



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

**Docket LA08021
Order LA09-05**

IN THE MATTER of an appeal by
Phillip and Christine Gallant of two decisions
of the Resort Municipality, dated October 21,
2008.

BEFORE THE COMMISSION
on Wednesday, the 11th day of March, 2009.

Brian J. McKenna, Vice-Chair
John Broderick, Commissioner
David Holmes, 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
Phillip and Christine Gallant of two decisions
of the Resort Municipality, dated October 21,
2008.

Contents

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

IN THE MATTER of an appeal by
Phillip and Christine Gallant of two decisions
of the Resort Municipality, dated October 21,
2008.

Appearances & Witnesses

1. For the Appellants Phillip and Christine Gallant

Phillip Gallant

2. For the Respondent Resort Municipality

Brenda MacDonald

Also present for the Respondent

Mel Gass

IN THE MATTER of an appeal by
Phillip and Christine Gallant of two decisions
of the Resort Municipality, dated October 21,
2008.

Reasons for Order

1. Introduction

[1] The Appellants Phillip and Christine Gallant (the Gallants) 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 Gallant's Notice of Appeal was received on November 12, 2008.

[2] This appeal concerns two October 21, 2008 decisions of the Respondent Resort Municipality (the Municipality) concerning properties in Stanley Bridge. In these related decisions, the Municipality issued two subdivision permits. A subdivision permit was issued to Richard and Linda Ozon to subdivide 0.04 acres off their property, property number 565952, and append it to property number 719492. A subdivision permit was issued to Anne Thompson to subdivide 0.08 acres off her property, property number 719492, and append it to property number 565952. The purpose of these subdivision permits is to allow for a proposed relocation of the entrance to the Ozon property.

[3] After due public notice, the appeal was heard by the Commission at a public hearing on February 4, 2009.

2. Discussion

The Gallants' Position

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

- The Gallants note that they have several letters of support from property owners in the neighbourhood. The Gallants submit that the driveway for the Ozon property should simply come off Four Winds Lane on the north boundary of property number 565952.
- The Gallants note that the driveway location proposed by the Ozons for their property could create a safety issue if other property owners were to locate their driveways in a similar fashion.

[5] The Gallants request that the Commission allow their appeal, reverse the Municipality's decisions to issue the two subdivision permits and require that the Ozon's driveway connect to Four Winds Lane via the north boundary of property number 565952.

The Municipality's Position

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

- The decisions made by the Municipality were decisions to subdivide land. The Municipality followed the process set out in its development bylaw to approve the subdivision. The Municipality submits that it did not make a procedural error.
- The Municipality submits that the proposed relocation of the driveway for the Ozon property has been mandated by a decision of the Department of Transportation and Public Works to alter the location of a portion of the Cavendish Road (Route 6) in Stanley Bridge. As a result, access between the Ozon's present driveway and Route 6 will be eliminated.
- The Municipality submits that the Gallants' real concern is with respect to the choice of driveway location for the Ozon property. The Municipality submits that it is the right of the Ozons to select the location of their driveway on their property as there are no restrictive covenants restricting the choice of driveway location on the Ozon property.

[7] The Municipality 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] 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.

[10] In the present appeal, the Municipality made two related decisions involving the subdivision of very small parcels of land. In effect, this amounts to approving a "land swap" between two property owners. The Commission cannot find any evidence to suggest that the Municipality erred, either procedurally or substantively, in these decisions to subdivide land.

[11] The Gallants, and the neighbours who submitted letters in support of their position, cite concerns with respect to property values, safety, drainage patterns and aesthetics (the proposed driveway does not fit the existing pattern of driveways). With respect, the Commission notes that these submissions represent personal opinions and preferences, rather than objective evidence.

[12] Unless it is established that the location proposed by the Ozons for their driveway would run counter to the law or in violation of a restrictive covenant running with their land, the choice of location for the Ozons' driveway on their own land is their decision to make as a private use of land. Based on the evidence presented and based on the Commission's jurisdiction under section 28 of the *Planning Act*, the Commission finds that there is no evidence that the driveway location proposed by the Ozons would be unlawful.

[13] Accordingly, the appeal is denied.

4. Disposition

[14] An Order denying this appeal follows.

IN THE MATTER of an appeal by
Phillip and Christine Gallant of two decisions
of the Resort Municipality, dated October 21,
2008.

Order

WHEREAS Phillip and Christine Gallant have appealed two related decisions of the Resort Municipality, dated October 21, 2009;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on February 4, 2009 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 March, 2009.

BY THE COMMISSION:

(Sgd.) *Brian J. McKenna*

Brian J. McKenna, Vice-Chair

(Sgd.) *John Broderick*

John Broderick, Commissioner

(Sgd.) *David Holmes*

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.

IRAC141A(99/2)