THE ISLAND REGULATORY AND APPEALS COMMISSION
Prince Edward Island
Île-du-Prince-Édouard
CANADA

Docket LA13002
Order LA13-04

IN THE MATTER of an appeal by Elizabeth Schoales of a decision of the City of Charlottetown, dated May 7, 2013.

BEFORE THE COMMISSION
on Tuesday, the 24th day of September, 2013.

Maurice Rodgerson, Chair
Ferne MacPhail, 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 Elizabeth Schoales of a decision of the City of Charlottetown, dated May 7, 2013.

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Appearances & Witnesses

Written submissions filed with the Commission:

1. **For the Appellant Elizabeth Schoales**

   Elizabeth Schoales, representing herself

2. **For the Respondent City of Charlottetown**

   Counsel:

   David W. Hooley, Q.C.
   Nathan Beck

IN THE MATTER of an appeal by Elizabeth Schoales of a decision of the City of Charlottetown, dated May 7, 2013.

Reasons for Order

1. Introduction

[1] The Appellant Elizabeth Schoales (the Appellant) 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 Appellant's Notice of Appeal was dated May 16, 2013 and received by the Commission on the same day.

[2] This appeal concerns a May 7, 2013 decision of the Respondent City of Charlottetown (the Respondent) to reject a request for reconsideration pertaining to the issuance of a building permit for a single family dwelling at 5 Ambrose Street, property number 351775 (the subject property).

[3] By way of background, on October 4, 2011 the Respondent granted subdivision approval thus creating the subject property. Notice was placed on the Respondent's public website of this approval, setting out a deadline for appeal of October 25, 2011. No appeal of this subdivision approval was received by the Commission.

[4] On March 25, 2013 the Developer Randy Robertson applied for a building permit for the subject property. On April 10, 2013, the Respondent issued a building permit to the Developer for a single family dwelling to be constructed on the subject property. The Appellant forwarded a letter dated April 17, 2013 to the City's Planning Department, said letter date stamped received on April 25, 2013. The Appellant's letter requested that the City reconsider the approval of the building permit for the subject property. The Appellant's letter also set out her reasons for this request.

[5] Under subsection 28(1.3) a notice of appeal must be filed with the Commission within 21 days after the date of the decision being appealed. The last day on which an appeal of the building permit could have been filed was May 1, 2013. No appeal of the building permit for the subject property was filed with the Commission by that deadline.

[6] Following the May 16, 2013 receipt of the Appellant's Notice of Appeal, Commission staff wrote to the Appellant and the Respondent identifying a jurisdictional issue and inviting written submissions. A portion of this letter is reproduced below:

Enclosed please find a Notice of Appeal filed by Ms. Schoales and received by the Commission on May 16, 2013. I understand that Ms. Schoales served a copy of her appeal on the City as required under subsection 28(6) of the Planning Act.

This appeal raises a jurisdictional question. I have reviewed the City's online permits approved and it appears that this matter concerns Permit 073-BLD-13 for a new single family dwelling on 5 Ambrose Street. The permit was issued by the City on April 10, 2013 to Randy Robertson.

Prima facie [at first sight] the twenty-one day appeal period expired prior to the filing of this appeal.

Ms. Schoales Notice of Appeal does not, however, appear to appeal the City's decision to issue the building permit. Rather, it addresses the decision by City Council on May 7, 2013 to "reject a request for reconsideration of a building permit".

In a nutshell, the preliminary issue before the Commission is whether the Commission has the jurisdiction to hear an appeal of a City reconsideration decision concerning an earlier City decision to issue a building permit.

Subsection 28(1.1) of the Planning Act reads as follows:

28(1.1) Subject to subsections (1.2) to (1.4), <u>any person who is dissatisfied by a decision of the council of a municipality</u>

> *(a) <u>that is made in respect of an application by</u> the person, or <u>any other person, under a bylaw for</u>*
>
> > *(i) <u>a building</u>, development or occupancy <u>permit</u>,*
> > *(ii) a preliminary approval of a subdivision,*
> > *(iii) a final approval of a subdivision; or*
>
> *(b) to adopt an amendment to a bylaw, including*
>
> > *(i) an amendment to a zoning map established in a bylaw, or*
> > *(ii) an amendment to the text of a bylaw,*

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

<u>Emphasis added</u>.

