



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

**Docket LA08001
Order LA08-02**

IN THE MATTER of an appeal by
James Hickey and Myles Hickey of a
decision of the Minister of Communities,
Cultural Affairs and Labour, dated December
21, 2007.

BEFORE THE COMMISSION
on Thursday, the 17th day of April, 2008.

Brian J. McKenna, Vice-Chair
John Broderick, Commissioner
David Holmes, Commissioner

Order

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IN THE MATTER of an appeal by
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decision of the Minister of Communities,
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21, 2007.

Appearances & Witnesses

1. For the Appellants

Representative: Myles Hickey

Also present: James Hickey

2. For the Respondent

Representative: Garth Carragher

Also present: John White

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Reasons for Order

1. Introduction

[1] James Hickey and Myles Hickey (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 January 10, 2008.

[2] This appeal concerns the December 21, 2007 decision of the Minister of Communities, Cultural Affairs and Labour (the Respondent), to deny an application for preliminary subdivision approval of property number 85985 (the subject property) located at Darnley.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard by the Commission at a public hearing on March 11, 2008.

2. Discussion

Appellants' Position

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

- The Appellants have been farming in the Darnley area for many years. A great deal of the surrounding land has already been subdivided into cottage lots, and many of these lots have been built upon. In consideration of a neighbour who suffers from allergies, the Appellants no longer grow potatoes in the field near her home. While they are able to grow cereals in that field, there is only minimal income from such a crop.
- The Appellants are currently working with Ducks Unlimited to put a wetland in the area.
- The Appellants have built up a substantial debt load which they would like to reduce through the sale of cottage lots.

[5] The Appellants request that the Commission relax the Princetown Point – Stanley Bridge Special Planning area requirements so they can subdivide the subject property.

Respondent's Position

[6] The Respondent's oral and written submissions (Exhibit R2) may be briefly summarized as follows:

- The Appellants originally applied to subdivide 26 lots from the subject parcel. In an October 9, 2007 email from the Respondent's Senior Subdivision Officer, the Appellants were advised that the Princetown Point – Stanley Bridge Special Planning Area applied to the subject parcel. As the subject parcel was located beyond 1000 feet of the shore, subsection 56(5) of the **Planning Act** Subdivision and Development Regulations applies and provides that no more than three lots shall be subdivided from any property or a portion of any property outside the 1000 foot development area specified in subsection 56(1). The Appellants were also informed of the exception contained in subsection 56.1(1).
- On December 6, 2007, the Appellants applied to subdivide four of the 26 lots.
- On December 21, 2007, the Respondent's Senior Subdivision Officer prepared a letter denying the Appellant's December 6, 2007 application as the Appellant's proposed subdivision is located more than 1000 feet from the shoreline.

[7] The Respondent requests that the Commission deny the appeal on the basis that the Respondent correctly interpreted and applied the **Planning Act** Subdivision and Development Regulations.

3. Findings

[8] 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.

[9] Sections 56 and 56.1 of the **Planning Act** Subdivision and Development Regulations read as follows:

56. (1) Within the Princetown Point - Stanley Bridge Special Planning Area residential subdivisions of more than three lots shall be permitted only within 1,000 feet (304.8 metres) of the shore.

(2) Where topographical or environmental conditions are unsuitable within the 1,000 foot (304.8 metre) development area, a subdivision may be permitted outside the development area provided that the subdivision is located as near as possible to the development area.

(3) Within any area that may be subdivided in accordance with subsection (1) or (2), a portion shall remain unsubdivided.

(4) *The unsubdivided area referred to in subsection (3) shall include*

(a) *a length equal to the full depth of the area being subdivided, measured from the perimeter coastline to the point of the parcel farthest from the shore; and*

(b) *a width equal to 34% of the width of the shoreline, measured as a straight line between the two points where the side boundaries of the property meet the perimeter coastline.*

(5) *No more than three lots shall be subdivided from any property, or a portion of any property, outside the 1,000 foot (304.8 metre) development area specified in subsection (1). (EC693/00)*

56.1 (1) *Notwithstanding anything to the contrary in section 56, a subdivision of three or more lots may be permitted outside the 1,000 foot (304.8 metre) development area specified in subsection 56(1) if*

(a) *the parcel of land being subdivided is 10 or more acres in size; and*

(b) *the subdivision is for a resource use.*

(2) *Where a subdivision permitted under subsection (1) is for an agricultural resource, use, a dwelling unit may be permitted to support that use. (EC617/04)*

[10] The Commission notes that there is no evidence before the Commission to support a finding that subsection 56(2) can be applied to the present appeal. While section 56.1 does allow for the subdivision of more than three lots if the parcel of land being subdivided is 10 or more acres in size, this exception is contingent upon the subdivision being for a resource use. In the present appeal, the application for subdivision is for cottage building lots. The Commission finds that the subdivision of agricultural land in order to create cottage building lots is not a resource use.

[11] The Appellants request that the Commission relax the regulatory requirements of section 56 of the **Planning Act** Subdivision and Development Regulations.

[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.

[14] The Appellants have provided the Commission with honest and sincere arguments concerning the importance of subdividing the subject parcel into cottage building lots. The Commission understands the challenges faced by family farming operations and appreciates the reasons why the Appellants wish to subdivide the subject property.

[15] However, the Subdivision and Development Regulations are an important component of the land use policy of the Province of Prince Edward Island. 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.

[16] The Commission notes that no breaches of the **Planning Act** or the Subdivision and Development Regulations were identified at the hearing of this matter. Rather, the Appellants focused on their reasons in favour of easing development restrictions within the Princetown Point – Stanley Bridge Special Planning Area.

[17] 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 the Subdivision and Development Regulations when making the decision to deny the Appellants' application for subdivision of the subject property.

[18] For the reasons stated throughout, this appeal is hereby denied.

4. Disposition

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

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James Hickey and Myles Hickey of a
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Cultural Affairs and Labour, dated December
21, 2007.

Order

WHEREAS James Hickey and Myles Hickey (the Appellants) have appealed a decision of the Minister of Communities, Cultural Affairs and Labour (the Respondent), dated December 21, 2007;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on March 11, 2008 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 17th day of April, 2008.

BY THE COMMISSION:

Brian J. McKenna, Vice-Chair

John Broderick, Commissioner

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)