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

Docket LA10006 and LA10007
Order LA10-07

IN THE MATTER of appeals by Judy Gallant and Lys-Ondray Goulet of a decision of the City of Charlottetown, dated April 12, 2010.

BEFORE THE COMMISSION
on Thursday, the 22nd day of July, 2010.

Allan Rankin, Vice-Chair
Michael Campbell, 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 appeals by Judy Gallant and Lys-Ondray Goulet of a decision of the City of Charlottetown, dated April 12, 2010.

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Order

IN THE MATTER of appeals by Judy Gallant and Lys-Ondray Goulet of a decision of the City of Charlottetown, dated April 12, 2010.

Appearances & Witnesses

1. For the Appellants Judy Gallant and Lys-Ondray Goulet

Representative:

Pamela MacKinnon

2. For the Respondent City of Charlottetown

Counsel:

David W. Hooley, Q.C.

Witness:

Laurel Palmer-Thompson

3. For the Developer Pan American Properties

Representative and Witness:

Tim Banks

IN THE MATTER of appeals by Judy Gallant and Lys-Ondray Goulet of a decision of the City of Charlottetown, dated April 12, 2010.

Reasons for Order

1. Introduction

[1] The Appellants Judy Gallant (Ms. Gallant) and Lys-Ondray Goulet (Ms. Goulet) have filed appeals 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. Gallant's Notice of Appeal (LA10006) was dated April 29, 2010 and received on April 30, 2010. Ms. Goulet's Notice of Appeal (LA10007) was dated April 30, 2010 and received the same day.

[2] This appeal concerns an April 12, 2010 decision of the City of Charlottetown (the City) to approve the proposed Welsh-Owen Hotel and Plaza as noted from the following letter of April 14, 2010:

> *Dear Mr. Gillis:*
>
> *Charlottetown City Council passed the following resolution at its regular monthly meeting held on April 12, 2010:*
>
> *"That the proposed Welsh-Owen Hotel to be located at 43 Queen Street, PID# 335646 (Confederation Bridge Office) & 45-49 Queen Street, PID# 335653 (former Kays Bros Bldg) & 49-57 Water Street, PID# 335620 (former Seaman's Bldg) & 31 Queen Street, PID# 335638 (vacant lot at comer of Queen Street and Water Street), be approved with the following requests:*
>
> *1. a height variance from the required 39.4 feet to approximately 75 feet,*
> *2. a lot consolidation (subject to the receipt of pinned survey plans),*
> *3. cash-in-lieu of parking (for 118 spaces), and*
> *4. that the Heritage component of the application for this new development as outlined in the Concept Plan dated February 24, 2010, as presented to Heritage Board, ensure the building facades which front on Queen and King Streets for the building located at 43 Queen Street, PID#335646. & 45-49 Queen Street, PID #335653, be maintained (kept standing at all times), stabilized, and restored (i.e. original brick, window openings and all architectural details)*
>
> *As you are aware this development is subject to a Development Agreement that will include the above noted items such as: variance,*

parking. heritage issues, site development, and other such development matters. We are awaiting your response to the Draft Development Agreement and once it is received the agreement is subject to review by the City solicitor and approval by Council."

[3] By letter dated May 4, 2010, Commission staff advised Ms. Gallant, Ms. Goulet and the City that the appeal hearing date was proposed for July 5, 2010. By letter dated May 5, 2010, the Developer Pan American Properties Inc. (Pan American) was advised of the proposed July 5, 2010 hearing date.

[4] The City filed copies of its record on May 27, 2010. The City filed additional documentation and CD-Rs on June 30, 2010.

[5] After due public notice, the appeals were heard on July 5, 2010.

2. Submissions

Ms. Gallant's Position

[6] Ms. Gallant's position is contained in the Grounds for Appeal which she attached to her Notice of Appeal. These grounds and the relief sought read as follows.

GROUNDS FOR APPEAL

Notice was not given by the Planning Board that the public could attend the meeting. I was personally informed that there would be three seats available for the neighbours to appear before The Planning Board. To allow only three members of the public to attend, and not all of the public, results in unequal treatment under the law. A meeting open to one should be open to all.

The City of Charlottetown owns 15% of CADC the latter of which stands to gain in this project. Therefore, the City is in direct conflict of interest.

