



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA10024
Order LA11-02**

IN THE MATTER of an appeal by
Alistair MacIntosh of a decision of the
Minister of Finance and Municipal Affairs,
dated October 6, 2010.

BEFORE THE COMMISSION
on Monday, the 28th day of February, 2011.

Allan Rankin, Vice-Chair
John Broderick, Commissioner
Michael Campbell, 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
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IN THE MATTER of an appeal by
Allistair MacIntosh of a decision of the
Minister of Finance and Municipal Affairs,
dated October 6, 2010.

Appearances & Witnesses

1. For the Appellant Allistair MacIntosh

Allistair MacIntosh

Witness called by the Appellant:

Peter Peters

2. For the Respondent Minister of Finance and Municipal Affairs

Counsel:

Robert MacNevin

Witnesses:

Lou Anne Wolfe

Jay Carr

3. For the Developers Ryan MacPhee and Wade Peconi

Ryan MacPhee

Wade Peconi

IN THE MATTER of an appeal by
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dated October 6, 2010.

Reasons for Order

1. Introduction

[1] The Appellant Allistair MacIntosh (the Appellant) 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. MacIntosh's Notice of Appeal was received on October 26, 2010.

[2] The Appeal concerns the September 27, 2010 decision of the Respondent Minister of Finance and Municipal Affairs (the Respondent), to issue to Ryan MacPhee (the Developer) a building permit for the construction of two mink barns on property number 293845 located in Springton, Prince Edward Island.

[3] Following due public notice, the appeal was heard on Wednesday January 5, 2011.

2. Discussion

The Appellant's Position

[4] While the Appellant filed the appeal he submits that he represents and speaks for other residents of the community of Springton.

[5] The Appellant presented and read into the record correspondence from two local residents addressed to the Minister of Environment, Energy and Forestry [Exhibits A-2 and A-3 respectively] opposing the mink farm development. In addition, the Appellant made reference to a signed petition from the community presented to the Minister of Environment, Energy and Forestry on September 16, 2010 and containing the names of some 100 individuals who also oppose the development.

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

- The Appellant submits that Springton has become a primarily residential community and that the proposed development is a

“factory farm” operation that does not fit into the general environment.

- The Appellant submits that a mink farm already exists on the western boundary of the neighboring community of Stanchel and that another mink farming operation will only compound existing problems such as odour, escaping animals, manure management, and the potential contamination of ground water and streams.
- The Appellant submits that the building permit initially approved by the Minister of Finance and Municipal Affairs subsequently was amended to allow for decreased setbacks and a larger building size, and that the community was not informed of these changes.
- The Appellant submits that the community has not been adequately consulted with respect to the proposed mink farm development and that a committee should be appointed with community participation to monitor the operations of the mink farm.

[7] The Appellant seeks as relief the stopping of “construction and operations” of the mink farm in question.

The Minister’s Position

[8] Counsel for the Respondent in a brief opening statement submitted that the mink farm development meets all requirements of the *Planning Act Subdivision and Development Regulations*, and that it also was reviewed and received approval by the Minister of Environment, Energy and Forestry under the ***Environmental Protection Act*** following an Environmental Impact Assessment (EIA).

[9] Lou Anne Wolfe, Property Development Officer for Prince County, submitted that the mink farm development application was received by the Department of Finance and Municipal Affairs on August 24, 2010.

[10] As part of its internal review of the application, Ms. Wolfe completed a site inspection and evaluation of the proposed structures for compliance under the Subdivision and Development Regulations and Highway Access Regulations.

[11] The application also was circulated to the Department of Agriculture as well as to the Department of Environment, Energy and Forestry for their reviews respectively.

[12] Lou Anne Wolfe submitted that the initial application was amended at the request of the Developer to alter the size of the two buildings from dimensions of 25’x250’ (6250 sq. ft.) each to dimensions of 42’x366’ (15,372 sq. ft.) each, and to reduce the setbacks from the highway and the adjacent waterway.

[13] Jay Carr, Environmental Assessment Officer with the Department of Environment, Energy and Forestry submitted that after reviewing the mink farm development application it was determined that an Environmental Impact Assessment was required for the project. It was further determined that the project had “few environmental impacts” and therefore warranted only Level 1 Public Consultation which requires that it be advertised in a local newspaper with no public information session.

[14] The public consultation period for the project ended on September 20, 2010. It concluded that while there was a “high level of public opposition” to the project and a “large third party interest around animal welfare and ethical issues associated with mink farming”, the Developer had taken steps to address these concerns and thereby minimize the potential impacts.

[15] Mr. Carr submitted that committees such as the kind requested by the Appellant to monitor the mink farm operation on an ongoing basis were reserved for major developments.

