



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA10018
Order LA11-09**

IN THE MATTER of an appeal by the
Cap Desir Homeowners Association Inc. of a
decision of the Minister of Finance and
Municipal Affairs, dated June 25, 2010.

BEFORE THE COMMISSION
on Friday, the 16th day of September, 2011.

Allan Rankin, Vice-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 an appeal by the
Cap Desir Homeowners Association Inc. of a
decision of the Minister of Finance and
Municipal Affairs, dated June 25, 2010.

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IN THE MATTER of an appeal by the
Cap Desir Homeowners Association Inc. of a
decision of the Minister of Finance and
Municipal Affairs, dated June 25, 2010.

Appearances & Witnesses

1. For the Appellant Cap Desir Homeowners Association Inc.

Representatives:

**Paula Ling
Rod Murphy
Margo Storey**

Counsel:

James C. Travers, Q.C.

2. For the Respondent Minister of Finance and Municipal Affairs

Representative (at the December 1, 2010 hearing):

Garth Carragher

Counsel:

Robert MacNevin

3. For the Developer Blue Bay Farms Ltd.

Representative:

Randall Nieuwhof

Counsel:

David W. Hooley, Q.C.

IN THE MATTER of an appeal by the
Cap Desir Homeowners Association Inc. of a
decision of the **Minister of Finance and
Municipal Affairs**, dated June 25, 2010.

Reasons for Order

1. Introduction

[1] The Appellant Cap Desir Homeowners Association Inc. (the Association) 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*). The Association's Notice of Appeal was received on July 8, 2010.

[2] This appeal concerns a June 25, 2010 decision of the Respondent Minister of Finance and Municipal Affairs (the Minister) to grant preliminary approval of an application by the Developer Blue Bay Farms Ltd. (Blue Bay) to subdivide 55 lots for summer cottage use from property number 665349 located in Anglo Rustico.

[3] Following suitable scheduling for the parties and due public notice, a hearing commenced on December 1, 2010.

[4] At the December 1, 2010 hearing a discussion of various preliminary matters ensued. Following this discussion, the Association and Blue Bay indicated a willingness to enter into discussions and requested that the Commission appoint a mediator to assist in the process. The Minister, through his representative, was in support of this approach.

[5] The Commission considered this request and appointed Philip J. Rafuse, the Commission's Appeals Administrator, as mediator pursuant to subsections 7(1)(a) and 11.1(1) of the *Island Regulatory and Appeals Commission Act* (the *IRAC Act*).

[6] Following numerous mediation sessions and discussions held during the ensuing months, the parties entered into a Mediation Settlement Agreement (the Agreement) in August 2011. This document was circulated to the various parties for their signatures and their corporate seals. A signed copy of the Agreement was received by the Commission on September 7, 2011.

2. Discussion

[7] The Agreement is presented to the Commission by the mediator and the parties for incorporation into a Commission Order pursuant to subsection 11.1(2) of the *IRAC Act*.

3. Findings

[8] The Commission hereby notes the following paragraphs of the Agreement which pertain to the Commission's ongoing jurisdiction in this matter:

8. Any dispute relating to or arising out of this Mediation Settlement Agreement shall be resolved by returning first to the Mediator; and, failing a consensual dispute resolution, any outstanding issue(s) shall be returned to the Commission for adjudication.

...

11. This Mediation Settlement Agreement shall be incorporated into an Order of the Commission and may be enforced as such.

[9] The Commission hereby incorporates the Agreement (together with all schedules attached to said Agreement) into this Order by reference. The signed and sealed Agreement in the Commission's possession shall be physically appended to the original Order on file with the Commission for ease of future reference.

4. Disposition

[10] An Order incorporating the Agreement by reference follows.

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WHEREAS the parties and the mediator referred to in the above Reasons for Decision have entered into a Mediation Settlement Agreement, said document received by the Commission on September 7, 2011;

AND WHEREAS the parties and the mediator have requested that the Commission incorporate said Mediation Settlement Agreement into an Order of the Commission;

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 Mediation Settlement Agreement described in the Reasons for Decision is hereby incorporated into this Commission Order by reference and may be enforced as an Order of the Commission.**

DATED at Charlottetown, Prince Edward Island, this 16th day of September, 2011.

BY THE COMMISSION:

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