It is not fair for certain members of Council i.e.: Kim Devine and Rob Lantz, to participate at the Planning Board meeting that considers the application for variance and then have a second chance to participate on the same application at City Council level. This is an overlap and a deemed conflict.

Snow removal as itemized in the original objection was not addressed. It has also come to my attention that parking for the City Cinema was not addressed which hosts approximately 40 vehicles per night. The issue of delivery vehicles was addressed only in the manner that Council acknowledged there would be deliveries but not how they would occur or be handled.

The Council has allowed a variance of APPROXIMATELY 75 feet. A variance should stipulate the exact variance within certain parameters and not give approximate measurements. The project could very easily go to 100 feet, which is approximately 75.

Council had not addressed the issue of safety in any way and is apparently ignoring the by-laws regarding noise abatement. The former on large vehicles at various times of day or night and the latter noise from said vehicles. The project is only 30 feet from my front door. The safety issue of emergency vehicles such as fire-fighting equipment could not possibly navigate the narrow street, but this was not addressed.

I am not against the concept of this project, but I am against variances that will have a detrimental effect on not only the value of the property by its proximity to the project but to the deterioration caused by the movement of large vehicles. One must remember this is a Heritage property and by its designation alone indicates its age and vulnerability to deterioration by vibrations of above mentioned vehicles.

RELIEF REQUESTED

Direct relief requested is:
-Deliveries be directed to the Water Street side,
-Variance on the height of the property be disallowed and to follow the already established allowable height of 39.4 feet.
-Parkade entrance/exit to be relocated to Water Street.

Ms. Goulet's Position

[7] Ms. Goulet's position is contained in the Grounds for Appeal which she attached to her Notice of Appeal. These grounds read as follows.

GROUNDS FOR APPEAL

Snow removal as itemized in the original objection was not addressed. It has also come to my attention that parking for the City Cinema was not addressed which hosts approximately 40 vehicles per night. The issue of delivery vehicles was addressed only in the manner that Council acknowledged there would be deliveries but not how they would occur or be handled.

The Board has deemed the project as being a good one but it did not address directly the concerns of the residents. The city is based on residents and the will of the people should take precedence especially if it is proven to be detrimental to the residents. If the variance goes ahead, it would show the City of Charlottetown has no regard as to the well being of the residents nor their wishes. Granted, the residents are small in number but that is the nature of the area. However, the residents do have rights and the enjoyment of their property is guaranteed by the Charter of Rights.

Council had not addressed the issue of safety in any way and is apparently ignoring the by-laws regarding noise abatement. The former on large vehicles at various times of day or night and the latter noise from said vehicles. The project is only 40 feet from my front door. The safety issue of emergency vehicles such as fire-fighting equipment could not possibly navigate the narrow street, but this was not addressed.

Property damage due to the vibrations of the heavy equipment used in the building of the project as well as the vehicles used to service the project after the completion is expected to be so detrimental to the physical structures that they may become uninhabitable. For this I am expected not to object to this project. This is my home.

The minutes of the meeting do not reflect my name or objections as posed to the Board.

RELIEF REQUESTED

Direct relief requested is:
-Deliveries be directed to the Water Street side,
-Variance on the height of the project be disallowed and to follow the already established allowable height of 39.4 feet.
-Parkade entrance/exit to be relocated to Water Street

The City's Position

[8] Highlights of the City's oral submissions include the following.

- The City followed all of the requirements set out in the City's Zoning and Development By-law (the Bylaw) when it made its April 12, 2010 decision to approve the proposed hotel with a height variance.

- While the proposed hotel is taller than buildings in the immediate vicinity, there are other buildings in the downtown area that are taller.

- The proposal for the hotel was reviewed by City planning staff, Heritage Board and Planning Board.

- On March 10, 2010, notices were sent to property owners within 100 metres of the proposed hotel. Of over seventy notices mailed out, the City received five written responses (four opposed, one in favour of the proposed hotel). Copies of these letters were provided to City councillors as part of their document package. The City's Bylaw does not require a public meeting for a variance application. However the residents opposed to the proposed hotel development were invited to attend the April 6, 2010 meeting of Planning Board.

- The City submits that CADC (Charlottetown Area Development Corporation) is a not for profit corporation with a mandate for development and redevelopment in the greater Charlottetown area. Accordingly, the City submits that the City's interest in CADC does not constitute a conflict of interest.

