



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA07009  
Order LA07-11**

**IN THE MATTER** of an appeal by  
George Kelly of a decision of the Minister of  
Communities, Cultural Affairs and Labour,  
dated September 10, 2007.

**BEFORE THE COMMISSION**

on Tuesday, the 11th day of December, 2007.

Maurice Rodgerson, Chair  
Weston Rose, Commissioner  
David Holmes, 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  
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# Contents

<i>Contents</i> .....	<i>ii</i>
<i>Appearances &amp; Witnesses</i> .....	<i>iii</i>
<i>Reasons for Order</i> .....	<i>1</i>
1. Introduction .....	1
2. Discussion .....	1
3. Findings .....	3
4. Disposition .....	4
<i>Order</i>	

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# Appearances & Witnesses

1. **For the Appellant**  
**George Kelly (via speakerphone)**
  
2. **For the Respondent**  
**Garth Carragher**  
**Also present for the Respondent**  
**John White**
  
3. **Members of the Public**  
**Rita Kelly**  
**Mary Boyd**

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# Reasons for Order

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## 1. Introduction

[1] George Kelly (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 October 1, 2007.

[2] This appeal concerns the September 10, 2007 decision of the Minister of Communities, Cultural Affairs and Labour (the Respondent), to grant preliminary approval for a subdivision of nine residential lots from property number 694133 (the subject property) located at Blooming Point.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard by the Commission at a public hearing on November 20, 2007. Allison Coles (the Developer) was advised of the hearing date, time and location but did not attend the hearing.

## 2. Discussion

### Appellant's Position

[4] The Appellant's oral submissions may be briefly summarized as follows:

- The importance of the preservation of land for agricultural use within the Province of Prince Edward Island was noted in the 1973 and 1990 Royal Commissions dealing with land use. However, summer cottage development and ribbon development along Provincial highways continues to erode the available agricultural land base.
- Increasing subdivision activity alters the character of the community. Blooming Point was settled as lots 35 and 36 in 1772. It is questionable whether there is any pressing need to change the rural character of this community. While the subdivision of residential lots results in short term financial gains for developers, such development not only reduces the agricultural land base but also encourages real estate speculation, the escalation of real estate prices and leads to increased real property tax assessments.

- Concerns exist over water quality and quantity and the effects of subdivision development on aquifers. Novartis had purchased the subject property in the 1970s and sunk wells. These wells reduced the water pressure on the Appellant's family farm. It is not known what effect the subject property's nine new wells will have on the wells of neighbouring properties. Septic systems may also be affected.

[5] The Appellant requests that the Commission allow the appeal and grant the following relief:

- Land preservation for food production should be a priority.
- The Old Bedford Road should be designated a heritage road and the existing hedgerows should be preserved as a buffer to wind and soil erosion.
- There needs to be a freeze on cottage lot subdivision and an inventory on approved lots should be prepared. There need to be restrictions on speculative development similar to those used in Bermuda and Nantucket.
- The Province needs to further consultations with the Lucy Maud Montgomery Land Trust and the Island Nature Trust in order to preserve traditional land use.

## Respondent's Position

[6] The Respondent filed a brief written submission (Exhibit R3). The Conclusion of this submission reads as follows:

*It is the position of our Department that Mr. Coles submitted a tentative design for the development of PID 694133 into 9 lots for summer cottage use that, prior to obtaining final approval, will satisfy the requirements of the **Planning Act** Subdivision and Development Regulations, the **Environmental Protection Act** Regulations governing sewage disposal and the **Roads Act** Highway Access Regulations.*

*In addition, the buffer zone adjacent to the shoreline area is in keeping with coastal area regulations developed and adopted by the provincial government in the early 90's.*

*It is not the mandate of our senior subdivision officer or our property development officers to initiate or expand upon government policies as seen to be necessary by Mr. Kelly.*

*The reservation of land for agricultural purposes, for example, would need to be an initiative generated by the government of the day – not by any one individual.*

[7] The Respondent requests that the Commission deny this appeal.

