



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA13008  
Order LA14-01**

**IN THE MATTER** of an appeal by Ray  
Schill et al of a decision of the Minister of  
Finance, Energy and Municipal Affairs, dated  
August 12, 2013.

**BEFORE THE COMMISSION**  
on Thursday, the 30th day of January, 2014.

Maurice Rodgerson, Chair  
Leonard Gallant, 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 Ray Schill et al of a decision of the Minister of Finance, Energy and Municipal Affairs, dated August 12, 2013.

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**IN THE MATTER** of an appeal by Ray Schill et al of a decision of the Minister of Finance, Energy and Municipal Affairs, dated August 12, 2013.

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# Appearances & Witnesses

1. **For the Appellants**  
  
Ray Schill  
Jill Schill  
Jerry Willoughby  
Dolores Willoughby  
Peter Dawes  
Robyn Dawes
  
2. **For the Respondent**  
  
Alan Robison  
Eugene Lloyd
  
3. **For the Developer**  
  
Dawn MacPhee

**IN THE MATTER** of an appeal by Ray Schill et al of a decision of the Minister of Finance, Energy and Municipal Affairs, dated August 12, 2013.

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# Reasons for Order

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## 1. Introduction

[1] The Appellants Ray Schill, Jill Schill, Jerry Willoughby, Dolores Willoughby, Peter Dawes and Robyn Dawes (the Appellants) 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 Appellants' Notice of Appeal was received on September 3, 2013.

[2] This appeal concerns an August 12, 2013 decision of the Respondent Minister of Finance and Municipal Affairs (the Respondent) to issue Development Permit number S-2013-2284 (the development permit) granting permission to Todd MacPhee and Dawn MacPhee (the Developers) to construct a non-commercial storage building on parcel number 696757 located on the east side at 192 Morrison Lane in the community of New London.

[3] Following suitable scheduling for the parties and due public notice, a hearing commenced on November 6, 2013.

## 2. Discussion

### The Appellants' Position

[4] The Appellants are residents of Morrison Lane. They contend that the Developers intend to use the storage building for commercial materials and machinery. They are concerned that use of the storage building for commercial purposes will result in large commercial vehicles regularly travelling on Morrison Lane. They submit that Morrison Lane is a one-lane gravel privately maintained right of way.

[5] The Appellants have no objection to the construction of a storage building for non-commercial personal use.

[6] The Appellants told the Commission that they had concerns back in 2012 that the Developers intended to construct a commercial storage building near their residence on Morrison Lane. The Appellants directed their concerns to the Respondent's staff. They received a response and were advised that a departmental solicitor would provide the Respondent with further clarification. The Appellants expressed concern that no legal opinion has been disclosed in the Respondent's file.

[7] The Appellants submitted photographs which they contend establish the presence of heavy trucks associated with commercial activity on Morrison Lane. They also submitted a photograph showing ruts in the road during winter.

[8] The Appellants contend that the Morrison Lane neighbourhood is "zoned" for residential cottages and as a result, commercial activity is prohibited.

[9] The Appellants contend that the definitions for "commercial" and "industrial" set out in the Planning Act Subdivision and Development Regulations (the Regulations) include a reference to storage of materials.

[10] The Appellants seek to stop the construction of a commercial storage facility.

### **The Respondent's Position**

[11] The Respondent's staff explained that proper procedures were followed before issuing the development permit. The Developers had applied for a non-commercial storage building for their personal vehicles and boat. The Respondent issued a development permit for a non-commercial storage building. If the Appellants establish that the storage building is being used for commercial purposes the Minister may investigate the matter under section 24 of the *Planning Act* as a non-compliance issue.

[12] The Respondent submits that the purpose of the appeal hearing is to ensure that the Respondent correctly followed the requirements of the Regulations before issuing the development permit. The Respondent submits that the permit was lawfully issued.

[13] The Respondent requests that the Commission deny the appeal as the Appellants have no grounds for their appeal.

### **The Developers' Position**

[14] The Developer Dawn MacPhee (Ms. MacPhee) told the Commission that the storage building will be used to store items they own, such as cars and a boat. They also have a forklift which is used to load business related supplies into the cube van and trailer. Ms. MacPhee explained that the Developers have had deliveries of tires, rims, and furniture which have been delivered by large trucks.

[15] At the hearing, Ms. MacPhee filed an affidavit (Exhibit D1). Exhibit D1 was sworn by the Developers on October 29, 2013. Ms. MacPhee told the Commission that the storage building will be storing items listed in the affidavit.

### 3. Findings

[16] 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.