[16] On September 27, 2010 the Minister of Environment, Energy and Forestry approved the mink farm development pursuant to Section 9(1) of the *Environmental Protection Act*, subject to conditions, and conveyed this decision to his colleague the Minister of Finance and Municipal Affairs. With all other regulatory requirements having been met, the Minister of Finance and Municipal Affairs issued permit number P-179-2010 allowing the project to proceed.

The Developer’s Position

[17] Mr. Wade Peconi, one of the two developers, submitted that the change in building size and scale of the mink farm was necessitated to meet industry standards regarding cage size for individual animals, and that the total number of animals housed at the facility (2000 breeding stock) has not increased from what had been initially proposed.

[18] Mr. Peconi also submitted that security measures at the mink farm would minimize the escape of animals, no manure or deadstock would be stored on site, and that while animals would be euthanized at the facility processing would take place elsewhere. He submitted that a more humane, improved code of practice would be followed on the mink farm.

[19] Mr. Peter Peters, (a witness technically called by the Appellant, but offering evidence in support of the mink farm) owns and operates an established mink farm at Howe Bay, Prince Edward Island. Mr. Peters also is President of the Canadian Mink Breeders Association. He testified that a growing market for mink fur exists in Russia, China, and South Korea.

[20] Mr. Peters also testified that he will supply and own the breeding animals to be housed at the proposed mink farm in Springton and that he will assume a role in the care of these animals. Mr. Peters submitted that the new mink farm is to be modern in every respect.

3. Findings

[21] After a careful review of the evidence, 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.

[22] Springton is an unincorporated, rural community, with no official plan or zoning bylaws to guide local development. There is no effective means available for the residents of the community to participate in the development process. Development is subject to the provisions of the *Planning Act Subdivision and Development Regulations*.

[23] The Appellant has submitted that the changing character of the local community from agricultural to residential should preclude the establishment of another mink farming operation. However, the Commission finds that the mink farm is an acceptable use [Section 1(r.2)] within the current provincial planning and regulatory framework.

[24] Section 5 of the *Subdivision and Development Regulations* reads in part as follows:

(5) No approval shall be given pursuant to these regulations until the following permits or approvals have been obtained as appropriate:

(a) where an environmental assessment or an environmental impact statement is required under the Environmental Protection Act, approval has been given pursuant to the Act

[25] An Environmental Impact Assessment of the mink farm development was deemed necessary under Section 9(1) of the **Environmental Protection Act**, and the Minister of Environment, Energy and Forestry granted conditional approval on September 27, 2010. This conditional approval subsequently was conveyed to the Minister of Finance and Municipal Affairs as partial fulfillment of the requirements for the issuance of a development permit.

[26] It is important to note that while approval of the mink farm development under the **Environmental Protection Act** is a pre-requisite for issuance of a development permit under the *Planning Act Subdivision and Development Regulations*, the September 27, 2010 decision of the Minister of Environment, Energy and Forestry is separate and not the subject of this appeal.

[27] The Commission does find the inter-departmental consideration of the mink farm development to have been somewhat disjointed. While the petition opposing the development submitted by the community to the Minister of Environment, Energy and Forestry was considered in making the decision to approve the development under the provisions of the **Environmental Protection Act**, this community petition was not made available to his colleague the Minister of Finance and Municipal Affairs and did not form part of that Minister's decision to issue the development permit under appeal. The Commission believes that the Minister issuing a development permit under the **Planning Act** should have a full knowledge of the views expressed to government by a local community respecting that development prior to the issuance of a permit.

[28] Notwithstanding, the Commission finds that the Department of Finance and Municipal Affairs administered the mink farm building permit application in a thorough and professional manner consistent with administrative procedures and policies in place at the time, and that the mink farm development meets all the requirements of the *Planning Act Subdivision and Development Regulations*.

[29] The Commission also finds that the conditions attached to the development permit (No. P-179-2010) with regard to mitigating odour, managing manure issues, and containing the animals within the confines of the facility, address to a large extent the Appellant's environmental concerns.

[30] For the above reasons, the Commission denies this appeal.

4. Disposition

[31] An Order denying the appeal follows.

IN THE MATTER of an appeal by
Allistair MacIntosh of a decision of the
Minister of Finance and Municipal Affairs,
dated October 6, 2010.

Order

WHEREAS the Appellant Allistair MacIntosh appealed a decision of the Minister of Finance and Municipal Affairs, dated October 5, 2010;

AND WHEREAS the Commission heard the appeal at a public hearing conducted in Charlottetown on January 5, 2011 after due public notice and suitable scheduling for the parties;

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 28th day of February, 2011.

BY THE COMMISSION:

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

(Sgd.) *John Broderick*
John Broderick, Commissioner

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