I would note as well that there may be some relevance to section 23.1 of the Planning Act as it may provide a context for section 28 and such context could be helpful in interpreting the meaning and intent of section 28. Further, section 4.28 of the City's Zoning and Development Bylaw sets out the City's reconsideration process and it may also be helpful in considering this matter.

[7] On June 14, 2013 the Respondent's Record [file] was received by the Commission. On June 21, 2013, the Commission received written submissions from the Appellant and Respondent. On June 25, 2013, the Commission received a supplementary record from the Respondent. On June 25, 2013 the Commission sent a letter to the Developer containing copies of the Notice of Appeal, the written submissions from both the Appellant and Respondent, and the Record and Supplementary Record received from the Respondent. The Developer was invited to file written submissions on the jurisdictional issue. On July 2, 2013 the Commission received, via email, a written rebuttal from the Respondent. This written rebuttal was circulated to the Appellant and Developer. On July 3, 2013, a copy of the Appellant's written submissions were faxed to legal counsel for the Developer.

[8] No written submissions were received from the Developer or his legal counsel.

[9] This order pertains to the issue of jurisdiction only.

2. Discussion

The Appellant's Position

[10] The Appellant's written submissions are reproduced below.

> *Thank you for your letter of 24 May 2013 and for the opportunity to make this submission. I understand from your letter that you have raised the issue as to whether or not the Island Regulatory Appeals Commission (IRAC) has the jurisdiction to hear an appeal of a City reconsideration decision with respect to an earlier City decision to issue a building permit. I understand the matter in question to be whether or not a reconsideration decision made by the City constitutes a decision under s. 28(1.1) of the Planning Act. I also understand that there is no indication that section s.28(1.1) distinguishes or defines two or more different categories of decisions made by a municipality. In response to your letter, you will find as follows the reasons for which I submit that a reconsideration decision does fall under s.28(1.1) and it is therefore within IRAC's jurisdiction to hear this appeal.*
>
> 1. *In accordance with the Island Regulatory and Appeals Commission Act, IRAC has the jurisdiction to hear appeals of decisions made by municipalities that are authorised by the municipalities' bylaws, and to determine whether or not a bylaw is correctly applied when a municipal decision is made. The municipality of Charlottetown's decision to deny a hearing of a request for reconsideration of a building permit was made under s. 4.28 of the Zoning and {Development Bylaw.*
>
> 2. *In accordance with s. 28(1.1) of the Planning Act, IRAC has the jurisdiction to hear appeals related to a decision made by the municipality in respect of a building permit. S. 28(1.1) does not distinguish between two or more categories of decisions, rather the language decision preceded by the indefinite article clearly indicates that s.28(1.1) applies to any decision made by the municipality in respect of a building permit that falls within the relevant bylaw.*

3. *In accordance with s.9 of the Interpretation Act, enactments are to be interpreted in a fair, large and liberal manner in order to achieve their objects. As such, s. 28(1.1) of the Planning Act is understood to cover any decision made by a municipality regarding a building permit governed by a bylaw. S. 28(1.1) does not restrict IRAC's jurisdiction to a specific category of decision made in respect of building permits, nor exclude a specific category of decision.*

4. *IRAC has previously interpreted statutes in their ordinary rather than literal sense, and within the object of the statute, as described in Maritime Electric v. Summers ide (City of) 2011 PECA 13 (para. 17-8). In order to uphold the objectives of the Planning Act, a decision made by a municipality in respect of a building permit under s. 28(1.1) of the Planning Act must be read as being inclusive, rather than exclusive, intended to cover any decision made by a municipality that relates to a building permit under the relevant bylaw.*

5. *IRAC has previously clarified that its jurisdiction is broad in considering administrative decisions made by municipalities (LAII-05, para. 18-20). It has previously clarified that s.28(1.1) of the Planning Act serves to codify the spectrum of its jurisdiction, rather than limit or increase it. (LAII-05 para. 24). In accordance with IRAC's determination ·of its jurisdiction in LA11-05, decisions under IRAC's jurisdiction include a range of decisions related to building permits, made by a wide range of decision makers.*

For the above reasons, I submit that the City of Charlottetown's decision to deny a hearing of a request for reconsideration of a building permit issued under the authority· of the Zoning and Development Bylaw meets the criteria of a decision made in respect of a building permit under s. 28(1.1) of the Planning Act. There is no reason to distinguish or exclude this decision from the purview of s.28(1.1). As such, I submit that an appeal of this decision falls under the jurisdiction of IRAC.

