



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

**Docket LA10025
Order LA11-06**

IN THE MATTER of a request for
review of Order LA11-03, issued by the
Commission on March 9, 2011.

BEFORE THE COMMISSION
on Wednesday, the 13th day of April, 2011

Maurice Rodgerson, Chair
John Broderick, Commissioner

Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

Appeals Administrator
Land, Corporate and Appellate Services Division

IN THE MATTER of a request for
review of Order LA11-03, issued by the
Commission on March 9, 2011.

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IN THE MATTER of a request for review of Order LA11-03, issued by the Commission on March 9, 2011.

Appearances & Witnesses

Written requests for review filed by:

Dale Sabeau, Intervener

Nathan and Kara Archibald, Interveners

IN THE MATTER of a request for review of Order LA11-03, issued by the Commission on March 9, 2011.

Reasons for Order

1. Introduction

[1] In Order LA11-03 issued by the Commission on March 9, 2011, the Commission allowed the appeal in part of the Appellant Caseley Farms Ltd. (the Appellant) and ordered the zoning of five lots in Rosewood Drive extension located within the Town of Kensington (the Town).

[2] On March 18, 2011 a written request for review was received from Dale Sabean (Mr. Sabean). Mr. Sabean owns a lot adjacent to one of the affected lots and was a member of the public who had appeared before the Commission on January 26, 2011.

[3] On March 20, 2011 a written request for review was received from Nathan and Kara Archibald (the Archibalds). The Archibalds own a lot adjacent to another affected lot.

[4] On March 21, 2011 via email, Commission staff invited Mr. Sabean, the Archibalds, the Appellant and the Town to file a written response. Commission staff also provided a link to a past Commission Order [LA97-11] which explained in detail the test to be met on a request for review. Randal Caseley replied on behalf of the Appellant on March 29, 2011 thanking the Commission for Order LA11-03. Geoff Baker, Chief Administrative Officer for the Town, replied on April 8, 2011 noting that the Town would not be making a submission in response to the request for review.

2. Discussion

The Request for Review

[5] The Archibalds own a home on a lot adjacent to Lot B40. Mr. Sabean and the Archibalds request that the Commission vary Order LA11-03 to zone Lot B40 as R1 rather than as R2 in order to provide one single family lot as a buffer between the Archibald home and any new semi-detached / two family homes that may be built on Rosewood Drive extension. To support their request, Mr. Sabean and the Archibalds note that the Commission had designated Lot B36 as R1 to provide “protection” to Lot B37, recently purchased by Mr. Sabean.

3. Findings

[6] After a careful review of the submissions of the interveners and the applicable law, it is the decision of the Commission to deny the request for reconsideration filed by Mr. Sabean and the Archibalds. Accordingly, the Commission confirms the decision contained in Order LA11-03.

[7] 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.

[8] 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 and 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.

[9] There is no evidence before the Commission that an error had been made in Order LA11-03.

[10] With respect to “changed circumstances”, there is no evidence that a new situation developed following the January 26, 2011 hearing. The information provided by Mr. Sabean and the Archibalds, that is to say that the Archibald home was adjacent to Lot B40, was known at the time of the January 26, 2011 hearing pursuant to a “Plan of Survey showing Lots B34 to B37, Lots B40 & B41, ...” said plan dated October 8, 2010. Mr. Sabean was present at the January 26, 2011 hearing and, while the Archibalds were not present at said hearing, the hearing was advertised and was open to the public.

[11] The Commission finds that the interveners have not met the required test for a request for review. Accordingly, the Commission denies the request for reconsideration.

[12] As the issue of fairness may be raised, it is important to review the Commission's reasoning for zoning Lot B36 as R1 as explained in Order LA11-03:

[20] The Commission agrees with the Town's decision to deny zoning Lot B36 as R2 (two-family residential). Lot B36 is adjacent to the recently conveyed B37, zoned R1. Lot B37 is adjacent to the existing semi-detached home on lot A11. The owner of Lot B37 gave evidence as a member of the public and told the Commission that, at the time he purchased Lot B37 from Caseley Farms; he was not informed that an R2 zoning designation was sought for B36. Under these circumstances, the Commission views that it would be inappropriate to effectively 'sandwich' one R1 lot between two R2 lots.

Emphasis added.

[13] There is no evidence before the Commission to suggest that the zoning of Lot B40 as R2 would effectively 'sandwich' the Archibald home between two R2 lots as the evidence previously before the Commission was that Lot A12, which is immediately adjacent to the Archibald home, is zoned R1.

4. Disposition

[14] An Order denying the request for reconsideration of Order LA11-03 will be issued.

IN THE MATTER of a request for review of Order LA11-03, issued by the Commission on March 9, 2011.

Order

WHEREAS the interveners Dale Sabeau, Nathan Archibald and Kara Archibald filed a request for review of Order LA11-03 pursuant to section 12 of the *Island Regulatory and Appeals Commission Act*,

AND WHEREAS the Commission invited the parties to file written submissions pertaining to said request for review;

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 LA11-08 is hereby denied.

DATED at Charlottetown, Prince Edward Island, this 13th day of April, 2011

BY THE COMMISSION:

(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

(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)