



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

**Docket LA08016
Order LA08-08**

IN THE MATTER of an appeal by Anne
McPhee and Billy MacMaster of a decision of
the Town of Souris, dated August 19, 2008.

BEFORE THE COMMISSION
on Monday, the 24th day of November, 2008.

Maurice Rodgerson, Chair
John Broderick, Commissioner
Chester MacNeill, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by Anne
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the Town of Souris, dated August 19, 2008.

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IN THE MATTER of an appeal by Anne McPhee and Billy MacMaster of a decision of the Town of Souris, dated August 19, 2008.

Appearances & Witnesses

1. For the Appellants

**Anne McPhee
Billy MacMaster**

2. For the Respondent

Counsel:

John W. Hennessey, Q.C.

Witnesses:

**Shelley MacInnis
Phil Wood**

IN THE MATTER of an appeal by Anne McPhee and Billy MacMaster of a decision of the Town of Souris, dated August 19, 2008.

Reasons for Order

1. Introduction

[1] The Appellants Anne McPhee and Billy MacMaster (Ms. McPhee and Mr. MacMaster) 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*). Ms. McPhee and Mr. MacMaster's Notice of Appeal was received on August 29, 2008.

[2] This appeal concerns an August 19, 2008, decision of the Respondent Town of Souris (the Town) to deny permission to move a mobile home into the Souris Trailer Park (the Park).

[3] After due public notice and suitable scheduling for the parties, the appeal was heard by the Commission at a public hearing on October 21, 2008.

2. Discussion

Ms. McPhee and Mr. MacMaster's Position

[4] Ms. McPhee and Mr. MacMaster's submissions may be briefly summarized as follows:

- Of the twenty-one homes in the Park, there are sixteen mobile homes and five mini-homes. There are four vacant lots.
- In August 2008, a resident acquired a mobile home and wanted to move the mobile home into the Park. He applied for and received a permit from the Town and then moved the mobile home. He was then informed by the Town that he could not move the mobile home into the Park. The mobile home was still in the park as of the hearing date.
- The Park is designated as a mini-home site. However, the Park is designed for 12 foot wide mobile homes, not 16 foot wide mini-homes. The existing lots are "grandfathered" as the Park, established in 1975, predated the Town's Zoning & Subdivision Control (Development) Bylaw (the Bylaw).

- Ms. MacPhee and Mr. MacMaster submit that subsection 4.42(1) of the Bylaw protects, as a non-conforming use, the use of land lawfully in existence on the effective date of approval of the Bylaw. They submit that at the time of the effective date of approval of the Bylaw, the Park was lawfully in existence as a mobile home park.

[5] Ms. McPhee and Mr. MacMaster request that the Commission allow the appeal and order the Town to issue a permit permitting the resident to keep his mobile home in the park.

The Town's Position

[6] The Town's submission may be briefly summarized as follows:

- The Town's expert witness, Phil Wood (Mr. Wood), explained the differences between mini-homes and mobile homes. Mr. Wood noted that new mobile homes have not been built in Canada for perhaps as many as 40 years. Mobile homes were not built to any building standards or codes. Mobile homes feature a steel chassis and the chassis rusts with age. Mobile homes deteriorate and are not that safe. Mini-homes are built according to the standards of the Canadian Standards Association (CSA) and meet modern residential building code requirements.
- Mr. Wood explained that the Town's Official Plan is a policy document that takes priority, under the **Planning Act**, over the Bylaw in the event of any conflict between the documents. The Official Plan expresses the will of the community. During the last review of the Town's Official Plan, concern was expressed over the condition of the Park. Since that time, the condition of the Park has improved greatly.
- Mr. Wood acknowledged that section 4.42 of the Bylaw, through the use of the phrase "use of land", may create some confusion when read together with section 4.47 which specifically prohibits mobile homes. However, the Official Plan provides clarification and the Official Plan contains an absolute prohibition against mobile homes.
- Mr. Wood noted that it was the intent of the Town in the Official Plan to see the Park maintained and evolve into a higher standard transitioning from mobile homes to mini-homes over time.

[7] The Town 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] Section 15 of the **Planning Act** reads as follows:

- 15. (1) Following the approval of an official plan by the Minister*
(a) the plan becomes the official plan for the area;

(b) a copy of the official plan as approved by the Minister shall be published in the Gazette;

(c) the Minister shall deposit a copy of the official plan, certified by the chairman as a true copy, in the office of the Registrar of Deeds for the county to which the plan relates; and

(d) the council shall, as soon as is practicable, cause bylaws to be made to implement the official plan.