The Respondent's Position

[11] Legal Counsel for the Respondent filed an extensive written submission with the Commission. Following receipt of the Appellant's submission, Counsel for the Respondent filed brief rebuttal submissions which are reproduced below.

Following is a very brief rebuttal of Ms. Schoales submission for the Commission's consideration.

Section 9 of the Interpretation Act, and the appellant's argument in this regard has some superficial merit. However, a proper application of the Interpretation Act supports the City's submissions. The key wording to focus on in Section 9 is "as best ensures the attainment of its ***objects****" – in the City's submission, limiting the types of decisions of Council that can be appealed accomplishes this goal.*

The objects of the Planning Act are set out as follows:

2. The objects of this Act are

> *(a)* ***to provide for efficient planning at the provincial and municipal level****;*
>
> *(b) to encourage the orderly and efficient development of public services;*
>
> *(c) to protect the unique environment of the province;*
>
> *(d)* ***to provide effective means for resolving conflicts respecting land use****;*
>
> *(e)* ***to provide the opportunity for public participation in the planning process****.*

Subsections (a), (d) and (e) are the most relevant to this appeal. Subsections (a) and (d) support the City's position; and, arguably perhaps, Subsection (e) supports the Appellant's. Overall, however, the object of providing "efficient planning" and "effective means for resolving conflicts" ought reasonably outweigh the object of "public participation". It is <u>not</u> "efficient" or "effective" to infer that Section 28 of the Act encompasses not only decisions denying or granting building permit applications, - but also "respecting" any later decisions (i.e. an internal reconsideration process) that are in any way related, however remotely. The Act balances an applicant and a decision makers ability to adjudicate a land use matter efficiently and effectively with an affected person's right to challenge a decision – but in a timely manner. The City's initial Submission addresses the ways and means by which the Act balances interested parties rights and obligations. In this instance, the City published notice of both the subdivision approval and the building permit in accordance with Section 23.1; Ms. Schoales appears to have been aware of this and her appeal date(s), but neglected to appeal in a timely manner. It is simply not "effective" nor "efficient" to allow her to do indirectly that which she cannot do directly.

To interpret the Planning Act in the manner Ms. Schoales contends is to go against its stated objects and purposes. It may be in keeping with the "public participation" aspect in Subsection (e), but it contradicts Subsections (a) and (d); and, overall it does not "best ensure the attainment of its objects".

Other than Ms. Schoales Section 9 of the Interpretation Act argument, there are a couple of other points and references the Appellant has raised that we will briefly address:

In paragraph one of her submissions, the Appellant references the IRAC Act as authority - stating the Commission has jurisdiction to hear certain appeals of decisions made by municipalities. After reviewing the Act, we cannot see what provision(s) she is basing this argument upon. Perhaps the commission can ask her to clarify what sections she is referring to.

Regarding paragraph two, whether the Act should read: "<u>a</u> decision"; or "<u>any</u> decision", is irrelevant to the current appeal. The decision still needs to be one made in respect of an <u>application</u> by a person for a (building) permit.

As an aside/observation, including the word "application" in Section 28(1.1) is a further indication the Legislature intended to limit the scope of this section. Excluding this word expands IRAC's jurisdiction, while including it imposes a limitation. For example, "in respect of a building permit" is much broader than "in respect of an application for a building permit". We note that the Appellant has left out the word "application" in a number of her references (see, for example, paras 2, 3, 4).

Regarding paragraphs 3 and 4, see our earlier comments.

Regarding paragraph 5, the Appellant's refers to para 24 of the Wanda Wood decision when she states, "the Planning Act serves to codify the spectrum of its jurisdiction, rather than limit or increase it". The paragraph the Appellant refers to discusses the amendment history of the section and, in our interpretation, is stating that the current wording is meant to clarify exactly what the section covers. The Appellant is correct, the latest amendment doesn't limit the jurisdiction of the Commission, rather it clarifies it further. To me, this supports the City's submissions with respect to "implied exclusion". The Legislature has had ample opportunity to review and re-review this section and fine-tune the wording. If they meant to include the type of decision currently under appeal, you would think they would have specifically said so.

