



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

**Docket LA10019  
Order LA10-11**

**IN THE MATTER** of an appeal by  
Krzysztof Opydo of a decision of the Resort  
Municipality, dated June 22, 2010.

**BEFORE THE COMMISSION**  
on Tuesday, the 30th day of November, 2010.

John Broderick, Commissioner  
Michael Campbell, Commissioner  
Chester MacNeill, 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 an appeal by  
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# Contents

<i>Contents</i> _____	<i>ii</i>
<i>Appearances &amp; 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>	

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# **Appearances & Witnesses**

1. **For the Appellant**  
**Krzysztof (Chris) Opydo**
  
2. **For the Respondent**  
**Brenda MacDonald**  
**Mel Gass**

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# Reasons for Order

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## 1. Introduction

[1] The Appellant Krzysztof (Chris) Opydo (Mr. Opydo) 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. Opydo's Notice of Appeal was received on July 13, 2010.

[2] This appeal concerns a June 22, 2010 decision of the Resort Municipality (the Municipality) to deny a request to rezone property number 233395 (the subject property) on the Cape Road from RR (Rural) zone to RD3 (Resort Campground) zone.

[3] After due public notice and suitable scheduling for the parties, the appeal was heard on September 13, 2010.

## 2. Submissions

### Mr. Opydo's Position

[4] Mr. Opydo's position may be briefly summarized as follows:

- Mr. Opydo owns and operates the White Sands Campground located on the Cape Road in the Municipality. Mr. Opydo also owns the subject property, which does not abut his existing campground. Mr. Opydo wishes to establish a "primitive" campground on the subject property. He explained that such a campground would be mostly forested and is targeted toward younger tourists using tents and offers minimal services. He explained that such a campground would primarily serve as an overflow campground during the peak camping season, especially for events such as the Cavendish Beach Music Festival (the Festival). He submitted that there is a demand for such a campground.
- Mr. Opydo explained that he purchased his existing campground in 2006. Since that time, he has made several unsuccessful applications to the Municipality. These included a small wind turbine, paintball, sign relocation, a deck extension and the present application which is the subject of this appeal.

- Mr. Opydo noted that there are on file letters of support and in opposition to his proposed campground.
- Mr. Opydo noted that his proposed campground would use composting toilets. However, he had proposed “porta-potties” for the 2010 tourist year only as he had hoped to have the campground open in time for the Festival.

[5] Mr. Opydo submitted that the Municipality’s decision was unfair and not based on the relevant facts. He requested that the Commission allow his appeal and order that the subject property be rezoned from RR to RD3 to allow his campground proposal to proceed.

### **The Municipality’s Position**

[6] The Municipality’s position may be briefly summarized as follows:

- The Municipality cannot cancel a public meeting on a rezoning application after the meeting is scheduled and advertised.
- The application did not specify primitive camping. The application did not provide a detailed site plan as required under section 8.6 of the Municipality’s Zoning and Subdivision Control (Development) Bylaw (the Bylaw) and no such plan was presented at the meeting.
- The application proposed 20 camping sites on 11.25 acres of land. The Municipality questions why it would be necessary to rezone all 11.25 acres for only 20 camping sites.
- Under section 8.7 of the Bylaw, all developments in the RD3 zone are required to be serviced by central sewer services where available or by an on-site sewage treatment system approved by the Provincial government. Mr. Opydo’s application did not address what services would be provided. At the public meeting he advised that porta-potties would be used.

[7] The Municipality submitted that the Commission should deny Mr. Opydo’s appeal as his application was incomplete and did not meet the requirements for a campground development set out in the Bylaw.

## **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 Commission finds that the following documents taken together set out Mr. Opydo’s proposal as presented to the Municipality:

- (i) a May 7, 2010 written rezoning application,
- (ii) oral details of the proposal noted in the minutes of the June 3, 2010 public meeting held to consider Mr. Opydo’s application, and
- (iii) the map provided by Mr. Opydo at the June 3, 2010 meeting.

[10] Mr. Opydo provided minimal details in his May 7, 2010 rezoning application email he sent to the Municipality. This application did not specify the type of sewer services to be provided. A May 27, 2010 email sent by the Municipality's Administrator reminded Mr. Opydo of the need for a detailed plan and a proposed site plan. According to the minutes of the June 3, 2010 public meeting, Mr. Opydo orally provided some additional information and he filed a map referencing the location of the subject property to nearby roads and his existing campground. At this public meeting, Mr. Opydo advised that porta potties would be used.

[11] The Commission finds that it was appropriate for the Municipality to deny the rezoning application filed by Mr. Opydo. His application was incomplete as the Bylaw requires a comprehensive site plan and no such plan was provided either at the time of filing his application or at the public meeting. In addition, the development proposed by Mr. Opydo did not include the type of sewer services required by the Bylaw. Further, in the absence of a comprehensive site plan, the Commission agrees with the Municipality that a rezoning of all 11.25 acres of the subject property may be unnecessary for a proposed campground of only 20 lots.

[12] As the proposed development of the subject property did not follow the requirements of the Municipality's Bylaw, the Commission denies this appeal.

## **4. Disposition**

[13] An Order denying this appeal follows.

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# Order

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**WHEREAS** the Appellant Krzysztof Opydo appealed a decision of the Resort Municipality dated June 22, 2010;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on September 13, 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 30th day of November, 2010.

### BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Michael Campbell

Michael Campbell, 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 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)