



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

**Docket LA08024
Order LA09-06**

IN THE MATTER of an appeal by Keith
Tanton of a decision of the City of
Summerside, dated November 17, 2008.

BEFORE THE COMMISSION
on Friday, the 13th day of March, 2009.

Brian J. McKenna, Vice-Chair
David Holmes, 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 Keith
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Summerside, dated November 17, 2008.

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IN THE MATTER of an appeal by Keith Tanton of a decision of the City of Summerside, dated November 17, 2008.

Appearances & Witnesses

1. For the Appellant Keith Tanton

Keith Tanton

2. For the Respondent City of Summerside

Counsel:

Krista J. MacKay

Witness:

Murray Pinchuk

Also present for the Respondent

Thayne Jenkins

IN THE MATTER of an appeal by Keith Tanton of a decision of the City of Summerside, dated November 17, 2008.

Reasons for Order

1. Introduction

[1] The Appellant Keith Tanton (Mr. Tanton) 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. Tanton's Notice of Appeal was received on December 5, 2008.

[2] This appeal concerns a November 17, 2008, decision of the Respondent City of Summerside (the City) to adopt Zoning Bylaw Amendment SS-15-A-82 (the Bylaw amendment). The purpose of this amendment, as noted in the October 8, 2008 minutes [Exhibit R1, Tab 17] of the City's Technical Services/Planning Board (Planning Board), is:

Purpose:

to provide for the development of the City's Wind Facility and to improve Council's ability to make changes in response to evolving needs in Wind Technology

[3] After due public notice, the appeal was heard by the Commission at a public hearing on February 18, 2009.

2. Discussion

Mr. Tanton's Position

[4] Mr. Tanton's oral submissions may be briefly summarized as follows.

- Mr. Tanton submits that the Bylaw amendment allows the City to move forward with its proposed wind farm development. He characterized the proposed development as a large industrial development in a residential neighbourhood.

- Mr. Tanton states that a comprehensive site selection process should be utilized using established criteria and including the impact on area residents. He submits that an environmental impact assessment should be performed. There is strong opposition to the development from area residents. It is not appropriate to rely on a wind farm developer to provide information as this only presents one side of the story. He submits that information was provided by the industry to the City at a closed door meeting. There appears to be no effort to compromise or mediate. The City continues to modify the proposal since the appeal was filed. He notes that residents do not know what the project will look like. He expresses concern over the health impact of locating wind turbines a few hundred metres from homes, identifying problems with noise and “shadow flicker” experienced by others as a result of wind turbines. He contends that a wind farm should be at least 1.5 to 2 kilometres from the nearest residence; a 400 to 500 metre buffer is not enough. He points out that the Netherlands requires a 1 kilometre buffer while Germany requires a 1.6 kilometre buffer.
- Mr. Tanton stated that, prior to the Bylaw amendment, wind turbines were not permitted in an institutional zone. He submits that allowing wind turbines in an institutional zone would represent poor planning practice.

[5] Mr. Tanton requests that the Commission allow the appeal and overturn the City’s decision to approve the Bylaw amendment.

The City’s Position

[6] The City’s oral submissions may be briefly summarized as follows.

- The decision under appeal is an amendment to the text of the Zoning Bylaw (Bylaw). The Bylaw amendment (a) allows wind turbines in an Institutional Zone and (b) takes the wind turbine provisions previously contained in the body of the Bylaw, adds some minor amendments and separates the wind turbine provisions into a regulation which can be amended by Council resolution. This provides the City with the flexibility to promptly update the regulations which pertain to wind turbine development within the City.
- The City submits that while the previous wind turbine provisions were intended to allow wind turbines in the Institutional Zone, these were inadvertently “not transposed” to the final draft. The Bylaw amendment corrects that error.
- The City submits that it followed the proper process in approving the Bylaw amendment and that it is consistent with sound planning principles.

[7] The City 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] The City's decision under appeal is a decision to adopt the Bylaw amendment. It is not a decision to approve a particular wind turbine project or to issue a development permit for a particular wind turbine project. The Bylaw amendment amends the previous wind turbine provisions contained in the Zoning Bylaw. It also places the wind turbine provisions into a regulation made under the Zoning Bylaw. This allows future amendments to be made by a resolution of the City's Council and, therefore, Ministerial approval would not be required for such future amendments. The City contends that, by placing these provisions in regulation, it will be able to respond more quickly to new issues which may appear as wind energy is developed in the City. Future amendments to these wind energy regulations would continue to be subject to appeal to the Commission, pursuant to section 28 of the *Planning Act*.

[10] Mr. Tanton contends that the Bylaw amendment allows the City to move forward with its proposed wind energy project. The October 8, 2008 minutes of Planning Board support that contention. The Commission finds that the Bylaw amendment has a dual role of providing a regulatory framework for any future wind energy project envisioned by the City and wind energy projects in general.

[11] There is no evidence before the Commission that the City made any procedural errors in approving the Bylaw amendment. While Mr. Tanton contends that allowing wind turbines in an Institutional Zone represents poor planning, he did qualify his remarks somewhat under cross examination by indicating that whether or not wind turbines should be permitted in an Institutional Zone would depend on the nature and scale of the project. The Commission heard the detailed evidence of Mr. Pinchuk, the City's planner, concerning the role and importance of providing detailed regulations addressing wind turbines in the City.

[12] For the above reasons, the Commission finds that the process followed by the City in approving its Bylaw amendment was followed correctly and in accordance with the law. The Commission finds that providing detailed regulations to guide development of wind energy in the City, and allowing these regulations to be promptly updated to address new issues in wind energy, is in accordance with sound planning principles. Accordingly, the Commission denies this appeal.

[13] The Commission is mindful of Mr. Tanton's concerns with respect to a proposed wind energy development under consideration for the St. Eleanors area within the City. However, it is premature to address these concerns in the present appeal as no approval of this development has occurred to date.

4. Disposition

[14] An Order denying this appeal follows.

IN THE MATTER of an appeal by Keith Tanton of a decision of the City of Summerside, dated November 17, 2008.

Order

WHEREAS the Appellant Keith Tanton has appealed a decision of the Respondent City of Summerside, dated November 17, 2008;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on February 18, 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 13th day of March, 2009.

BY THE COMMISSION:

(Sgd.) Brian J. McKenna

Brian J. McKenna, Vice-Chair

(Sgd.) David Homes

David Holmes, 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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