3. Findings

[12] After a careful review of the evidence, the submissions of the parties, and the applicable law, it is the decision of the Commission that it does not have jurisdiction to hear this appeal. The reasons for the Commission's decision follow.

[13] Subsection 28(1.1) of the ***Planning Act***, reproduced in the Introduction of these reasons, sets out the right to appeal certain municipal decisions. However, the right of appeal does not extend to all municipal decisions; rather, it is limited to certain specified land use planning decisions. In the present appeal, the following portion of subsection 28(1.1) is particularly germane:

> *… any person who is dissatisfied by a decision of the council of a municipality*
>
> > *(a) that is made in respect of an application by the person, or any other person, under a bylaw for*
> >
> > > *(i) a building, development or occupancy permit,*
>
> *…*
>
> *may appeal the decision to the Commission by filing with the Commission a notice of appeal.*

[14] Subsection 23.1 of the ***Planning Act*** sets out the notice requirements for appealable decisions. Section 23.1 reads as follows:

> *23.1 (1) Where*

> *(a) the Minister makes a decision of a type described in subsection 28(1); or*
>
> *(b) the council of a municipality makes a decision of a type described in subsection 28(1.1)*
>
> *the Minister or council, as the case may be, shall, within seven days of the date the decision is made, cause a written notice of the decision to be posted*
>
> *(c) on an Internet website accessible to the public; and*
>
> *(d) at a location accessible to the public during business hours,*
>
> *(i) if the decision is made by the Minister, in*
>
> *(A) a provincial government office in Charlottetown, and*
>
> *(B) a provincial government office in the county where the land that is the subject of the decision is located, or*
>
> *(ii) if the decision is made by the council of a municipality, in that municipality.*
>
> *Contents of notice*
>
> *(2) A notice of a decision that is required to be posted under subsection (1) shall contain*
>
> *(a) a description of the land that is the subject of the decision;*
>
> *(b) a description of the nature of the application in respect of which the decision is made;*
>
> *(c) the date of the decision;*
>
> *(d) the date on which the right to appeal the decision under section 28 expires; and*
>
> *(e) the phone number of a person or an office at which the public may obtain more information about the decision. 2006,c.15,s.1*.

[15] The notice requirements set out in section 23.1 above specify forms of a general notice to the public. Specific notice is not mentioned and thus is not required. In *Booth and Peake* v. *IRAC* 2004 PESCAD 18, a decision which pre-dated section 23.1, Justice Webber discussed the need for notice to ensure that a right of appeal is a real, rather than merely an illusory right:

> *[20] All these cases express a concern about ensuring that a right of appeal is a real rather than an illusory right.*

> *[21] I find that* ***Re Hache and Minister of Municipal Affairs*** *(1969), 2 D.L.R. (3d) 186 (NBSCAD) applies in this province and the appeal period will begin to run when an appellant has received notice of the decision. This may be specific notice or general notice through posting or publication or by some other means. The bylaws of a community could establish the type of public notice that will be given upon the issuance of a building permit, e.g. publication in a newspaper or newsletter, posting in the community office. If the public can become aware of the decision by way of this public process then the process will likely satisfy the requirements of notice.*
>
> *…*
>
> *[23] Such notice of a decision is essential to give meaning to the appeal process. If this were not the case, the right to appeal would be illusory, rendering the statutory right of appeal meaningless. It would not be reasonable to interpret the statute in a way that renders a given right meaningless. The law does not specify the manner in which notice to the public must be given but does state that there must be some public notice of a decision - or specific notice to persons affected by the development - before an appeal period can be said to run.*

[16] Section 2.9 of the Respondent's Zoning and Development Bylaw (the Bylaw) sets out the notice requirements for building and development permits:

> ***2.9 POSTING OF BUILDING PERMITS***
>
> *The City Shall post Building and Development Permits, subdivision/consolidation, and demolition permits that have been issued by the City on their webpage and this Shall be deemed to be notification under the Bylaw of a permit being issued. The website posting shall:*
> *.1 be updated at least every second week;*
> *.2 state the parcel number, property address and type of work approved**.***
> *At least once every six (6) months the City will place an advertisement in the local newspaper indicating that the permits and approvals are posted on the City website.*

[17] As is the case with section 23.1 of the ***Planning Act***, section 2.9 of the Bylaw requires only general notice to the public.