## Members of the Public

[8] Rita Kelly stated that the Old Bedford Road is in “terrible shape”. She stated that the road is not a gentle slope; in fact it is a steep hill. She would be dismayed if the road was upgraded only because of this subdivision. She noted that there is no farmland left next to the water in this area. She also noted that cottages built today are often large two storey homes, sometimes built high in the air to enhance the owner’s view of the water.

[9] Mary Boyd stated that the idea of altering the Old Bedford Road would be a mistake. The attitude is “don’t worry about tomorrow, make money now”. People are now less self reliant when it comes to food production. Agricultural land needs to be zoned to protect it from development. Organic farming is becoming increasingly important in our agricultural sector yet hedgerows are being destroyed in order to widen, ditch and improve roads. Government ought to be safeguarding the common good.

## 3. Findings

[10] After a careful review of the submissions of the parties and the applicable law, it is the decision of the Commission to deny this appeal. The reasons for the Commission’s decision 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.*

[12] The Commission is a quasi-judicial administrative tribunal empowered by several statutes to perform various administrative, regulatory and appellate functions. In its appellate functions, it is the role of the Commission to consider the decisions of various municipal and ministerial decision makers to ensure that they have complied with the acts, regulations or bylaws which provide the legal foundation for their decision.

[13] The present matter is an appeal of a decision of the Minister of Communities, Cultural Affairs and Labour in respect of the regulations made pursuant to the powers conferred by the **Planning Act**. These regulations include the Subdivision and Development Regulations and the Province-wide Minimum Development Standards Regulations.

[14] Appeals under the **Planning Act** generally take the form of a hearing *de novo* before the Commission. In an often cited decision which provides considerable guidance to the Commission, In the matter of Section 14(1) of the **Island Regulatory and Appeals Commission Act** (Stated Case), [1997] 2 P.E.I.R. 40 (PEISCAD), Mitchell, J.A. states for the Court at page 7:

*it becomes apparent that the Legislature contemplated and intended that appeals under the Planning Act would take the form of a hearing de novo after which IRAC, if it so decided, could substitute its decision for the one appealed. The findings of the person or body appealed from are*

*irrelevant. IRAC must hear and decide the matter anew as if it were the original decision-maker.*

[15] The Appellant has provided the Commission with forceful and articulate arguments concerning the broad issue of the subdivision of rural land, especially land with good agricultural capability. These arguments have been made with considerable thought and effort and the Commission is impressed with the Appellant's commitment to this issue.

[16] The Commission commends the members of the public who participated in the hearing for their comments which reflect a much broader concern than the subdivision approval under appeal.

[17] Regardless of the conviction or persuasive power of the Appellant's argument, the Commission's role is not to stand in judgment of existing public policy or to fashion new policy initiatives. That role properly belongs with the Legislative Assembly of Prince Edward Island. The role of the Commission is akin to the role of the Courts: to ensure that the law as currently written has been complied with. However, unlike the Supreme Court, the Commission is a creature of statute and accordingly its jurisdiction is thus more limited.

[18] The Commission notes that no breach of the **Planning Act** or its regulations was identified at the hearing of this matter. Rather, the Appellant focused on the need for reform of public policy relating to rural land use development.

[19] Having reviewed the file disclosed by the Respondent, the Commission cannot find any error on the part of the Respondent. The Commission finds that the Respondent followed the **Planning Act** and its regulations in granting preliminary subdivision approval to the subject property.

[20] In the event that the Commission had found that the Respondent had breached the requirements of the **Planning Act** or its regulations, the most extensive remedy that the Commission could provide would have been to quash preliminary approval of the subdivision of the subject property. The Commission does not have the jurisdiction to order the relief requested by the Appellant.

[21] For the reasons stated throughout, the Commission hereby denies this appeal.

## 4. Disposition

[22] An Order denying this appeal will therefore issue.

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# Order

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**WHEREAS** George Kelly (the Appellant) has appealed a decision of the Minister of Communities, Cultural Affairs and Labour (the Respondent), dated September 10, 2007;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on November 20, 2007 after due public notice;

**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 appeal is hereby denied.

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

**BY THE COMMISSION:**

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Maurice Rodgeron, Chair

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Weston Rose, Commissioner

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David Holmes, 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)