



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA14002
Order LA14-05**

IN THE MATTER of an appeal by
Bonnie MacLean of a decision of the Town of
Cornwall, dated July 28, 2011.

BEFORE THE COMMISSION
on Monday, the 6th day of October, 2014.

J. Scott MacKenzie, Q.C., Chair
Doug Clow, Vice-Chair

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
Bonnie MacLean of a decision of the Town of
Cornwall, dated July 28, 2011.

Order

On June 30, 2014, the Appellant Bonnie MacLean (the Appellant) 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**). On July 29, 2014 the Appellant filed a second Notice of Appeal form with the Commission, also concerning section 28 of the **Planning Act**.

The Appellant's June 30, 2014 Notice of Appeal does not refer to any particular decision, leaving that portion of the form blank. The Notice of Appeal states the following in the grounds for appeal section of the form:

Bylaws not be adhered too [sic] noise, privacy, maintenance of your own property, buffer zone between residential/commercial.

On July 4, 2014 Commission staff wrote to the Appellant, referred her to section 28 of the **Planning Act** and stated the following:

After reviewing your Notice of Appeal [June 30, 2014], it is my understanding that you are not appealing a specific decision but rather the issue of by-law enforcement. To preserve any future right of appeal, you may consider withdrawing this appeal.

The Appellant's July 29, 2014 Notice of Appeal attempts to appeal a decision of the Respondent Town of Cornwall (the Town) to issue development permit C-69-11 dated July 28, 2011. This latter Notice of Appeal includes several added documents, including numerous emails between the Appellant and the Town.

On July 30, 2014, the Commission received an email from Kevin McCarville, the Town's Chief Administrative Officer. The main portion of Mr. McCarville's email is reproduced below.

Further to a July 4, 2014 letter from Dawn Murphy to Bonnie MacLean please consider the following.

Given the history of Ms. MacLean's property and the adjacent Town of Cornwall property it is my opinion IRAC should be dismissing outright any further attempts by Ms. MacLean or her agents to appeal decisions, or in the latest case, a non-decision by the Town pertaining to town property at 29 Cornwall Road, being the Cornwall Civic Centre.

It is difficult for me to imagine a more frivolous matter for your Commission, or my office, to be devoting resources.

Ms. MacLean owns the property at 22 Seymour Drive. [The remaining portion of Mr. McCarville's paragraph has been deleted by the Commission for privacy reasons. The paragraph does indicate that a building permit to construct the Appellant's home was issued by the Town in 2008.]

The adjacent property, 29 Cornwall Road, has been owned by the Town (previously Community, previously Village) of Cornwall since the 1970s. It has been the site of the Cornwall Civic Centre, Curling Club, swimming pool, a playground, the Cornwall Lions Club for many, many years. In fact, the Town purchased the property from the Lions Club in the 1970s. Until 2006 the building also housed the Town administration office.

In 2011 the Town demolished the original structure (excluding the curling club) and rebuilt a new facility using the existing foundation. At this time the Town also replaced the parking lot. It should be noted the new parking lot is the same size and at the same location as the one we replaced.

In 2013 the Town replaced the outdoor swimming pool.

It is important to note with all the renovations and improvements to the property the current uses are consistent with activities which have taken place here for decades. The building is no bigger, the parking lot is no bigger, the pool operates the same number days each year, the curling season remains the same, the summer programs run the same length, etc.

Clearly, Ms. MacLean wants a visual buffer between her property and the Town property. There was no visual buffer in place when she took ownership of her property.

The Town has considered Ms. MacLean's request several times, even offering to construct a fence on her property at one point.

A contributing factor to this saga is a stormwater ditch (completely on Town property) which lies between the edge of the Civic Centre property and Ms. MacLean's property. This ditch allows storm water from the public right of way to flow from the Cornwall Road to Seymour Drive. This ditch has been in place for decades as well and, to my knowledge has never been altered. Ms. MacLean continues to request the ditch be filled in and the water piped. TIR has advised against this. We have emails to this effect if you require them.

Ms. MacLean does not share my opinion that the new parking lot has no effect on the capacity of the ditch or that the amount of water directed to the ditch has not been increased.

I could write another page, however I believe the pertinent information is outlined above.

I respectfully request the Commission to weigh these comments in any future discussions involving 22 Seymour Drive and 29 Cornwall Road.

Thank you

The Appellant had previously filed an appeal in October 2013 and in Order LA13-07 the Commission found that it did not have the jurisdiction to hear that appeal as the appeal had been filed beyond the twenty-one day appeal period. Arising out of that appeal, the Commission finds that the Appellant is well aware of the twenty-one day appeal period set out in the **Planning Act**.

The Commission is a creature of statute entrusted with providing dissatisfied persons with a right to appeal certain kinds of municipal and ministerial planning decisions. The kinds of decisions that may be appealed and the time frame for doing so are set out in section 28 of the **Planning Act**.

The Commission finds that it has no jurisdiction to hear an appeal, based on either of the Appellant's Notice of Appeal forms. First, the appeal was filed nearly three years after development permit C-69-11 was issued, well beyond the twenty-one day appeal period set out in section 28 of the **Planning Act**. Second, the **Planning Act** does not provide a right of appeal based on an alleged failure to comply with the development bylaw or issues of bylaw enforcement.

In the Appellant's present appeal, the documents filed with the Commission indicate that a dispute exists between the Appellant and the Town. It appears the Appellant is attempting to obtain a resolution of this dispute by utilizing the appeal provisions of the **Planning Act**. The **Planning Act** does not grant the Commission the authority to hear general matters of contention between property owners and a municipality. The Commission does not have the jurisdiction to hear and decide the issues raised by the Appellant. If the Appellant wishes to pursue these issues, the Supreme Court of Prince Edward Island would be the appropriate forum.

The Town has characterized the latest appeal as a frivolous matter. That said, the issues that concern the Appellant do not appear to be frivolous to her. However, the Appellant's approach of utilizing the appeal process to seek redress of these issues is well beyond the Commission's jurisdiction.

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

IT IS ORDERED THAT

1. The Commission has no jurisdiction to hear the Appellant's appeal.

DATED at Charlottetown, Prince Edward Island, this **6th** day of **October**, **2014**.

BY THE COMMISSION:

(Sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(Sgd.) Doug Clow

Doug Clow, Vice-Chair

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)