[18] Based on the documentation contained in the Respondent's Record and Supplementary Record, the Commission finds that the Respondent followed the notice requirements set out in section 23.1 of the ***Planning Act*** and section 2.9 of the Respondent's Bylaw.

[19] While section 28 of the ***Planning Act*** provides a right of appeal, there is another option available to a person who is dissatisfied with certain kinds of planning decisions made by the Respondent. Section 4.28 of the Respondent's Bylaw sets out the process for seeking a reconsideration. Section 4.28 reads as follows.

4.28 RECONSIDERATION

.1 If a permit or approval under this By-law is granted, not granted, or granted subject to conditions the applicant or an aggrieved Person feels are unjustified or unwarranted under this By-law, the applicant or an aggrieved Person May seek a reconsideration before Council.

.2 An aggrieved Person or an applicant wishing to launch a reconsideration Shall make known their intention to do so and the grounds or reasons as per subsection 3 below by written letter delivered to the Development Officer within twenty-one (21) calendar days of the initial decision.

.3 Council May review, rescind, change, Alter or vary any order or decision made by the Development Officer or Council, and Council May reconsider any application under this section provided that:

(a) new material facts or evidence not available at the time of the initial order or decision have come to light;
(b) a material change of circumstances has occurred since the initial order or decision; or
(c) there is a clear doubt as to the correctness of the order or decision in the first instance.

.4 A letter Shall be sent by ordinary mail explaining the valid reconsideration request to all Affected Property Owners within 100 m (328.1 ft.) of the boundaries of the subject Lot identifying the subject Lot.

.5 Council Shall hear any proper request for reconsideration of a decision under this section. Council Shall give all interested Persons a full opportunity to be heard and make a determination on a request for reconsideration.

.6 The City is not liable for any construction commenced prior to the lapse of the twenty-one (21) calendar day appeal period.

.7 The City Shall not consider an application for reconsideration if, at the same time, there is an appeal filed with the Island Regulatory and Appeals Commission; but the City May proceed with reconsideration if the applicant has instructed the Island Regulatory and Appeals Commission in writing to hold this appeal in abeyance, and the Commission has agreed in writing to hold their appeal until the appellant has exhausted the recourse of reconsideration with the City.

[20] In paragraph 16 of the Respondent's written submissions, Counsel for the Respondent wrote:

16. The building permit was issued on April 10, 2013. The Appellant, being dissatisfied with that decision, had several "appeal" or "review" options available to her at that time:

i. She could file a notice of appeal with the Commission under s. 28 of the Planning Act within 21 days of the City's decision to issue the permit;

ii. She could request a reconsideration under s. 4.28 of the Bylaw within 21 days of the impugned decision;

iii. *In order to preserve her right of appeal to the Commission in the event her reconsideration request was unsuccessful, she could have both filed an appeal to the Commission under section 28 of the Planning Act within the prescribed 21 days; and, filed a request for reconsideration with the City under section 4.28 of its Bylaw. In this scenario, she could have availed herself of section 4.28.7 which would have allowed her IRAC appeal to be placed in abeyance while she pursued a reconsideration. If her reconsideration request failed, then she would be at liberty to pursue her appeal to IRAC.*

[21] The Commission finds that a potential appellant does in fact have three "options" when dissatisfied with a permit or approval granted, not granted or granted with conditions under the Respondent's Bylaw. Appealing to the Commission does not preclude a request for reconsideration as section 4.28.7 of the Respondent's Bylaw allows an appellant to file an appeal with the Commission and also file a request for reconsideration with the City as long as the appellant asks that the Commission hold the appeal in abeyance pending the outcome of the reconsideration request. By doing so, an appellant can pursue a request for reconsideration without having to give up his or her statutory right of appeal. Indeed, the Commission is familiar with this "option" as is has been commonly used by appellants in the past.

[22] The Appellant in the present matter takes the position that the wording of section 28(1.1) in effect allows the Commission to hear an appeal of a reconsideration decision made in respect of the issuance of a building permit. The Respondent submits that such wording does not give the Commission such jurisdiction, especially as the actual wording is "a decision of the council of a municipality that is made in respect of an application by the person, or any other person, under a bylaw for (i) a building … permit".

