



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA07011
Order LA07-12**

IN THE MATTER of an appeal by Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor of a decision of the Community of Brudenell, dated September 24, 2007.

BEFORE THE COMMISSION
on Thursday, the 20th day of December,
2007.

Maurice Rodgerson, Chair
Weston Rose, Commissioner
Chester MacNeill, 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 Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor of a decision of the Community of Brudenell, dated September 24, 2007.

Contents

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

IN THE MATTER of an appeal by Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor of a decision of the Community of Brudenell, dated September 24, 2007.

Appearances & Witnesses

1. **For the Appellants**
Blair Sorrey

2. **For the Respondent**
Jock Beck

3. **For the Developer**
Mark Baker

IN THE MATTER of an appeal by Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor of a decision of the Community of Brudenell, dated September 24, 2007.

Reasons for Order

1. Introduction

[1] Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor (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' appeal was received on October 12, 2007.

[2] This appeal concerns a September 24, 2007 decision of the Community of Brudenell (the Respondent) to issue a building permit to Baker and Son Inc. (the Developer) for a new service station and convenience store on property numbers 451898 and 199042 at the corner of the Robertson Road and the A. A. MacDonald Highway in Brudenell.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard by the Commission at a public hearing on December 5, 2007.

2. Discussion

Appellants' Position

[4] The Appellants filed written submissions with their Notice of Appeal (Exhibit A1). The Appellants filed a follow up letter containing further submissions which the Commission received on November 9, 2007 (Exhibit A2). The Appellants also presented oral submissions at the hearing. A brief summary of the Appellants' submissions follow.

- The Appellants raise concerns about the process used by the Respondent. The Developer's application contained only a hand drawn sketch – no blueprint for the building was provided. Full disclosure was not provided. The minutes of the public meeting were not accurate. A motion was approved by the Respondent's council providing only twenty-four hours notice of a follow up meeting with notice provided only to those members of the public in attendance at the original meeting. No questions from the public were allowed at the follow up meeting.
- The Appellants are concerned about the environmental impact of the new service station. The only environmental information in the Respondent's possession is email correspondence from the Department of Environment, Energy and Forestry. The Appellants refer the Commission to environmental contamination caused by an older service station some years ago. The Appellants note that the last groundwater test concerning this contamination was performed twelve years ago. A follow up test should have been performed in 2007. The Appellants are concerned that this new service station could also, in time, contaminate the environment. The bulk storage tanks are too close to residential properties.
- The Appellants are also concerned about the increased traffic flow which will occur as a result of the new service station. The combination of a service station, convenience store and drive-through will make this intersection a very dangerous one. No traffic study was undertaken by the Respondent.

[5] The Appellants request that the Commission allow this appeal and revoke the building permit granted to the Developer.

Respondent's Position

[6] A brief summary of the Respondent's oral submissions follow.

- The zoning for the new service station is commercial, thus permitting this type of use. No variances were granted in this application. No public meeting was required and the building permit could have been issued by the Respondent's chief administrative officer. However, the Respondent's council felt that it would be appropriate to hold a public meeting given concerns about the service station expressed in the community.
- Following the first public meeting, the Respondent decided to hold off on issuing the building permit until further information was received from the Department of Transportation and Public Works and the Department of Environment, Energy and Forestry. The follow up meeting was scheduled so that those in attendance at the original public meeting would be aware that the information had been received from these two departments. The Chair of the Respondent's planning board personally contacted those in attendance providing more than twenty-four hours notice.

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

Developer's Position

- [8] A brief summary of the Developer's oral submissions follow.
- Many of the details with respect to the service station project were confidential as required by the contracts with the major petroleum company. The Developer met with the Respondent's planning board to provide further information.
 - The environmental concerns expressed by the Appellants fall under the **Environmental Protection Act**, R.S.P.E.I. 1988, Cap. E-9 and the **Petroleum Products Act**, R.S.P.E.I. 1988, Cap. P-5-1. It is in the best interests of the Developer that the property on which the new service station has been built is a "clean property".
 - The roads in question are Provincial highways and thus traffic safety matters on those roads are the responsibility of the Department of Transportation and Public Works. The highway access of the new service station has been approved by the Department of Transportation and Public Works. The closure of the Respondent's old service station will resolve an existing traffic safety issue.
- [9] The Developer requests that the Commission deny this appeal.

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] The Appellants raise three areas of concern: procedural error on the part of the Respondent's council, environmental concerns and traffic concerns.

[12] With respect to the allegations of procedural error, the Commission finds that there is no evidence of procedural error. The Commission has not been able to locate in the Respondent's Zoning, Subdivision and Development Bylaws any requirement that blueprints are to be provided with a building permit application. No changes in zoning or variances were required for the new service station. A building permit could have been issued without obtaining input from the public. The Respondent opted to call a public meeting so concerns could be addressed. While meeting procedure may have been somewhat awkward and lacking in polish, the Commission finds no evidence of error. The Respondent quite wisely requested and obtained information from staff at the Department of Environment, Energy and Forestry on the environmental concerns and from the Department of Transportation and Public Works on the traffic concerns. This information was brought back to a meeting open to the public and the Respondent made the effort to advise persons who had attended the original public meeting of the date and time of the follow up meeting.

[13] Environmental issues and traffic concerns of any new development are always of great importance. However, it is important to understand that in the present appeal these areas of concern are within the jurisdiction of the Province, not the Respondent. The Commission finds that the Respondent has adequately addressed these two issues within the limits of its jurisdiction.

[14] It is the responsibility of the Department of Transportation and Public Works to consider the effect of a new development prior to issuing an entranceway permit. The evidence before the Commission demonstrates the Respondent was advised such a permit was issued.

[15] It is the responsibility of the Department of Environment, Energy and Forestry to ensure that a new development is in compliance with the ***Environmental Protection Act***. Again, the evidence indicates the Respondent was advised this was addressed by the proper authority.

[16] The Respondent therefore satisfied itself the relevant requirements had been met.

[17] Further, the Commission's own jurisdiction is restricted. The Commission cannot hear appeals of a decision made under the ***Environmental Protection Act***. While the Commission does have the statutory authority to hear an appeal by an applicant with respect to an application for an entranceway permit under the ***Roads Act***, R.S.P.E.I. 1988, Cap. R-15, Highway Access Regulations, the Commission lacks jurisdiction where a person other than the applicant seeks to challenge a decision to issue an entranceway permit.

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

4. Disposition

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

IN THE MATTER of an appeal by Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor of a decision of the Community of Brudenell, dated September 24, 2007.

Order

WHEREAS Blair Sorrey, Dianne Sorrey, Bellamy Beck, Alma Beck, Howard McInnis and Shirley MacGregor (the Appellants) have appealed a decision of the Community of Brudenell (the Respondent), dated September 24, 2007;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on December 5, 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 20th day of December, 2007.

BY THE COMMISSION:

Maurice Rodgerson, Chair

Weston Rose, Commissioner

Chester MacNeill, 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)