- The City submits the members of Planning Board that are also City councilors serve as Council's representatives on Planning Board.

- The City submits that Pan American does not, as of the hearing date, have a signed development agreement or a building permit for the proposed hotel as there are "finer details" still to be worked out. Accordingly, the City's April 12, 2010 decision can be viewed as an "approval in principle".

[9] The City requests that the Commission deny the appeals.

Pan American's Position

[10] Pan American submitted that it made its best efforts to work with those concerned with heritage and the City to put forward a proposed project that would be good for the City. The vast majority of the more than seventy property owners within the 100 metres radius of the proposed hotel were not opposed to the project. Neither Ms. Gallant nor Ms. Goulet presented any expert witnesses to support their appeals. Pan American voluntarily presented shadowing information to the City and to the Commission. Pan American requests that the Commission deny the appeals so that the proposed hotel project may proceed to the next stage.

3. Findings

[11] 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 reasons follow.

The Commission's Jurisdiction

[12] Subsection 28(1.1) of the ***Planning Act*** reads as follows:

> *(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality*
>
> *(a) that is made in respect of an application by the person, or any other person, under a bylaw for*
>
> *(i) a building, development or occupancy permit,*
>
> *(ii) a preliminary approval of a subdivision,*
>
> *(iii) a final approval of a subdivision; or*
>
> *(b) to adopt an amendment to a bylaw, including*
>
> *(i) an amendment to a zoning map established in a bylaw, or*
>
> *(ii) an amendment to the text of a bylaw,*
>
> *may appeal the decision to the Commission by filing with the Commission a notice of appeal.*

[13] While not raised by the City or Pan American, it might be possible to view the City's decision of April 12, 2010 as falling outside the types of municipal decisions listed in subsection 28(1.1). Counsel for the City characterized the City's decision as an "approval in principle". The City and Pan American acknowledge that the City's decision is not a building permit. The question for the Commission is whether the City's April 12, 2010 decision is a decision made in respect of an application by Pan American under the City's Bylaw for "a building, development or occupancy permit".

[14] Section 9 of the ***Interpretation Act***, R.S.P.E.I. 1988, Cap. I-8 (the ***Interpretation Act***), reads as follows:

9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.

[15] Section 2 of the ***Planning Act*** reads as follows:

2. The objects of this Act are

(a) to provide for efficient planning at the provincial and municipal level;

(b) to encourage the orderly and efficient development of public services;

(c) to protect the unique environment of the province;

(d) to provide effective means for resolving conflicts respecting land use;

(e) to provide the opportunity for public participation in the planning process. 1988,c.4,s.2.

[16] While at first blush it might seem to the advantage of the City and Pan American to argue that the Commission did not have the jurisdiction to hear this appeal, such a position could be viewed as short sighted, as it would effectively delay the right of appeal to the building permit stage. Pan American quite appropriately pointed out that the costs for a developer to be incurred at the building permit stage will be much higher than at the approval in principle stage.

[17] Regardless of whether the Commission has the jurisdiction to hear the present appeal, there is a future right to appeal a building permit issued for the proposed hotel. That being said, provided the present appeal is heard, and heard within the principles of natural justice and fairness, the range of issues to be considered on any future appeal at the building permit stage would be significantly narrowed pursuant to the principle of issue estoppel as considered by the Supreme Court of Canada in *Danyluk* v. *Ainsworth Technologies Inc.,* [2001] 2 S.C.R. 460, 2001 SCC 44.

[18] Given the objects of the ***Planning Act*** and the requirements of section 9 of the ***Interpretation Act***, the Commission finds that the City's decision of April 12, 2010 is a decision made in respect of an application by Pan American to develop parcels of land for a proposed hotel. Indeed, while a building permit has not been issued, Pan American did apply for a building permit on February 24, 2010 (Tab 19 of the City's Record). In effect, through a "*fair, large and liberal construction and interpretation"*, the City's April 12, 2010 decision serves as a development permit. Accordingly, the Commission finds that it has the jurisdiction to hear the present appeal.