[23] The wording chosen by the legislature in section 28(1.1) may be thought of by some as vague while others see the wisdom of flexible wording. The Commission has frequently considered section 9 of the ***Interpretation Act*** for guidance:

> *9. Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects. 1981,c.18,s.9.*

[24] For some enactments, the objects have to be gleaned from a careful reading and may be open to debate. However, the ***Planning Act*** very prudently specifies its objects in section 2:

> *2. The objects of this Act are*
>
> *(a) to provide for efficient planning at the provincial and municipal level;*
>
> *(b) to encourage the orderly and efficient development of public services;*
>
> *(c) to protect the unique environment of the province;*
>
> *(d) to provide effective means for resolving conflicts respecting land use;*

> *(e) to provide the opportunity for public participation in the planning process. 1988,c.4,s.2.*

[25] Within the context of planning appeals, all of the above objects can be important. However, in this particular matter, object clauses (a), (d) and (e) are particularly relevant.

[26] As Justice Webber noted in *Booth and Peake* cited earlier, a right of appeal needs to be "a real rather than an illusory right". In order for the Commission to ensure its part in providing an effective means for resolving conflicts respecting land use, the right of appeal must be freely exercised without fear, intimidation, or outside interference. For the record, in the present matter there is not even a hint of a suggestion, let alone any shred of evidence, that either the Respondent or the Developer in any way sought to interfere with the Appellant's right to appeal the building permit issued on April 10, 2013. The Appellant, or any other dissatisfied person was free to have filed an appeal of that building permit on or before the statutory 21 day deadline of May 1, 2013. Had such an appeal been filed, the matter would have proceeded to a public hearing before the Commission.

[27] However, no appeal was filed by May 1, 2013. The statutory right of appeal of the building permit had expired, and the Respondent, and especially the Developer, were entitled to conclude that the building permit no longer could be challenged and the Developer could proceed to build in confidence according to the requirements of the Bylaw and following all applicable codes, laws and bylaws.

[28] The right of appeal is thus to be maintained in a balance; it provides a right, subject to a time limitation. The interests of all parties must be considered. Fairness is due to the Appellant, but fairness is equally due to the Respondent and the Developer. When the time limitation has expired, and absent any breach of statutory or common law notice requirements and absent any fettering of the freedom to file an appeal, fairness then dictates that the right of appeal has ended and the permit be free from subsequent challenge. Such approach provides for efficient and certain planning while allowing an effective means, within a 21 day window of opportunity, for commencing a process to resolve conflict within the sphere of land use planning.

[29] In the present matter, the statutory notice requirements were met. The freedom to file an appeal was unfettered. The Appellant had three options as explained earlier and chose a reconsideration without filing an appeal. In the present matter, the Commission finds that allowing an appeal of the reconsideration decision would be tantamount to unfairly circumventing the appeal process pertaining to the decision to issue the building permit.

[30] Accordingly, the Commission finds that it does not have the jurisdiction to hear this appeal.

[31] However, the Commission wishes to be clear that subsection 28(1.1) is to be construed in a remedial way. Where a decision maker or a developer could be objectively seen as misleading, confusing, intimidating or otherwise interfering with an appellant's right to appeal, the flexible wording found in subsection 28(1.1) shall be interpreted to restore the balance of rights.

4. Disposition

[32] An Order stating that the Commission has no jurisdiction to hear this appeal will be issued.

IN THE MATTER of an appeal by Elizabeth Schoales of a decision of the City of Charlottetown, dated May 7, 2013.

Order

WHEREAS the Appellant Elizabeth Schoales appealed a decision of the Respondent City of Charlottetown dated May 7, 2013;

AND WHEREAS Commission staff identified a jurisdictional question and the Commission invited all parties to this matter to file written submissions with respect to the jurisdictional issue;

AND WHEREAS written submissions were received from the Appellant and from legal counsel for the Respondent;

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 Commission does not have the jurisdiction to hear this appeal.**

DATED at Charlottetown, Prince Edward Island, this 24th day of September, 2013.

BY THE COMMISSION:

(Sgd.) Maurice Rodgerson
Maurice Rodgerson, Chair

(Sgd.) Ferne MacPhail
Ferne MacPhail, 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)