



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA13006  
Order LA13-10**

**IN THE MATTER** of an appeal by Gary  
McLure of two decisions of the Minister of  
Finance, Energy and Municipal Affairs, dated  
June 26, 2013 and July 3, 2013.

**BEFORE THE COMMISSION**  
on Wednesday, the 11th day of December,  
2013.

Maurice Rodgerson, Chair  
Ferne MacPhail, Commissioner  
Peter McCloskey, 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 Gary  
McLure of two decisions of the Minister of  
Finance, Energy and Municipal Affairs, dated  
June 26, 2013 and July 3, 2013.

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**IN THE MATTER** of an appeal by Gary McLure of two decisions of the Minister of Finance, Energy and Municipal Affairs, dated June 26, 2013 and July 3, 2013.

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# Appearances & Witnesses

**1. For the Appellant**

**Gary McLure**

**Witnesses:**

**Chris Palmer  
Sandy Foy**

**2. For the Respondent**

**Alan Robison  
Eugene Lloyd**

**3. For the Developer**

**John Mantha  
David Wu**

**4. Members of the Public**

**Bonnie Mitchell  
Dario Zannier**

**IN THE MATTER** of an appeal by Gary McLure of two decisions of the Minister of Finance, Energy and Municipal Affairs, dated June 26, 2013 and July 3, 2013.

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# Reasons for Order

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## 1. Introduction

[1] The Appellant Gary McLure (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*).

[2] On July 23, 2013, the Appellant filed his Notice of Appeal. On the Notice of Appeal form, the Appellant described the decision appealed as “*Permit No. C-2013-2060 Sub. Div. Plan #10252B PID1008978*”. The Appellant cited the grounds for his appeal as “*The approval of a change of use parcel 1008985 [Commission note: changed to 1008986 see below] see attached page 1 and 2*”.

[3] On August 29, 2013, the Commission received a copy of the file from the Respondent Minister of Finance, Energy and Municipal Affairs (the Respondent). Also on August 29, 2013, the Commission received from the Appellant an amendment to his Notice of Appeal. This amendment changed all references (on both the Notice of Appeal form and the added attachments) to parcel number 1008985 to **1008986** and changed all references (on the attachments – the reference on the Notice of Appeal form was correct) to parcel number 1008998 to **1008978**.

[4] On October 1, 2013, the Appellant filed further documents including highlighted excerpts from the Planning Act Subdivision and Development Regulations, five plans of subdivision and a deed relating to the fifth plan of subdivision.

[5] The Commission attempted to serve various letters and packages of documents on the Developers Tian Fei and David Wu (the Developers). Some of these packages and letters were returned by Canada Post and Purolator.

[6] On October 9, 2013, the hearing of the appeal commenced. At the hearing, two preliminary matters were raised.

### **Preliminary Matter #1**

[7] Sandy Foy, a member of the public, requested intervener status. The Commission heard from Mr. Foy and the parties and determined that Mr. Foy could testify and present documents as a member of the public or as a witness for a party, but the Commission denied him intervener status. Mr. Foy was ultimately called as a witness by the Appellant.

### **Preliminary Matter #2**

[8] The Respondent's representative sought clarification as to which of the Respondent's decisions were the subject of the appeal. The decisions identified were a June 26, 2013 decision of the Respondent to grant preliminary approval to the Developer David Wu's application to append parcel number 1008986 (Lot06-2, Plan #52120A) to parcel number 1008978 (Plan #10252B) and a July 3, 2013 Development Permit C-2013-2060 issued to the Developer Tian Fei to renovate and relocate existing rental cottages and locate 9 additional rental cottages on parcel number 1008978, Sub. Plan #10252B and located at 31 Blue Spruces Way in the community of Hampton.

[9] The Commission determined that it would hear an appeal of the July 3, 2013 decision as the Appellant's Notice of Appeal was filed within the 21 day appeal period. The Commission also determined that it would not hear an appeal of the June 26, 2013 decision as the Appellant's Notice of Appeal was filed beyond the 21 day appeal period set out in section 28 of the ***Planning Act***.

[10] The Commission then proceeded to hear testimony from witnesses and members of the public as well as oral submissions from the representatives of the three parties.

