been provided to the parties and the Commission as part of the ongoing appeal process. Appeals usually need to be filed before file material and minutes become available.

[19] The Commission finds that the last day upon which an appeal could have been filed was June 25, 2007, the twenty-first day following the June 4, 2007 decision. As the Notice of Appeal was filed with the Commission on July 18, 2007, the Commission does not have the jurisdiction to hear this appeal.

## 4. Disposition

[20] An Order stating that the Commission does not have the jurisdiction to hear this appeal will therefore issue.



**IN THE MATTER** of an appeal by David  
T. Ruddell et al of a decision of the  
Community of Victoria, dated June 4, 2007.

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# Order

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**WHEREAS** David T. Ruddell, Sheila Latham, David Latham, Vincent Keough, Ruth Keough, Donald Wood, Wanda Wood, Lillian Elliott, Myron Mitten and Heather McBeath (the Appellants) have appealed a decision of the Community of Victoria, dated June 4, 2007;

**AND WHEREAS** the Commission provided the parties with an opportunity to file written submissions on the issue of whether the Commission has the 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 8th day of November, 2007.

**BY THE COMMISSION:**

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Brian J. McKenna, Vice-Chair

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Weston Rose, Commissioner

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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)