Merits of the Appeals

[19] Appeals under the ***Planning Act*** generally take the form of a hearing *de novo* before the Commission. In an often cited decision which provides considerable guidance to the Commission, In the matter of Section 14(1) of the *Island Regulatory and Appeals Commission Act* (Stated Case), [1997] 2 P.E.I.R. 40 (PEISCAD), Mitchell, J.A. states for the Court at page 7:

> *it becomes apparent that the Legislature contemplated and intended that appeals under the **Planning Act** would take the form of a hearing de novo after which IRAC, if it so decided, could substitute its decision for the one appealed. The findings of the person or body appealed from are irrelevant. IRAC must hear and decide the matter anew as if it were the original decision-maker.*

[20] In previous appeals, the Commission has found that it does have the power to substitute its decision for that of the municipal or ministerial decision maker. Such discretion should be exercised carefully. The Commission ought not to interfere with a decision merely because it disagrees with the end result. However, if the decision maker did not follow the proper procedures or apply sound planning principles in considering an application made under a bylaw made pursuant to the powers conferred by the ***Planning Act***, then the Commission must proceed to review the evidence before it to determine whether or not the application should succeed.

[21] In the present appeal, Ms. Gallant and Ms. Goulet submit that the City failed to hold a public meeting and thus did not follow its own Bylaw and procedures.

[22] The Commission has reviewed the City's Bylaw, and in particular, sections 4.29 and 4.30 which apply to variances. The Commission finds that there is no requirement in the Bylaw for a public meeting on a variance application.

[23] The City's Bylaw does require written notification to property owners with respect to parcels of land within 100 metres of the parcel for which a variance is sought. The City followed this requirement and the letters received were included in the document packages distributed to councillors. While not required by the Bylaw, the City's Planning Board invited Ms. Gallant and Ms. Goulet to the April 6, 2010 meeting of Planning Board.

[24] Based on the available evidence, the Commission finds that the City followed its required process and procedures as set out in the Bylaw.

[25] With respect to sound planning principles, it appears that the main concerns of Ms. Gallant and Ms. Goulet relate to the mass and scale of the proposed hotel. Both appellants object to the height variance granted by the City. Given the close proximity of their homes, both of which are zoned Medium Density Residential (R-3), to the proposed hotel, it is understandable that the appellants would object to a variance that extends the permissible height of the proposed hotel from an 'as of right' maximum of 39.4 feet to approximately 75 feet.

[26] However, while it is understandable that Ms. Gallant and Ms. Goulet would be opposed to a variance tantamount to a near doubling of the maximum permissible height for the proposed hotel, the evidence before the Commission indicates that the "approval in principle", including the height variance, for the proposed hotel development, had the support of the City's planning staff, Heritage Board, and Planning Board before it was submitted to Council.

[27] In its Record, the City submitted a list of thirteen downtown buildings which required a height variance. This included the nearby Delta Hotel, 125 feet at its highest point, and the nearby Dominion Building, approximately 80 feet high. The Commission notes that Pan American proposes to construct its hotel development on parcels of land zoned Downtown Mixed Use (DMU). The Commission notes that section 20.1 of the City's Bylaw lists some forty permitted uses in the DMU zone. All of the various uses that Pan American has in mind for the proposed hotel development [hotel, apartments, condominiums, commercial uses, underground parking] are consistent with the permitted uses for the DMU zone.

[28] Based on the available evidence, the Commission finds that the City applied sound planning principles when it made its April 12, 2010 decision with respect to the proposed hotel project. Accordingly, the Commission denies Ms. Gallant's and Ms. Goulet's appeals.

Issue of Concern

[29] By way of background, the hearing of this appeal commenced on July 5, 2010 at 9:30 a.m. Both appellants, their representative, the City's legal counsel and the City's witness were present. No representative of Pan American was present in the hearing room that morning.

[30] Immediately prior to the hearing, the Commission and the Commission's Appeals Administrator had their first opportunity to view the additional documents and CD-Rs filed by the City. At the commencement of the hearing, Ms. MacKinnon advised that she was representing both Ms. Gallant and Ms. Goulet. Ms. MacKinnon also advised the Commission that, shortly before the hearing started, she received the additional documents and CD-Rs from the City. Ms. MacKinnon requested an adjournment to allow the appellants and her to review the documents. The Commission adjourned the matter to 1:30 p.m. that afternoon in order to give the appellants and Ms. MacKinnon an opportunity to review the additional documents and the contents of the two CD-Rs.

