



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA08011  
Order LA08-05**

**IN THE MATTER** of an appeal by  
Robert Robertson of a decision of the  
Minister of Communities, Cultural Affairs and  
Labour, dated April 11, 2008.

**BEFORE THE COMMISSION**  
on Thursday, the 24th day of July, 2008.

Brian J. McKenna, Vice-Chair  
Gordon McCarville, 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  
Robert Robertson of a decision of the  
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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 .....	2
4. Disposition .....	4
<i>Order</i>	

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# Appearances & Witnesses

1. **For the Appellant**  
**Robert Robertson**
  
2. **For the Respondent**  
**Don Walters**

**IN THE MATTER** of an appeal by  
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# Reasons for Order

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## 1. Introduction

[1] The Appellant Robert Robertson (Mr. Robertson) 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*). Mr. Robertson's Notice of Appeal was received on May 1, 2008.

[2] This appeal concerns the April 11, 2008 decision of the Respondent Minister of Communities, Cultural Affairs and Labour (the Minister), to deny an application for subdivision approval of property number 852889 (the subject property) located in Fortune Cove.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard by the Commission at a public hearing on June 30, 2008.

## 2. Discussion

### Mr. Robertson's Position

- [4] Mr. Robertson's oral submissions may be briefly summarized as follows:
- The subject property had previously consisted of four lots. A prior owner had consolidated these four lots into one 1.28 acre parcel. Mr. Robertson purchased this consolidated lot and built a home near the northeastern property line.
  - Mr. Robertson wishes to subdivide the subject property into two approximately equal sized lots. However, he has been advised by the Minister's staff that his subdivision proposal would not meet the requirement for the minimum circle diameter, in this case 150 feet, to be contained within the boundaries of each lot. The subject property measures approximately 162 by 230 by 225 by 148 feet, including a shoreline buffer zone.

- Mr. Robertson notes that there is a 32 foot right of way which he submits would increase septic field spacing between one of his proposed lots and a lot to the south-southwest.

[5] Mr. Robertson requests that the Commission grant a variance to the minimum circle requirement contained in the various **Planning Act Regulations** in order to permit him to subdivide the subject property.

### The Minister's Position

[6] The Minister's oral submissions may be briefly summarized as follows:

- A septic system is not permitted under a right of way. While the Minister has granted small variances in the past, Mr. Robertson's proposed subdivision would require a very large variance, as Mr. Robertson's proposed subdivision would only make available an 85 foot circle for each proposed lot. The minimum circle diameter set out in both the **Planning Act Subdivision and Development Regulations** and the **Planning Act Province-wide Minimum Development Standards Regulations** is required by the Department of Environment, Forestry and Energy to ensure adequate separation of on-site water and on-site sewage disposal systems. To significantly reduce this distance sets a precedent and could result in environmental and health problems in the neighbourhood.
- The neighbouring lots, each of which approximates three-tenths of an acre, were created in the 1970s when regulations were less stringent.

[7] The Minister requests that the Commission deny the appeal.

## 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] Subsections 4(1) and 4(2) of the **Planning Act Province-wide Minimum Development Standards Regulations** read as follows:

*4. (1) No approval or permit shall be granted for the subdivision of a lot for residential use unless the lot conforms with the minimum lot size standards set out in Table 1.*

*(2) With respect to the minimum circle diameter requirement set out in column (e) of Table 1 and column (d) of Table 2, where applicable, the space encompassed by the circle shall be in a location on the lot which will accommodate an on-site sewerage system.*

[10] The relevant lot size standards from Table 1 are set out below:

TABLE 1

## MINIMUM LOT SIZE STANDARDS

## RESIDENTIAL DEVELOPMENTS

a) servicing	b) lot category	c) number of dwelling units	d) minimum lot area sq. ft. / sq. m.	e) minimum circle diameter to be contained within the boundaries of the lot feet / meters
on-site water and on-site sewerage system	I	1	25,000 sq. ft. / 2,322.5 sq. m.	150 ft. / 45.7 m.

[11] Subsection 9(1) of the **Planning Act Province-wide Minimum Development Standards Regulations** reads as follows:

*9. (1) The authority having jurisdiction may, for special cause, authorize such minor variance from the provisions of these regulations as, in its opinion, is desirable and not inconsistent with the general intent and purpose of these regulations.*

[12] Based on the available evidence, the Commission finds that a 150 foot diameter circle would need to be located within the proposed boundaries of each of the lots which Mr. Robertson seeks to create. The evidence before the Commission suggests that only an 85 foot diameter circle could be located within each of these proposed lots. While a minor variance may be authorized for special cause, the Commission finds that reducing a circle requirement from 150 feet to 85 feet would amount to a major variance.

[13] 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 statutes, regulations or bylaws which provide the legal foundation for their decision.

[14] Having reviewed the file concerning Mr. Robertson's present application, the Commission cannot find any error on the part of the Minister. The Commission finds that the Minister followed the **Planning Act Province-wide Minimum Development Standards Regulations** when she made the decision to deny Mr. Robertson's application for subdivision of the subject property.

[15] For the reasons stated above, this appeal is hereby denied.

## **4. Disposition**

[16] An Order denying this appeal follows.

**IN THE MATTER** of an appeal by Robert Robertson of a decision of the Minister of Communities, Cultural Affairs and Labour, dated April 11, 2008.

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# Order

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**WHEREAS** the Appellant Robert Robertson has appealed a decision of the Minister of Communities, Cultural Affairs and Labour, dated April 11, 2008;

**AND WHEREAS** the Commission heard the appeal at a public hearing conducted in Charlottetown on June 30, 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 24th day of July, 2008.

### BY THE COMMISSION:

(Sgd.) *Brian J. McKenna*

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Brian J. McKenna, Vice-Chair

(Sgd.) *Gordon McCarville*

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Gordon McCarville, Commissioner

(Sgd.) *Anne Petley*

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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.*

IRAC141AA(2006/10)