[11] Following the hearing, the Commission commenced its deliberations. An issue of concern was identified. The Commission authorized the Commission's Appeals Administrator to inquire into the issue, invite a response and establish a deadline for any such response, with deliberation to reconvene following such deadline.

## **2. Discussion**

[12] The Commission's issue of concern is identified and explained in detail in the following letter from the Commission's Appeals Administrator. Personal addresses have been removed for privacy reasons.



October 10, 2013

Gary McLure  
[REDACTED]

Alan Robison  
Safety Standards Chief  
Environment, Labour and Justice  
31 Gordon Drive  
PO Box 2000  
Charlottetown PE C1A 7N8

MANTHA LAND SURVEYS INC.  
John Mantha, P.E.I.L.S.  
[REDACTED]

Dear Parties:

Appeal #LA13006 – Gary McLure v. Minister of Finance, Energy & Municipal Affairs

As Mr. Mantha represented the Developers at the October 9, 2013 hearing, we are considering him as the contact person for the Developers with respect to this appeal.

During the Commission's post-hearing deliberations, the panel became concerned over a matter of considerable importance. Specifically, the Commission is concerned that the Minister may have failed to provide section 23.1 notice of the June 26, 2013 decision. Commission staff and the panel Chair searched "PEI Planning Decisions" <http://bl3.baselinegeo.com/pns/view.aspx> and could not locate the June 26, 2013 decision of the Minister.

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National Bank Tower, Suite 501, 134 Kent St., P.O. Box 577, Charlottetown, P.E.I., Canada, C1A 7L1  
Tel 902-892-3501 Toll-free 1-800-501-6268 Fax 902-566-4076 Website: [www.irac.pe.ca](http://www.irac.pe.ca)

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Section 23.1 of the *Planning Act* reads:

Notice of  
 decision of  
 Minister or  
 council

**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

Emphasis added by the Commission.

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

Appeals from decisions of Minister      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

(a) a development permit;

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

(c) a final approval of a subdivision;

(d) the approval of a change of use; or

(e) any other authorization or approval that the Minister may grant or issue under the regulations.

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

Section 12 of the Island Regulatory and Appeals Commission Act reads as follows:

Review, etc. of decisions      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. 1991, c. 18, s. 12.

At the hearing of the appeal on October 9, 2013, the Commission determined, as a preliminary matter, that it did not have the jurisdiction to hear an appeal of the June 26, 2013 decision because the appeal had not been filed within 21 days of said decision. However, the Commission's determination was predicated on the Minister having followed the notice requirements set out in section 23.1 of the *Planning Act*. In the absence of statutory notice, the common law notice as set out in *Booth and Peake v. Island Regulatory and Appeals Commission* 2004 PESCAD 18 applies:

<http://www.gov.pe.ca/courts/supreme/reasons/1017.pdf>

*Prima facie* [at first sight] it appears that the Minister may not have followed the requirements set out in section 23.1. The Commission wishes to provide the Minister with an opportunity to respond to this concern. Any such response shall be addressed to myself on behalf of the Commission and copied to the other parties, or their representatives. The deadline for this response is **November 1, 2013**.

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[14] The Commission received the following response from legal counsel for the Respondent:



Prince Edward Island Île-du-Prince-Édouard

Environment,  
Labour and Justice  
Legal Services  
PO Box 2000  
Charlottetown PE  
Canada C1A 7N8

Environnement,  
Travail et Justice  
Services légaux  
C.P. 2000  
Charlottetown PE  
Canada C1A 7N8

Reply Attention of: Robert MacNevin  
Our File Reference: 17352

October 30, 2013

Philip Rafuse  
The Island Regulatory and Appeals Commission  
National Bank Tower, Suite 501  
134 Kent Street, PO Box 577  
Charlottetown, PE C1A 7L1

Dear Mr. Rafuse:

**Re: Gary McLure v. Minister of Finance, Energy & Municipal Affairs  
Appeal #LA13006**

I represent the Minister of Finance, Energy and Municipal Affairs in relation to this matter. This is in response to your October 10, 2013 letter regarding this matter.

It appears that due to a clerical error, notice of the June 26, 2013, decision of the Minister was posted under a different PID# (the parent parcel number) on the Department's website. Nevertheless, I am told that this decision was in fact discussed and addressed at the hearing by the parties, and it is my position that there was no prejudice resulting as a result of that clerical error, and therefore it is not an ongoing concern.

