



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

**Docket LA08022  
Order LA10-03**

**IN THE MATTER** of a request for  
review of Order LA09-07, issued by the  
Commission on May 22, 2009.

**BEFORE THE COMMISSION**  
on Wednesday, the 31st day of March, 2010.

Maurice Rodgerson, Chair  
John Broderick, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

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Appeals Administrator  
Land, Corporate and Appellate Services Division

**IN THE MATTER** of a request for  
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# **Appearances & Witnesses**

**Written Submissions filed by:**

- 1. Claus Brodersen, the Appellant, representing himself**
- 2. Dianne Dowling, representing the Respondent Community of New Haven Riverdale**

**IN THE MATTER** of a request for review of Order LA09-07, issued by the Commission on May 22, 2009.

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# Reasons for Order

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## 1. Introduction

[1] In Order LA09-07, issued by the Commission on May 22, 2009, the Commission allowed the appeal of the Appellant Claus Brodersen (Mr. Brodersen), quashed a decision of the Respondent Community of New Haven Riverdale (the Community) and referred the matter back to the Community to amend its Zoning and Subdivision Control Bylaw to define the word “kennel” for the purposes of said Bylaw.

[2] By letter dated September 30, 2009, Mr. Brodersen requested that the Commission reconsider Order LA09-07. Mr. Brodersen included copies of documents to update the Commission.

[3] By letter dated October 6, 2009, Commission staff invited Mr. Brodersen, the Community and the Developer Deirdre McKinnon (Mrs. MacKinnon) to file written submissions pertaining to the request for reconsideration.

## 2. Discussion

### Mr. Brodersen’s Position

[4] Mr. Brodersen submitted that the Community “... has basically done nothing to remove the kennel operation from the McKinnon’s [sic] property.” Mr. Brodersen further noted, “... we thought that by obtaining legal counsel and having gone through the IRAC appeal process, we could see an end to this unfortunate situation. Instead, we are now six months later and still no resolution to the problem has been secured.” Mr. Brodersen requested that Order LA09-07 be made “... more specific as it pertains to the roles and responsibilities of the Community ...”.

### The Community’s Position

[5] In the Community’s written response of October 20, 2009, it noted in part:

*Council has not dropped the issue as Mr. Brodersen implies in his letter. The Community is currently in the process of amending the Official Plan and Bylaws, and in doing so hired a professional planner to oversee this process, included in the mandate is to establish a definition for kennels. However, our community and several others were impeded in this process by a needed amendment to the Planning Act. This problem created an unfortunate delay. This amendment was recently approved by Executive Council and the revised draft plan and bylaws are completed, complete with a definition of a kennel. A public meeting is scheduled for October 21, 2009 and Council anticipates the New Plan and Bylaws to be adopted by November 2, 2009.*

[6] On March 23, 2010, the Community's administrator provided an update to Commission staff.

- The Community's administrator advised that the Community had purported to give the Official Plan and Zoning and Subdivision Control Bylaw (the Bylaw) approval by November 2, 2009, just prior to the municipal election.
- However, staff of the Minister of Communities, Cultural Affairs and Labour (which, at the time was the Minister responsible for the **Planning Act**) advised the Community of a procedural error with respect to the timing of a newspaper notice. The Community was required to re-start the public consultation process.
- Following a new round of newspaper notices, public meetings and votes of Council, the Community approved final reading of a new Official Plan and Bylaw on March 16, 2010.
- The new Official Plan and Bylaw will be forwarded to the Minister of Finance and Municipal Affairs (the Minister presently responsible for the **Planning Act**) for ministerial review as required under the **Planning Act**.

### 3. Findings

[7] After a careful review of the submissions of the parties and the applicable law, it is the decision of the Commission to deny the request for reconsideration filed by Mr. Brodersen. Accordingly, the Commission confirms the decision contained in Order LA09-07.

[8] Section 12 of the **Island Regulatory and Appeals Commission Act** (the **IRAC 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. 1991,c.18,s.12.*

[9] In Order LA97-11, *In the Matter of a Request for Review of Commission Order LA97-08 by Keir Clark and Marion Clark* (Order LA97-11 *Clark*), the Commission set out in some detail the test to be met on an application for a review or reconsideration of Commission decision:

*The Commission and its predecessor, the Prince Edward Island Public Utilities Commission, have considered in the past the minimum criteria an Applicant must meet before the Commission will exercise its absolute discretion in the matter of reviewing its decisions under s. 12 of the **Island Regulatory & Appeals Commission Act**, and the identical predecessor to s. 12, s. 16 of the **Public Utilities Commission Act**. This test has been interpreted consistently by the Commission in its past decisions.*

*As noted in previous decisions, the onus rests upon the Applicant to show that a prima facie case exists which will entitle the Applicant to the review. A prima facie case will be shown only where the function of review should be exercised to correct an error of the Commission or to meet changed circumstances.*

*Changed circumstances may encompass either a situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced. Changed circumstances will dictate a review only if they are material.*

*Finally, the power to review is discretionary and will be exercised sparingly.*

[10] There is no evidence before the Commission of an error in Order LA09-07.

[11] The substance of Mr. Brodersen's position would appear to be that the Community has not taken action to implement a requirement of Order LA09-07, that is to say the adoption of a Bylaw definition of "kennel", that this situation developed following the issuance of Order LA09-07 and therefore Order LA09-07 needs to be amended to be more specific.

[12] The substance of the Community's position is that it did take action to implement the adoption of a definition of the word "kennel" as part of the amendment process of its Official Plan and Bylaw.

[13] Had the Community not followed up on the Commission's direction noted in Order LA09-07, the Commission would have been inclined to agree with Mr. Brodersen's request to review Order LA09-07. Such a review would, in all likelihood, have been premised on the basis of changed circumstances [failure to comply with the Order] which occurred since the issuance of Order LA09-07.

[14] However, in the view of the Commission, the Community did move to comply with Order LA09-07. It chose to time the adoption of a definition of "kennel" with other amendments as part of the statutory review process for the Official Plan and the Bylaw. In less than six months after the Commission issued its Order, the Community approved a revised Official Plan and Bylaw which included, among other items, a definition of "kennel". The Minister responsible for the **Planning Act** prudently pointed out a procedural error and the Community was obligated to repeat much of its process.

[15] While the Commission understands the frustration experienced by Mr. Brodersen, the Commission finds that the Community did follow Order LA09-07 in good faith. The Commission finds that there is no error in Order LA09-07 and that there are no changed circumstances as set out in the test cited in Order LA97-11 *Clark* noted above. Accordingly, Mr. Brodersen's request for a review of Order LA09-07 is hereby denied.

## 4. Disposition

[16] An Order denying the request for reconsideration and confirming the decision set out in Order LA09-07 will be issued.

**IN THE MATTER** of a request for review of Order LA09-07, issued by the Commission on May 22, 2009.

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# Order

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**WHEREAS** the Appellant Claus Brodersen filed a request for review of Commission Order LA09-07;

**AND WHEREAS** the Commission invited written submissions from Mr. Brodersen, the Community of New Haven Riverdale and the Developer Deirdre MacKinnon;

**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 request for review of Order LA09-07 is hereby denied, and said Order is hereby confirmed.

**DATED** at Charlottetown, Prince Edward Island, this 31st day of March, 2010.

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

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(Sgd.) *John Broderick*

John Broderick, 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)