[31] It is the practice of the Commission to provide parties to an appeal with a brief adjournment to review documents that are not received until the start of the hearing. Usually such documents are brief, easy to read, and require a very brief adjournment of perhaps fifteen minutes, especially when all parties are represented by legal counsel. Where one or more parties are self represented, or are represented by a friend or relative with no legal training, a longer adjournment may be advisable to review the new documents. On occasion, however, documents disclosed at the last moment include substantive information that could fairly be said to require a party to significantly review the evidence they wish to call and the arguments they wish to make.

[32] Disclosure of documents is a fundamental principle in the Canadian judicial system and "trial by ambush" is repugnant to courts and quasi-judicial tribunals in Canada. That being said, the Commission wishes to point out that it in no way finds any sinister intent on the part of the City to catch the appellants or the Commission by surprise. The City and its legal counsel have always been respectful of the Commission and the Commission recognizes that all participants in the hearing process face time pressures. Simply put, a little 'give and take' makes for a fair yet expeditious hearing. With an extensive and bulky file, an occasional document is bound to be overlooked and the Commission commends the City and its legal counsel for double checking the file and providing updates and any inadvertently omitted pages.

[33] In the present matter, the documents and CD-Rs merely contained updates and missing pages inadvertently omitted from the City's Record. However, the relative importance of these documents was not apparent until the appellants, their representative and the Commission had some time to review them.

[34] The hearing resumed at 1:30 p.m. In addition to the persons present that morning, Mr. Tim Banks, President and Chief Executive Officer of Pan American/APM, was also present. Ms. Gallant then advised the Commission that she had just been served by a process server with a lawsuit filed by Pan American/APM.

[35] In the minutes that followed, it became apparent to the Commission that, shortly prior to the resumption of the hearing at 1:30 p.m., both appellants had been served on Commission premises with legal documents, apparently a Statement of Claim, initiating a Supreme Court civil action.

[36] In the Stated Case cited earlier in these reasons, Justice Mitchell states for the Court at paragraph 10:

> *[10] The fact that an appellant must state the grounds of appeal and relief sought in writing in order to invoke the appeal procedure does not restrict the jurisdiction of IRAC in hearing or deciding the case. In situations where an appeal is by way of trial* ***de novo*** *grounds of appeal do not serve the same function as they do for instance in appeals to this court. [See: Salhany,* ***Canadian Criminal Procedure****, Canada Law Book Ltd,1968 at pp.203-4.] Their purpose in hearing* ***de novo*** *appeals is simply to alert the appeal tribunal and parties to the nature of the appellant's complaint with the decision, and the form of redress being sought. However, IRAC does not have unfettered discretion or unbridled power to deal with and decide appeals as it likes. It would be bound to hear, consider, and decide the issues of the case in accordance with the requirements and objects of the* ***Planning Act****. It is required by s-ss. 28(7) and 37(3) of that legislation to conduct appeals in accordance with the rules of natural justice and therefore must act judicially. It must give reasons for its decision (s-ss. 28(8) and 37(3) of the* ***Planning Act****) and if it exceeds its authority or errs in law it is subject to review by this court by way of an appeal under s. 13 of the* ***Island Regulatory and Appeals Commission Act****. All of the forgoing being so, I am unable to conclude that either s. 28 or 37 of the* ***Planning Act*** *are inconsistent with the rule of law.*

[37] As explained in detail in Order LA10-06, *Warren Doiron* v. *City of Charlottetown*, an appellant has a statutory right to appeal and the Commission is bound to hear that appeal. The following paragraphs from Order LA10-06 summarize the detailed explanation given in said Order:

> *[11] The appeal provisions of the **Planning Act** are clear. So long as the requirements of subsection 28(1.1) subsections 28(1.2), (1.3) and (1.4) [the bylaw must have been made under the authority of the **Planning Act**, the Notice of Appeal must have been filed within 21 days after the decision being appealed and, where the appeal is of a bylaw amendment, the 21 day appeal period commences on the date of a Council's final reading of the bylaw amendment] are met, an appellant is permitted and empowered to file an appeal; that is to say, an appellant has a statutory right to file an appeal.*
>
> *[12] Once an appellant's statutory right to file an appeal has crystallized, the Commission is obligated by law to proceed with the appeal. The Commission shall determine the hearing procedure, shall hear and decide the appeal, shall give reasons for its decision and the municipal decision maker or Minister shall implement the Commission's order. These requirements are set out in subsections 28(7), (8), (9) and (10) of the **Planning Act** and read as follows:*
>
> > *(7) Subject to adherence to the rules of natural justice, the Commission shall determine its own procedure.*
> >
> > *(8) The Commission shall hear and decide appeals and shall issue an order giving effect to its disposition.*
> >
> > *(9) The Commission shall give reasons for its decision.*
> >
> > *(10) The council or the Minister, as the case may be, shall implement an order made by the Commission.*

