



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA12012
Order LA13-01**

IN THE MATTER of an appeal by Henry Gallant of a purported decision of the Minister of Finance, Energy and Municipal Affairs.

BEFORE THE COMMISSION
on Friday, the 11th day of January, 2013.

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 an appeal by Henry Gallant of a purported decision of the Minister of Finance, Energy and Municipal Affairs.

Order

On September 11, 2012, the Appellant Henry Gallant (Mr. Gallant) filed a Notice of Appeal form 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. Gallant's Notice of Appeal form made reference to a September 10, 2012 decision of the Minister of Finance, Energy and Municipal Affairs (the Minister). Mr. Gallant alleged that his proposal to subdivide his land had been rejected by the Minister.

On September 13, 2012 Commission staff forwarded a letter to Mr. Gallant and to Alan Robison (Mr. Robison) of the Minister's staff.

On September 18, 2012 Commission staff received an email from Mr. Robison noting in part:

Our office has not issued an official decision on this case. We are still working with Mr. Gallant (or at least we thought we were) on possible options.

On September 19, 2012 Commission staff wrote the parties, noting the position of the Minister, reviewing the wording of section 28 of the **Planning Act** and identifying a jurisdictional matter. Staff's letter invited written submissions from the parties on the jurisdictional issue. Staff's letter also invited Mr. Gallant to withdraw his appeal.

No written submissions were filed by Mr. Gallant and no additional written submissions were filed on behalf of the Minister.

Subsection 28(1) of the **Planning Act** reads in part:

28. (1) Subject to subsections (1.2) to (4), any person who is dissatisfied by a decision of the Minister that is made in respect of an application by the person, or any other person, pursuant to the regulations for

...

(b) a preliminary approval of a subdivision or a resort development;

...

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

Rule 29 of the Commission's *Rules of Practice and Procedure for Hearings* reads as follows:

29.0 Hearing Limited by Jurisdictional Issues

1. *When the Commission believes that it may lack jurisdiction to hear a particular appeal or application, the Commission may direct that the question of jurisdiction be heard, either through oral or written submissions, and determined prior to a hearing on the merits of the appeal or application.*
2. *Where it is found that the Commission lacks jurisdiction pursuant to subsection (1), the Commission will not hear the application or appeal.*

In the present case, the Commission finds that Mr. Gallant believed that the Minister had made a decision and thus he filed an appeal. However, the Commission finds that the Minister's staff had not yet made a decision and was still working with Mr. Gallant on possible options.

A pre-condition to the right of appeal is that there be a decision which may be appealed. The Commission therefore finds that it lacks the jurisdiction to hear Mr. Gallant's appeal as the Minister had not made a decision.

Pursuant to Rule 29, the Commission will not hear Mr. Gallant's appeal filed on September 11, 2012.

However, the Commission wishes to make it clear that Mr. Gallant may file a new appeal, pursuant to the requirements of section 28 of the *Planning Act*, if he is dissatisfied by a decision of the Minister. The Commission will expect that any such appealable Ministerial decisions will be ones made in writing and the Commission will also expect that a copy of such a written decision will be attached to a Notice of Appeal form.

NOW THEREFORE, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

IT IS ORDERED THAT

1. **The appeal filed on September 11, 2012 by the Appellant Henry Gallant is hereby dismissed.**

DATED at Charlottetown, Prince Edward Island, this **11th** day of **January, 2013**.

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.

IRAC141x-SFN(2009/11)