



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA12013
Order LA13-02**

IN THE MATTER of an appeal filed by
Brian Chandler of a decision of the
Community of Miltonvale Park.

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 filed by
Brian Chandler of a decision of the
Community of Miltonvale Park.**

Order

On October 11, 2012, the Appellant Brian Chandler (Mr. Chandler) 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. Chandler's Notice of Appeal form made reference to a March 14, 2012 letter from Sandy Foy (Mr. Foy), Development Officer of the Respondent Community of Miltonvale Park and a September 14, 2012 letter from Scott M. Barry (Mr. Barry), solicitor for the Respondent.

On October 15, 2012, Commission staff sent a letter to the parties identifying a jurisdictional matter. The letter invited the parties to make written submissions with respect to the jurisdictional issue.

On November 7, 2012 Mr. Foy filed a written submission via email. Mr. Foy submits on behalf of the Respondent that the decision was made on March 6, 2012 and communicated to Mr. Chandler by way of a letter dated March 14, 2012. Mr. Foy submits that the Respondent's decision was a bylaw enforcement decision and that such decisions are not included in the list of appealable decisions contained in section 28 of the **Planning Act**. Mr. Foy also submits that Mr. Chandler's appeal was filed well beyond the 21 day appeal period set out in section 28 of the **Planning Act**.

On November 6, 2012, Mr. Chandler filed written submissions. Mr. Chandler's submissions deal with the merits of his appeal rather than the jurisdictional issues.

There are two jurisdictional issues before the Commission. The first issue deals with the timing of the appeal. The second issue deals with a determination as to whether the Respondent's decision was a type of decision which could be appealed.

Mr. Chandler's Notice of Appeal was filed on October 11, 2012, several months after the Respondent wrote a decision letter to Mr. Chandler. This is well beyond the 21 day appeal period set out in the **Planning Act**. While it might be said that Mr. Chandler's Notice of Appeal was filed in response to Mr. Barry's September 14, 2012 letter, Mr. Barry's letter was not a decision letter; rather it was a follow-up letter written by the Respondent's solicitor. Further, more than 21 days had passed between the date of Mr. Barry's letter and the filing of Mr. Chandler's appeal. On the basis of the filing date of the Notice of Appeal form alone the Commission does not have the jurisdiction to hear this appeal.

The second issue is the matter of whether the Respondent's decision was the kind of decision which could be appealed to the Commission. The pith and substance of Mr. Foy's March 14, 2012 decision letter is that no person shall commence any development without first applying for, and receiving, a permit from the Respondent's Council. Mr. Foy's letter stated that the trailer was located in contravention of the Respondent's Bylaw and he requested the removal of the trailer within 60 days.

The Commission finds that Mr. Foy's March 14, 2012 decision letter concerns the matter of bylaw enforcement. Subsection 28(1.1) of the **Planning Act** provides a list of municipal decisions which may be appealed to the Commission. These decisions must relate to an application under a bylaw for:

- (i) a building, development or occupancy permit;
- (ii) a preliminary approval of a subdivision;
- (iii) a final approval of a subdivision;
- (iv) an amendment to a zoning map established in a bylaw; or
- (v) an amendment to the text of a bylaw.

In Order LA09-11, *629857 N.B. Inc. et al v. City of Charlottetown*, the Commission noted that the right of appeal was contained in the **Planning Act** and limited to specified matters within said legislation. No right of appeal was present in the **Charlottetown Area Municipalities Act (CAMA)** and decisions made pursuant to **CAMA** alone could not be appealed to the Commission.

The **Municipalities Act**, like **CAMA**, does not have any provisions for an appeal to the Commission. In the absence of an express right of appeal, there is always the potential that an appellant might argue in favour of the existence of an implied right of appeal. However, if the legislature was of the view that a broad menu of municipal decisions could be appealed to the Commission it would be logical to place the appellate provisions within the **Municipalities Act**. This, however, has not occurred in Prince Edward Island.

There is no express right of appeal of a bylaw enforcement decision within the **Planning Act**. The statutory right of appeal is provided for under the **Planning Act**, not the **Municipalities Act**, and therefore the Commission finds that the rights of appeal are limited to those set out in section 28 of the **Planning Act**.

Accordingly, for the above reasons, the Commission finds that it does not have jurisdiction and pursuant to Rule 29 of the Commission's *Rules of Practice and Procedure for Hearings*, the Commission will not hear Mr. Chandler's appeal filed on October 11, 2012.

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

IT IS ORDERED THAT

1. **The appeal filed on October 11, 2012 by the Appellant Brian Chandler 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)