



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA13004  
Order LA13-06**

**IN THE MATTER** of an appeal by Roma  
Dingwell of a decision of the Minister of  
Finance, Energy and Municipal Affairs, dated  
May 28, 2013.

**BEFORE THE COMMISSION**  
on Thursday, the 31st day of October, 2013.

John Broderick, Commissioner  
Peter McCloskey, Commissioner  
Jean Tingley, Commissioner

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# Order

Compared and Certified a True Copy

A handwritten signature in blue ink, appearing to read "Philip J. Rafuse", is written over a horizontal line.

Philip J. Rafuse  
Appeals Administrator  
Corporate Services and Appeals Division

**IN THE MATTER** of an appeal by Roma  
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**IN THE MATTER** of an appeal by Roma Dingwell of a decision of the Minister of Finance, Energy and Municipal Affairs, dated May 28, 2013.

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# Appearances & Witnesses

1. **For the Appellant Roma Dingwell**  
  
Roma Dingwell
  
2. **For the Respondent Minister of Finance, Energy and Municipal Affairs**  
  
Alan Robison  
Eugene Lloyd

**IN THE MATTER** of an appeal by Roma Dingwell of a decision of the Minister of Finance, Energy and Municipal Affairs, dated May 28, 2013.

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# Reasons for Order

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## 1. Introduction

[1] The Appellant Roma Dingwell (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 actually received by the Commission on June 21, 2013, which is beyond the 21 day appeal period set out in the Planning Act. However, the Appellant had inadvertently filed her appeal on or about June 17, 2013 with staff of the Respondent Minister of Finance, Energy and Municipal Affairs (the Respondent). Accordingly, the Commission deems her appeal to have been filed on June 17, 2013 which is within the statutory appeal period.

[2] This appeal concerns a May 28, 2013 decision of the Respondent to deny the Appellant's application for subdivision of property number 785048 located in Anglo Rustico.

[3] The hearing was initially scheduled for August 26, 2013. At the request of both parties, the hearing was adjourned to September 20, 2013. The hearing of the appeal then proceeded on September 20, 2013.

## 2. Discussion

### The Appellant's Position

[4] The Appellant testified that the property originally was three approved parcels. These parcels were then consolidated into two parcels by a previous owner. She purchased one parcel in 1991 and then purchased the second parcel in 1992. She then consolidated these two parcels shortly before building a dwelling on the parcel in 1994. She now wishes to subdivide the parcel. She submits that by not being able to subdivide, the investment value of her property is diminished.

[5] The Appellant requests that the Commission allow her property to be subdivided.

### The Respondent's Position

[6] The Respondent submitted that it followed the **Planning Act** and Planning Act Subdivision and Development Regulations. While the legislation allows the Respondent to grant as much as a ten percent variance, a subdivision of the Appellant's property would require an almost fifty percent variance. Simply put, if the Appellant's property were subdivided each portion would be far too small to allow development under present day planning and environmental regulations. The following email from the Respondent's staff to the Appellant summarizes the Respondent's position in this matter:

*Your appeal request must be made to the Island Regulatory and Appeals Commission directly, we have nothing to do with that process.*

*As I mentioned before, the parcel you are trying to create is far too small to meet today's regulations. Even if you had kept them as 3 separate lots, they still may have been difficult to develop based on today's Buffer Zone requirements and erosion rates. I understand your frustration, however, your proposal would require an almost 50% variance on the lot size requirement under our regulations (Section 23.(2)- minimum 150 foot diameter circle must be possible within the boundaries of the lot excluding the Buffer zone) and it doesn't appear as if our Department would entertain such a large variance. The regulations do change periodically, so trying to predict what may happen in the future is difficult. In this case, the lots appear to have been merged together in 1992; the current lot size requirements have been in place since June, 1993. Also, the required Buffer Zone setback came in around that time as well which significantly reduces the amount of developable area.*

*You are well within your rights to appeal this decision, however, we feel that based on the current regulations, your proposal cannot be permitted. We have no choice but to utilize the current subdivision regulations as they are written.*

[7] The Respondent requests that the Commission deny the appeal and uphold the Respondent's decision to deny the Appellant's application for subdivision of property number 785048.

## 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 deny this appeal. The reasons for the Commission's decision follow.

[9] The Appellant seeks a subdivision of her property. However, any such subdivision must follow the law, in this case the Planning Act Subdivision and Development Regulations. The plan of subdivision proposed by the Appellant does not meet the physical requirements set out in the Regulations. Clause 1.(w.1) of the Regulations defines variance:

*(w.1) "variance" means a limited relaxation from the provisions of these regulations with respect to setbacks, area, height or size of a structure where, owing to the conditions peculiar to the parcel, and not the result of actions of the applicant, a literal enforcement of the regulations would result in unnecessary or undue hardship;*

[10] Section 10 of the Regulations does provide for the granting of a variance:

<i>Variance</i>	<p><i>10. (1) A variance from the provisions of these regulations may be granted where</i></p> <p><i>(a) the variance does not violate the intent and purpose of the regulations;</i></p> <p><i>(b) the variance is for a unique circumstance and is not a difficulty common to properties in the area; and</i></p> <p><i>(c) the circumstance for which the variance is requested is not the result of an intentional disregard for the requirements of the regulations.</i></p>
<i>Variance of up to 10%</i>	<p><i>(2) A variance of up to 10% from the provisions of these regulations may be granted where</i></p> <p><i>(a) the variance meets the provisions of subsection (1); and</i></p> <p><i>(b) there is, in the opinion of the Minister, no reasonable alternative available.</i></p>
<i>Variance of more than 10%</i>	<p><i>(3) A variance of more than 10% from the provisions of these regulations may be granted where</i></p> <p><i>(a) the variance meets the provisions of subsection (1);</i></p> <p><i>(b) there is, in the opinion of the Minister, no reasonable alternative available.</i></p> <p><i>(c) Revoked by EC386/04.</i></p>
<i>No variance for sight distance</i>	<p><i>(4) Notwithstanding subsections (1), (2) and (3), no variance from the sight distance standards set out in the Highway Access Regulations shall be granted. (EC693/00; 386/04)</i></p>

[11] It is the evidence of the Respondent that the Appellant's subdivision proposal would require an almost 50% variance with respect to lot size. The Commission finds that an almost 50% variance would extend well beyond the meaning of a "limited relaxation" from the requirements of the Regulations and would also exceed a reasonable interpretation of "up to 10%" and "more than 10%". In addition, it could also be said that such a large variance would violate the intent and purpose of the Regulations. Accordingly, the Commission finds that the Respondent's decision was made pursuant to the requirements of the Regulations.

[12] For the above reasons, the appeal is denied.

## **4. Disposition**

[13] An Order denying this appeal follows.

**IN THE MATTER** of an appeal by Roma Dingwell of a decision of the Minister of Finance, Energy and Municipal Affairs, dated May 28, 2013.

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# Order

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**WHEREAS** the Appellant Roma Dingwell (the Appellant) appealed a decision of the Respondent Minister of Finance, Energy and Municipal Affairs (the Minister), dated May 28, 2013;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on September 20, 2013 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 appeal is hereby denied.

**DATED** at Charlottetown, Prince Edward Island, this 31st day of October, 2013.

**BY THE COMMISSION:**

\_\_\_\_\_  
(sgd.) John Broderick

John Broderick, Commissioner

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(sgd.) Peter McCloskey

Peter McCloskey, Commissioner

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(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)