

**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA12009
Order LA12-04**

IN THE MATTER of an appeal by
Champion Butler of a decision of the
Community of Kinkora, dated April 18, 2012.

BEFORE THE COMMISSION
on Thursday, the 30th day of August, 2012.

Allan Rankin, Vice-Chair
Peter McCloskey, Commissioner
Jean Tingley, 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
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Appearances & Witnesses

1. **For the Appellant Champion Butler**

Champion Butler

Witness: Leonard Keefe

2. **For the Respondent Community of Kinkora**

Counsel:

Jonathan Greenan

Witnesses:

Roger Savoie
Aaron Gauthier
Derek French

IN THE MATTER of an appeal by
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Reasons for Order

1. Introduction

[1] The Appellant Champion Butler (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 Appellant's Notice of Appeal was received on April 24, 2012.

[2] This appeal concerns an April 18, 2012 decision of the Respondent Community of Kinkora (the Respondent) to deny an application by the Appellant for a home based business located at 91 Anderson Road in Kinkora.

[3] This appeal was heard on June 25 and 26, 2012.

2. Discussion

The Appellant's Submissions

[4] The following are the highlights of the Appellant's oral submissions presented at the hearing.

- The Appellant submitted that he was given approval to start a home based motorcycle related business by way of an undated document [issued very shortly following the Respondent's Council meeting of February 22, 2012] signed by the Respondent's Chair and the Respondent's Administrator, bearing the seal of the Respondent. This document was then appealed by Mr. Keefe, a resident of Kinkora. Mr. Keefe later withdrew his appeal before it was scheduled to be heard by the Commission.
- The Appellant submitted that due to pressure and a petition from Mr. Keefe and other local residents, the Respondent in effect reversed the earlier approval and denied his application for a home based business on April 18, 2012.
- The Appellant submitted that he was treated unfairly by the Respondent. He stated that he has lost thousands of dollars on his business venture as a result of the Respondent's decision and considerable delay in starting his business.

- The Appellant submitted that he was always willing to modify his business proposal in order to be in full compliance with the Respondent's Zoning and Subdivision Control Bylaws (the Bylaw).

[5] The Appellant requests that the Commission allow the appeal, quash the Respondent's April 18, 2012 decision denying his application for a home based business and order the Respondent to issue a permit for his home based business.

The Respondent's Submissions

[6] The following are the highlights of the Respondent's oral submissions presented at the hearing.

- The Respondent has been supportive of the Appellant's business proposal. Both the Respondent's Chair, Mr. Savoie, and the Respondent's Administrator, Mr. Gauthier, assisted the Appellant in filing his applications.
- The February 22, 2012 meeting of the Respondent's Council and the document issued the next day did not represent a development permit because the Appellant had not yet filed an application. In effect, both parties 'put the cart before the horse' as the process set out in the Bylaw specifically requires an application. Counsel for the Respondent acknowledged that the undated document, identified during the hearing as issued on February 23, 2012, should not have been delivered to the Appellant in that form.
- There were a number of problems with the Appellant's proposal as identified in his business plan which would run counter to what is permitted by the Bylaw for a home based business.

[7] The Respondent requests that the Commission deny the appeal and uphold the April 18, 2012 decision to deny the Appellant a permit for a home based business.

3. Findings

[8] After a careful review of the evidence, the submissions of the parties, and the applicable law, it is the decision of the Commission to allow the appeal and direct the Respondent to issue a permit for a home based business to the Appellant, subject to conditions to be determined by the Respondent in consultation with the Appellant and the Respondent's Development Officer, Derek French. The reasons for the Commission's decision follow.

[9] The Respondent's April 18, 2012 decision was expressed in writing on the following day and is reproduced below.



April 19, 2012

Champion Butler
91 Anderson St.
Kinkora, PE
C0B 1N0

Re: Business Development Application Dated March 22, 2012


Dear Mr. Butler:

Please be advised that your application which you submitted to council was reviewed at the monthly council meeting on April 18, 2012. The following decision was made by Council with regards to your application.

Upon review of your application by the council's Development Office and the Present Standing Council your application was denied. Please find a letter attached from the Development Officer which was the basis of council's decision to deny the permit.