If you have any further questions, please direct them to me. Thank you.

Yours truly,

for: Robert MacNevin  
Departmental Solicitor

RM/st

c: Client

### 3. Findings

[15] The Commission finds that it will re-hear this appeal pursuant to section 12 of the ***Island Regulatory and Appeals Commission Act*** which 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. 1991,c.18,s.12.*

[16] While legal counsel for the Respondent suggests that the June 26, 2013 decision was merely entered under the wrong property number, the Commission has viewed and reviewed “PEI Planning Decisions” numerous times looking for all of the Respondent’s decisions pertaining to the community of Hampton, going back as far as November 2008 [some 34 entries as of early December 2013 - see the screenshot reproduced earlier] and can find no listing of any decision made by the Minister on June 26, 2013 pertaining to the community of Hampton. It is not a matter of a mere clerical error posting a decision under the wrong parcel number: the decision was not posted at all on the website.

[17] The Commission’s search of “PEI Planning Decisions” was made overly difficult as that website does not permit a public search by parcel number. The public would face the very same difficulties in searching this website as the Commission.

[18] Section 23.1 of the ***Planning Act*** obligates municipal decision makers and the Respondent to provide notice of planning decisions to the public. Without notice, a right of appeal is an empty right. The Appellant filed his Notice of Appeal within 21 days of the only relevant decision which was posted on “PEI Planning Decisions”. The Commission finds that where a decision maker fails to adhere to the statutory obligation set out in section 23.1 of the ***Planning Act***, the common law notice requirement will apply so that the 21 day appeal period will commence when an appellant learns of the decision.

[19] The Commission hereby rescinds its oral decision made on October 9, 2013 with respect to the appeal status of the June 26, 2013 decision of the Respondent.

[20] In the present appeal, the June 26, 2013 decision appears *prima facie* [at first sight] to be a necessary pre-condition to the July 3, 2013 decision. Both decisions are very much germane to the issues raised in the Appellant’s Notice of Appeal and attachments. In order to provide a fair hearing to all parties, it is essential that the hearing reconvene so that the parties may call evidence and make submissions pertaining to both decisions.

[21] The Commission will therefore reconvene the hearing of this appeal and will instruct Commission staff to coordinate such additional hearing days as may be necessary to allow for further evidence and submissions in order to allow for a full and complete appeal hearing pertaining to both the June 26 and July 3 decisions.

[22] Having scrutinized “PEI Planning Decisions” in considerable depth, the Commission is also concerned that the Respondent may not be paying full attention to clauses 23.1(2)(d) and (e) which require a specified appeal expiry date and also strongly implies that the Respondent will provide more information about a decision when requested to do so.

## **4. Disposition**

[23] An Order rescinding the Commission’s oral decision made on October 9, 2013 with respect to the appeal status of the June 26, 2013 decision of the Respondent and reconvening the appeal hearing follows.

**IN THE MATTER** of an appeal by Gary McLure of two decisions of the Minister of Finance, Energy and Municipal Affairs, dated June 26, 2013 and July 3, 2013.

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# Order

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**WHEREAS** the Appellant Gary McLure (the Appellant) on July 23, 2013 appealed a decision of the Respondent Minister of Finance, Energy and Municipal Affairs (the Respondent) dated July 3, 2013 and his appeal also pertained to a decision of the Minister dated June 26, 2013;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on October 9, 2013 after due public notice;

**AND WHEREAS** following the hearing the Commission determined that the Respondent had not complied with the requirements of section 23.1 of the *Planning Act* with respect to the June 26, 2013 decision;

**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's oral decision made on October 9, 2013, with respect to the appeal status of the Respondent's June 26, 2013 decision, is hereby rescinded.
2. The appeal hearing shall be reconvened at the earliest suitable date for the involved parties.

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

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *Maurice Rodgerson*

Maurice Rodgerson, Chair

\_\_\_\_\_  
(Sgd.) *Ferne MacPhail*

Ferne MacPhail, Commissioner

\_\_\_\_\_  
(Sgd.) *Peter McCloskey*

Peter McCloskey, 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)