[38] For greater certainty, the Commission does not have the power to toss appeals aside on the premise that an appeal is without merit. So long as the statutory and jurisdictional requirements set out in the ***Planning Act*** are met, the appeal shall be heard and the rules of natural justice followed. That is the law.

[39] In the present appeal, all parties were advised of the hearing date mere days following the filing of the two Notices of Appeal. Neither the City nor Pan American asked Commission staff for an earlier date. Hearing dates are selected by the Commission with a view to allowing a decision maker enough time to gather and prepare the decision maker's file or record, to give parties an opportunity to review that record, instruct counsel and make reasonable adjustments to their professional and personal schedules, and allow for the availability of the Commission's hearing room, staff and Commissioners.

[40] The City's Record reveals that Pan American, by way of a letter from its solicitor to the City's solicitor, assumed that it was not a full party to the appeal and therefore asked the City to contact the Commission to request an earlier hearing date. The City did not do this, nor was it obligated to do so.

[41] The Commission wishes to point out that a developer is always a party to an appeal, with the same rights as the other parties. In some appeals, a ministerial or municipal decision maker has denied a developer's application and the developer files an appeal with the Commission. In such appeals, the developer and the appellant are the same individual or corporation. In other appeals, the decision maker approves an application filed by a developer and a dissatisfied person files the appeal. Either way, the developer has a material interest in the outcome of the appeal and is viewed by the Commission as a full party to the hearing, with all the rights, and responsibilities, of a party to the appeal process. As a party, Pan American was welcome to contact Commission staff and request an earlier hearing date.

[42] Given the events which unfolded at the public hearing of this appeal on the afternoon of July 5, 2010, the Commission finds the following:

- The statutory right to appeal certain decisions of ministerial and municipal decision makers made under the ***Planning Act*** has been confirmed and clarified by the Supreme Court of Prince Edward Island - Appeal Division, now the Court of Appeal.

- The Commission seeks to protect this right of appeal by ensuring that its hearing process is open, procedurally sound, and respectful of the interests of all parties.

- At the heart of the hearing process is the ability of all parties, especially those who are not represented by legal counsel, to present evidence in an unimpeded manner, free from any threat or intimidation. The principles of natural justice and procedural fairness must prevail.

- In the present appeal, the Commission finds that one party, Pan American/APM, abused the hearing process by causing a Statement of Claim to be served upon the appellants shortly before they were to commence their opening submissions. This service took place on the Commission's premises and within the confines of the hearing itself and had the effect of intimidating the appellants.

- While Pan American/APM has the legal right to file documents in the Supreme Court of Prince Edward Island to initiate a legal action, the appellants have the right to have their appeals heard by the Commission.

- The service of the Statement of Claim could have delayed Pan American's proposed development of the Welsh-Owen Hotel and Plaza, as the Commission had the authority to adjourn the appeal *sine die* [without a future date], pending the resolution of the civil action by the Supreme Court of Prince Edward Island.

- The action by Pan American/APM also showed disrespect for the legislated role and mandate of the Commission as a quasi-judicial body, may have constituted contempt, and will result in the Commission revisiting its current practices to strengthen and further protect the appeal process for all parties.

4. Disposition

[43] An Order denying this appeal follows.

IN THE MATTER of appeals by Judy Gallant and Lys-Ondray Goulet of a decision of the City of Charlottetown, dated April 12, 2010.

Order

WHEREAS the Appellants Judy Gallant and Lys-Ondray Goulet have appealed a decision of the City of Charlottetown, dated April 12, 2010;

AND WHEREAS the Commission heard the appeal at public hearings conducted in Charlottetown on July 5, 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 denied.

DATED at Charlottetown, Prince Edward Island, this 22nd day of July, 2010.

BY THE COMMISSION:

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

(Sgd.) *Michael Campbell*
Michael Campbell, 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 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)