



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA12006
Order LA12-07**

IN THE MATTER of a request for
review of Order LA12-03 issued by the
Commission on July 13, 2012.

BEFORE THE COMMISSION
on Friday, the 30th day of November, 2012.

John Broderick, Commissioner
Michael Campbell, Commissioner
Ferne MacPhail, 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 LA12-03 issued by the
Commission on July 13, 2012.

Contents

<i>Contents</i>	<i>ii</i>
<i>Appearances & Witnesses</i>	<i>iii</i>
<i>Reasons for Order</i>	<i>I</i>
1. Introduction	1
2. Discussion	1
3. Findings	1
4. Disposition	4
<i>Order</i>	

IN THE MATTER of a request for
review of Order LA12-03 issued by the
Commission on July 13, 2012.

Appearances & Witnesses

Written request for review filed by the Appellant Barbara Duncan-Biage

IN THE MATTER of a request for review of Order LA12-03 issued by the Commission on July 13, 2012.

Reasons for Order

1. Introduction

[1] In Order LA12-03 issued by the Commission on July 13, 2012, the Commission, by a majority decision, denied the appeal of the Appellant Barbara Duncan-Biagi (the Appellant) thus affirming the March 20, 2012 decision of the Respondent Community of New Haven-Riverdale (the Respondent) to deny the Appellant's application to subdivide property number 611228 (the subject property).

[2] On July 31, 2012 the Appellant filed a written request for a review of Order LA12-03. Following a review of the Appellant's request, the Commission directed staff to advise the Appellant of the test that the Commission uses to consider requests for review. On August 29, 2012 the Appellant filed further documentation in support of her request.

2. Discussion

[3] The Appellant provided detailed reasons in her July 31 and August 29, 2012 documents. The Appellant takes the position that the Commission erred in its findings contained in paragraphs 22 and 24 of Order LA12-03. The Appellant also takes the position that the "Plan B" highway improvement project will result in significant change within the Community of New Haven-Riverdale by restricting new developments to "side roads such as Cameron Road".

3. Findings

[4] After a careful review of the submissions of the Appellant, it is the decision of the Commission to deny the request for reconsideration. Accordingly, the Commission confirms the decision contained in Order LA12-03.

[5] Section 12 of the *Island Regulatory and Appeals Commission Act* (the *IRAC Act*) reads as follows:

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.

[6] 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 a 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.

[7] The Appellant alleges that the Commission erred in its findings contained in paragraphs 22 and 24 of Order LA12-03. To place these paragraphs within context, paragraphs 21 to 25 inclusive are reproduced below.

[21] *The Respondent's decision letter, dated March 26, 2012 and found at Tab S of Exhibit R2, contains a detailed series of reasons for the Respondent's decision to deny the Appellant's application to subdivide the subject property. When a municipal decision maker provides detailed reasons for its decision, such reasons are beneficial for all concerned parties and allow an appellate body, be it the Court or the Commission, to know the basis for the decision.*

[22] *The Commission has heard evidence from Mr. Wood, a knowledgeable and respected land use planner, and finds that the various points set in the Respondent's decision letter are rooted in the Official Plan and in the Bylaw. The Commission finds that the Respondent's decision is consistent with sound planning principles, and most importantly, the specific principles the Respondent has chosen to adopt in its Official Plan and implement in its Bylaw.*

[23] However, the Commission is also of the view that there is much merit in the Appellant's application. The Appellant's April 24, 2012 "Response" provides an insightful perspective on the Respondent's decision. Just because the Respondent's decision is consistent with sound planning principles does not mean that the Appellant's proposal is contrary to sound planning. The Commission is of the view that there is enough leeway in the Respondent's Official Plan to lend support to an approval of the Appellant's application had the Respondent seen fit to do so. The Respondent effectively chose to strongly emphasize the rural character of the community, avoid placing pressure on itself to develop municipal services by maintaining a very low development density and place considerable weight on the "detrimental" effect on neighbouring properties.

[24] Where a municipal decision maker follows the law and its own process carefully, and bases its decision on identified principles contained in its Official Plan and sound planning in general, the majority of the Commission is inclined to defer to the decision of a municipal government. In the present situation, the Respondent's decision was a decision made by its elected Council. The Respondent's Council followed the process without error and specifically considered the application with a view to its compliance with identified sections of the Official Plan and Bylaw. Neither the Appellant nor the Commission was left guessing: it was abundantly clear what the Respondent's concerns were as its decision was carefully reasoned and thoughtfully referenced to the specific Official Plan and Bylaw provisions. The Respondent had to make a difficult decision in applying the facts of the application to the requirements of the Official Plan and the Bylaw.

[25] Accordingly, the majority of the Commission defers to the decision of the Respondent and the appeal is hereby denied.

[8] The Appellant emphasized the following quotation from section 2.6 Page 14 of the Respondent's Official Plan:

From the date of approval of this Plan and the implementing Bylaw all development is no longer affected by the SPA [special planning area] Regulations.

[9] The Appellant contends that section 63 of the Planning Act Subdivision and Development Regulations were specifically excluded from the Respondent's Official Plan.

[10] While the Appellant may have identified an error or an overstatement in a background section of the Respondent's Official Plan, the Commission finds that the Appellant has not made a *prima facie* case that the Commission made an erroneous finding of fact or law in Order LA12-03.

[11] The Appellant contends that there are changed circumstances given the adoption of the "Plan B" highway re-alignment project. The Commission is of the view that while the Plan B project may very well have a significant impact on the Respondent community in general, such new information is not directly material to the Appellant's application to subdivide the subject property.

[12] The Commission finds that the Appellant has not met the required test for a request for review. Accordingly, the Commission denies the request for review of Order LA12-03.

4. Disposition

[13] An Order denying the request for review of Order LA12-03 follows.

IN THE MATTER of a request for review of Order LA12-03 issued by the Commission on July 13, 2012.

Order

WHEREAS the Appellant Barbara Duncan-Biage 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 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 LA12-03 is hereby denied.

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

BY THE COMMISSION:

(Sgd.) John Broderick

John Broderick, Commissioner

(Sgd.) Michael Campbell

Michael Campbell, Commissioner

(Sgd.) Ferne MacPhail

Ferne MacPhail, 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)