



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

**Docket LA09020
Order LA10-01**

IN THE MATTER of an appeal by Dale
Mahar of a decision of the Minister of
Communities, Cultural Affairs and Labour,
dated October 29, 2009.

BEFORE THE COMMISSION
on Monday, the 1st day of March, 2010.

Allan Rankin, Vice-Chair
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 Dale Mahar of a decision of the Minister of Communities, Cultural Affairs and Labour, dated October 29, 2009.

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IN THE MATTER of an appeal by Dale Mahar of a decision of the Minister of Communities, Cultural Affairs and Labour, dated October 29, 2009.

Appearances & Witnesses

1. For the Appellant Dale Mahar

**Dale Mahar
Sandra Mahar**

2. For the Respondent Minister of Communities, Cultural Affairs and Labour

**Garth Carragher
Andy Wilson**

IN THE MATTER of an appeal by Dale Mahar of a decision of the Minister of Communities, Cultural Affairs and Labour, dated October 29, 2009.

Reasons for Order

1. Introduction

[1] The Appellant Dale Mahar (Mr. Mahar) 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. Mahar's Notice of Appeal was received on November 18, 2009.

[2] This appeal concerns the October 29, 2009 decision of the Respondent Minister of Communities, Cultural Affairs and Labour, as said Ministry then existed, (the Minister), to deny an application by Mr. Mahar to subdivide a lot from property number 759175 located in Rollo Bay.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard on January 7, 2010.

2. Discussion

Mr. Mahar's Position

[4] The submissions presented on behalf of Mr. Mahar may be briefly summarized as follows:

- Mr. Mahar is attempting to subdivide a parcel of land so that his daughter can establish a residence. He seeks to use an existing entranceway.
- Mr. Mahar cited some examples of developments in the Rollo Bay area that he believes are contrary to the regulations under the *Act*. He believes that there is a "double standard" in terms of the application of the access requirements.

[5] Mr. Mahar requests that the Commission overturn the Minister's decision and approve his subdivision application.

The Minister's Position

[6] The submissions presented on behalf of the Minister may be briefly summarized as follows:

- Mr. Mahar's parcel of land currently has access from Route 2 which is an arterial highway. Mr. Mahar applied to subdivide a parcel from this parent parcel. In order to subdivide the parcel, an entranceway permit is required. However, under subsection 20(1) of the **Roads Act** Highway Access Regulations, no entrance way permit shall be issued to provide an entrance way to a parcel of land created after March 22, 1992 or the date upon which the adjacent highway was designated as an arterial highway, whichever is later.
- The Minister's representative acknowledged at the hearing that the sight distances are good at the proposed driveway location. However, the Minister's representative noted that the Highway Access Regulations apply to Mr. Mahar's proposed subdivision and prohibit access to a newly created parcel off of Route 2.

[7] The Minister requests that the Commission deny this 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 20(1)(e) of the **Roads Act** Highway Access Regulations reads as follows:

20. (1) The Minister may issue an entrance way permit to authorize placement of a new entrance way or a change of use of an existing entrance way, to a portion of an arterial highway outside of an area that has been designated for infilling in Schedule "A-3", except no entrance way permit shall be issued

...

(e) to provide an entrance way to a parcel of land created after March 22, 1992 or the date upon which the adjacent highway was designated as an arterial highway, whichever is later, other than to enable

(i) the creation of a new farm;

(ii) the creation of a new parcel of land subdivided from a farm for the purpose of establishing one new single-family dwelling or the creation of a separate parcel of land that includes a single-family dwelling to allow the farmer to retain the dwelling and sell the remainder of the farm, provided that the existing entrance way to the farm is used for access to the new or separate parcel of land and any other entrance way to the new or separate parcel of land is removed, or

(iii) cultivation of a natural resource;

but where the existing parcel of land is served by more than one existing entrance way, no additional entrance way may be established to serve the new parcel of land;

[10] In the present appeal, Mr. Mahar seeks to subdivide one lot to be used as a residential lot. The exceptions set out in (i) , (ii) and (iii) of subsection 20(1)(e) above do not apply as neither the parent parcel, nor the proposed subdivided lot, may be considered within the context of a farm or cultivation of a natural resource.

[11] While the evidence before the Commission suggests that the sight distances are good at the location proposed by Mr. Mahar, the Commission does not have the authority to waive the application of the **Roads Act** Highway Access Regulations.

[12] Subsection 25(2) of the **Planning Act** Subdivision and Development Regulations reads as follows:

25(2) No person shall subdivide a parcel of land that abuts, and requires access to, an arterial highway unless an entrance way permit, where required, has been issued by the Minister responsible for the Roads Act Highway Access Regulations.

[13] The Commission finds that there is no evidence of any error in the Minister's October 29, 2009 decision denying Mr. Mahar's application to subdivide a lot from property number 759175. Accordingly, the Commission denies this appeal.

[14] While Mr. Mahar is of the view that some other developments in the Rollo Bay area may have been approved contrary to the **Roads Act** Highway Access Regulations, the Commission notes that these other developments are not the subject of the present appeal.

4. Disposition

[15] An Order denying this appeal follows.

IN THE MATTER of an appeal by Dale Mahar of a decision of the Minister of Communities, Cultural Affairs and Labour, dated October 29, 2009.

Order

WHEREAS the appellant Dale Mahar has appealed a decision of the Minister of Communities, Cultural Affairs and Labour, dated October 29, 2009;

AND WHEREAS the Commission heard the appeal at a public hearing conducted in Charlottetown on January 7, 2010 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 1st day of March, 2010.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*
Allan Rankin, Vice-Chair

(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 Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTICE: IRAC File Retention

In accordance with the Commission's Records Retention and Disposition Schedule, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.

IRAC141AA(2009/11)