If you have any questions or concerns please feel free to contact my office at 887-2868.

Thank you


Aaron Gauthier
C.A.O. Community of Kinkora


Roger Savoie
Council Chair



[10] Immediately prior to commencing his testimony before the Commission, Derek French became aware of the following undated document, identified at the hearing as having been issued on February 23, 2012:

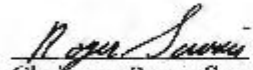


Re: Business Proposal

Dear Champion Butler

Your business proposal was presented and discussed at the council meeting of February 22, 2012. We are pleased to inform you that Council granted approval for a permit to allow your business to be started up with in the Community of Kinkora as subject to our community's by-laws.

On behalf of council we would like to wish you well with this endeavor!


Chairman Roger Savoie


Aaron Gauthier Administrator



[11] Mr. French stated during his testimony that he was not aware of the above cited document when he prepared his April 11, 2012 recommendation letter to the Respondent. Mr. French noted that a permit can be issued subject to attached conditions.

[12] The Commission notes that at the appeal hearing the Appellant provided the Commission with the original February 23, 2012 document. The Commission examined this original document. The Commission observes that the original document was not only signed by the Respondent's Chair and Administrator but also had the imprint of the Respondent's seal.

[13] The Commission is of the view that the February 23, 2012 document was a permit approval in substance, granted subject to a formal application being filed by the Appellant. The application would then assist the Respondent in establishing conditions to ensure that the permit would be subject to the Respondent's Bylaw. From the evidence of Mr. French, the Commission concludes that Mr. French would have likely given a different recommendation to the Respondent had he known of the February 23, 2012 document. The Commission finds that, in all likelihood, Mr. French's recommendations would have addressed conditions to be attached to the permit, rather than a denial of a permit.

[14] The Commission finds that the Respondent made a serious procedural error when it made its April 18, 2012 decision after having issued the February 23, 2012 document. The Respondent also erred by seeking an opinion from a professional without disclosing material documentation. That said, the Commission is heartened by the indication that the Respondent is striving to improve its process and procedure. The Commission was impressed by the knowledge and candour of Mr. French and is of the view that this unfortunate situation can be resolved through a collaborative approach.

[15] The Commission hereby orders that the April 18, 2012 decision of the Respondent be quashed. The Commission finds that the February 23, 2012 document is a *de facto* approval to issue a permit for the Appellant's home based business.

[16] Having reviewed the Appellant's application and business plan, the Commission believes that some of the proposed business activities are permissible for a home based business while others may not be permissible. As a result, conditions will no doubt be necessary to ensure that the permit is in clear compliance with the Respondent's Bylaw. Accordingly, the Commission directs the Respondent to retain Mr. French to draft conditions for the Appellant's permit after having fully consulted with the Appellant as to the kinds of business activities he proposes to be undertaken at his home. Following the drafting of such conditions, the Respondent shall formally issue a permit, with reasonable conditions, to the Appellant.

4. Disposition

[17] An Order follows allowing the appeal, quashing the Respondent's April 18, 2012 decision and directing the Respondent to issue a permit for a home based business to the Appellant, subject to reasonable conditions to be determined by the Respondent in consultation with the Appellant and the Respondent's Development Officer, Derek French.

IN THE MATTER of an appeal by
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WHEREAS the Appellant Champion Butler has appealed a decision of the Respondent Community of Kinkora, dated April 18, 2012;

AND WHEREAS the Commission heard the appeal at a public hearing conducted in Charlottetown on June 25 and 26, 2012 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 Respondent's April 18, 2012 decision is hereby quashed.
2. The Commission directs the Respondent to issue a permit for a home based business to the Appellant, subject to reasonable conditions to be determined by the Respondent in consultation with the Appellant and the Respondent's Development Officer, Derek French.

DATED at Charlottetown, Prince Edward Island, this 30th day of August, 2012.

BY THE COMMISSION:

(Sgd.) *Allan Rankin*

Allan Rankin, Vice-Chair

(Sgd.) *Peter McCloskey*

Peter McCloskey, Commissioner

(Sgd.) *Jean Tingley*

Jean Tingley, 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)