(2) The bylaws or regulations made under clause (1)(d) shall conform with the official plan and in the event of any conflict or inconsistency, the official plan prevails. 1988,c.4,s.15; 1991,c.1,s.1; 1991,c.18,s.22; 1994,c.46,s.4 {eff.} Sept. 1/94; 1995,c.29,s.6 {eff.} Oct. 14/95.

[Emphasis added.]

[10] Policy PR-6 of the Official Plan reads as follows:

Policy PR-6: Prefabricated Homes

It shall be the policy of Council to not discriminate against housing forms based solely on the method of construction. Older style mobile homes which have a unique style and character shall no longer be permitted to be located within the Town. The current mobile home court shall be designated as a Mini-Home park and only modern CSA approved mini-homes shall be permitted. Mini-homes shall also be permitted in residential areas only where they are compatible with adjacent residences in terms of size and architectural style. Larger “modular” homes shall be permitted in all residential areas.

Plan Action:

- The current mobile home park shall be monitored and the owners required to maintain their units in an appropriate manner. When units become delapidated, Council shall take action to encourage their removal.*
- Modern “mini-homes” shall be permitted within the existing mobile home park or as a “special permit use” but only when they are deemed to be architecturally compatible with adjacent homes.*
- Larger, “modular homes” shall be permitted in all residential zones.*
- No further mobile home courts shall be located in the Town but consideration may be given to the establishment of a “mini-home” subdivision if it is developed to a high standard and well segregated from existing neighbourhoods.*

[Emphasis added.]

[11] Section 4.47 of the Bylaw reads as follows:

4.47 MOBILE HOMES

Mobile Homes shall not be permitted to be located within the municipality.

[12] Subsection 4.42(1) of the Bylaw reads as follows:

4.42 NON-CONFORMING USES

(1) Subject to the provisions of this Bylaw, a building or structure, or use of land, buildings or structures lawfully in existence on the effective date of approval of this Bylaw may continue to exist;

[13] Section 4.47 of the Bylaw appears to prohibit mobile homes in the Town. Subsection 4.42(1) of the Bylaw appears to temper this prohibition and the Town acknowledges that mobile homes which were situated in the Town prior to the approval of the Bylaw and Official Plan remain. Ms. McPhee and Mr. MacMaster contend that the inclusion of the phrase “use of land” would allow the Park to continue lawful uses permitted prior to the approval of the Bylaw. They therefore contend that mobile homes ought to be permitted to move into the Park.

[14] Based on a reading of the Bylaw alone, the Commission would be inclined to agree with the Bylaw interpretation provided by Ms. McPhee and Mr. MacMaster. However, when reading Policy PR-6 as a whole, the Commission finds that the intention of the Official Plan is to prevent mobile homes from being moved into the Park and the Town while permitting those already in place to remain. Subsection 15(2) of the **Planning Act** provides that the Official Plan prevails over any conflict or inconsistency between the Official Plan and the Bylaw.

[15] Accordingly, the Commission finds that the Town correctly applied its Bylaw and Official Plan in making its decision to deny permission to move a mobile home into the Park. Therefore, the appeal is denied.

[16] However, the Commission is concerned that the Town did not provide Ms. McPhee and Mr. MacMaster with an up to date copy of the Official Plan. Access to accurate information and knowledge of a decision maker’s line of reasoning is key to making an informed decision as to whether to file or, for that matter, continue an appeal. Ms. McPhee stated at the hearing she had repeatedly asked for reasoning as to why the trailer was not permitted but was never made aware of the specific commentary included in the Official Plan and had not seen it until it was presented at the hearing. Some may argue that such documents are available to the public online on the Provincial government website or on a municipalities’ website. But such advice could be unintentionally misleading. The Commission discovered, during the drafting of this Order, that the online version of the Town’s Official Plan found at the provincial government website is out of date and, with respect to the key issue before the Commission, woefully inaccurate.

[17] In addition to deciding the matter at hand, appeals before the Commission often serve as examples for improving processes, procedures and communication. Accordingly, the Commission would encourage municipalities

to ensure that on-line versions of official plans and bylaws are kept up to date. Residents should ensure that they are dealing with a true copy of the official plan and bylaw when seeking to have matters addressed. The official plan is a key component of the decision making process and municipal decision makers are hereby encouraged to disclose their official Plan and bylaw, or relevant portions of such documents, in order to assist in explaining the rationale for the decision.

4. Disposition

[18] An Order denying this appeal follows.

IN THE MATTER of an appeal by Anne
McPhee and Billy MacMaster of a decision of
the Town of Souris, dated August 19, 2008.

Order

WHEREAS the Appellants Anne McPhee and Billy MacMaster appealed a decision of the Respondent Town of Souris, dated August 19, 2008;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on October 21, 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 denied.

DATED at Charlottetown, Prince Edward Island, this 24th day of November, 2008.

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *Chester MacNeill*

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.

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