[17] Section 28 of the **Planning Act** sets out the right to appeal land use planning decisions to the Commission. Subsection 28(1) pertains to decisions of the Respondent, the relevant portion of which reads:

*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;*

*...*

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

[18] The decision under appeal is the Respondent's August 12, 2013 decision to issue a development permit. This permit very clearly grants permission to the Developers to construct a non-commercial storage building. The Appellants are concerned that the storage building will be used for commercial storage.

[19] The Appellants have drawn the Commission's attention to the definition of "commercial" and "industrial" contained in the Regulations. These terms read as follows:

*1. (e.1) "commercial" means the use of a building or lot for the storage, display or sale of goods or services, and includes hotels, motels, inns, or rental cottages;*

*...*

*1. (j.1) "industrial use" means the use of a building or lot for the storage, distribution, processing, assembly or recycling of wholesale products, goods or materials, or for activities relating to transportation, extraction, manufacturing, construction, warehousing, assembly or general repair;*

[20] In a planning appeal, the Commission reviews the decision made by the decision maker; in the present case, the development permit issued by the Respondent. The Commission reviews such a decision not only on the file or record of such decision but also on a hearing *de novo* basis. That is to say, the Commission gives a new, fresh hearing to the matter and considers new evidence as well as the record from the original decision. In the case of a ministerial decision, the Commission considers whether the Respondent followed the **Planning Act** and the Regulations.

[21] In their submissions before the Commission, the Appellants stated that they had expressed concerns to the Respondent many months before the permit was issued. These concerns related to a belief that the Developers were seeking to build a storage building for commercial purposes. The Appellants expressed concern that the record before the Commission did not contain a legal opinion from the Respondent's departmental solicitor.

[22] The Respondent drew the Commission's attention to section 24 of the **Planning Act** the relevant portions of which read as follows:

*24. (1) Any bylaw or regulation made pursuant to the powers conferred by this Act or a bylaw made under Part I of the Charlottetown Area Municipalities Act R.S.P.E.I. 1988, Cap. M-4.1, or the City of Summerside Act R.S.P.E.I. 1988, Cap. S-9.1 relating to planning matters may be enforced and the breach thereof may be restrained by application at the instance of the appropriate authority to the Supreme Court.*

*(2) In any proceeding commenced under subsection (1), the Supreme Court or a judge thereof may grant one or more of the following:*

*(a) a declaration that an act engaged in or about to be engaged in by a person is or will be a breach of any bylaw or regulation or provision of this Act;*

*(b) an injunction restraining any person from breaching or continuing to breach any such bylaw, regulation or provision;*

*(c) an order directing any person to comply with the requirements of any such bylaw, regulation or provision and directing that compliance be carried out under the supervision of a named person;*

*(d) such other order as the court or judge may determine.*

[23] The Commission wishes to point out to the Appellants that there is no zoning in the Morrison Lane neighbourhood. Rather, the subdivided lots were approved for summer cottage residential use. Land use zoning only occurs in Prince Edward Island in cities, towns or communities that have an Official Plan. There is no Official Plan in this community.

[24] The Commission also wishes to point out to the Appellants that a legal opinion prepared for a party is considered by the Commission to be a privileged document, and as such, if the Respondent had in fact received a legal opinion there would be no requirement for the Respondent to disclose such document.

[25] In the present appeal, the Respondent had received an application for a “storage building”. The Respondent was also in receipt of concerns from some area residents that the building might be used for commercial purposes. The Respondent on August 12, 2013 issued a development permit that was very clearly specified to be for a non-commercial storage building. The Commission can find no evidence of any error or omission in the Respondent’s decision. The Commission is of the view that the Respondent’s decision was made in full compliance with the requirements of, and said decision also made pursuant to the authority granted under, the **Planning Act** and the Regulations.

[26] The Commission wishes to make it clear that it is only the Respondent’s decision which may be appealed to the Commission. A breach of the terms and conditions of the development permit would need to be dealt with in a forum with the jurisdiction to do so.

[27] Section 24 provides the “appropriate authority”, in this case the Respondent, with the legal authority to make application to the Supreme Court in order to enforce the **Planning Act** and the Regulations.

[28] The Developers have provided the Commission, the Respondent and the Appellants with a copy of a sworn affidavit. To succinctly summarize the pith and substance the affidavit, the Developers have sworn that their storage building will be used for non-commercial purposes.

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

## 4. Disposition

[30] An Order denying this appeal follows.



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# Order

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**WHEREAS** the Appellants Ray Schill, Jill Schill, Jerry Willoughby, Dolores Willoughby, Peter Dawes and Robyn Dawes appealed a decision of the Minister of Finance, Energy and Municipal Affairs, dated August 12, 2013;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on November 6, 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 30th day of January, 2014.

**BY THE COMMISSION:**

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

Maurice Rodgerson, Chair

\_\_\_\_\_  
(Sgd.) *Leonard Gallant*

Leonard Gallant, 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)