



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA14003  
Order LA15-03**

**IN THE MATTER** of an appeal by Gary  
McLure of a decision of the Minister of  
Finance, Energy and Municipal Affairs, dated  
July 9, 2014.

**BEFORE THE COMMISSION**  
on Friday, the 20th day of March, 2015.

J. Scott MacKenzie, Q.C., Chair  
Doug Clow, Vice-Chair  
John Broderick, 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 a decision of the Minister of Finance, Energy and Municipal Affairs, dated July 9, 2014.

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# Appearances & Witnesses

1. **For the Appellant**  
  
Gary McLure
  
2. **For the Respondent**  
  
**Counsel:**  
  
Robert A. MacNevin  
  
**Witnesses:**  
  
Glenda MacKinnon-Peters  
Eugene Lloyd
  
3. **For the Developer**  
  
**Counsel:**  
  
Barb Stevenson, Q.C.
  
4. **Member of the Public**  
  
Sandy Foy

**IN THE MATTER** of an appeal by Gary McLure of a decision of the Minister of Finance, Energy and Municipal Affairs, dated July 9, 2014.

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# Reasons for Order

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## 1. Introduction

[1] On July 15, 2014, 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] The Appellant appealed a July 9, 2014 decision of the Respondent Minister of Finance, Energy and Municipal Affairs (the Respondent) granting Development Permit No. C-2014-0131 to the Developers Tian Fei and Hong Yang (the Developers) to re-locate three (3) new rental cottages on parcel number 1008978 (the subject property) located at 31 Blue Spruces Way in the community of Hampton.

[3] On August 6, 2014, the Respondent's staff provided a copy of the file record to the Commission. On September 10, 2014, Counsel for the Respondent filed written submissions with the Commission.

[4] On September 15, 2014, the Appellant filed an Amended Notice of Appeal and written submissions in response to the written submissions filed by Counsel for the Respondent.

[5] The appeal was heard on October 8, 2014.

## 2. Discussion

### Preliminary Matter

[6] At the commencement of the hearing, Counsel for the Developer orally raised a motion requesting that the appeal be dismissed on the basis that the Amended Notice of Appeal fails to disclose adequate grounds for appeal. Discussion occurred on the record with Counsel for the Respondent adding his support to the motion and the Appellant maintaining that his appeal should be heard.

[7] The Commission retired to consider the preliminary motion and ruled that the Notice of Appeal and the Amended Notice of Appeal do meet the requirements of the Act for an appeal to be heard by the Commission. The Commission noted that it takes guidance on its practice and procedure with respect to matters such as these from the reference case, *In the Matter of Section 14(1) of the Island Regulatory and Appeals Commission Act* (Stated Case), [1997] 2 P.E.I.R. 40 (PEISCAD), Mitchell, J.A. That case dealt with a reference concerning the Commission dealing with jurisdiction and dealing with matters of procedure. In that decision the Court addressed the purpose of a hearing at the Commission and found that where an appeal is by way of trial de novo, the grounds of appeal do not serve the same function as they do for appeals to the court. The purpose of the grounds of appeal in a hearing de novo is simply to alert the appeal tribunal and the parties to the nature of the a complaint with the decision, and the form of redress being sought. The Commission found that taken together, the Notice of Appeal and the Amended Notice of Appeal state that the grounds that the appeal is an appeal for the development permit granted on July 9, 2014 to relocate three new rental cottages on a parcel that is alleged not to have been properly or legally subdivided.

#### **The Appellant's Position**

[8] The Appellant referred to his September 15, 2014 written submissions (Exhibit A6) as well as various deed and subdivision plans he previously filed (Exhibit A4). The Appellant takes the position that the subject property was illegally subdivided as the 1984 plan was approved but never deeded, while the 1986 plan was not approved but deeded. The Appellant submits the Respondent has no authority to issue a development permit for an illegally subdivided parcel.

[9] The Appellant submitted that save and except for the Appellant's position that the subject property was illegally subdivided, he had no other issues or concerns with the Development Permit including the plan to relocate the three new rental cottages on the subject property, the type of cottage or any other aspect of the Development Permit.

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

[10] Counsel for the Respondent referred to his September 10, 2014 written submissions. He submitted that the 1984 plan was approved but the Minister had no knowledge of the 1986 plan. He submitted that the 1984 plan applies and the subject property was a remainder parcel that was left after other properties were conveyed. In other words, the subject property is a remnant lot that is approved by default. Counsel for the Respondent stated that while the appeal was not a frivolous appeal, it was close to frivolous, and he requested that the Commission deny the appeal.

#### **The Developer's Position**

[11] Counsel for the Developer referred the Commission to the objects of the *Planning Act* set out in section 2 and submitted that efficient land use planning is a key and relevant concern in this appeal. She submitted that the subject property was a lawful remnant or remainder parcel that did not require any type of approval. She requested that the Commission deny the appeal.

### Member of the Public

[12] Sandy Foy, as a member of the public, gave a statement on planning in the Province of Prince Edward Island. Mr. Foy outlined his concerns about general land use planning and enforcement issues.

## 3. Findings

[13] 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 for the reasons that follow.

[14] Counsel for the Developer appropriately referred the Commission to the objects of the **Planning Act**, which are set out in section 2 and read 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. 1988,c.4,s.2.*

[15] The Commission is of the view that decisions made under the **Planning Act** and the Planning Act Subdivision and Development Regulations must be consistent with the aforementioned objects set out by the Legislature.

[16] In the present appeal, the Appellant alleges that the subject property was not legally subdivided and as a result, the Respondent has no authority to issue a development permit with respect to the subject property. The Respondent and Developer contend that the 1986 plan was never approved and the subject property is a remainder parcel left after other parcels were conveyed out of the approved 1984 plan. The Respondent and Developer submit that the subject property is a lawful remainder or remnant parcel.

[17] In page 2, paragraph 9. of his September 10, 2014 written submission, Counsel for the Respondent states:

*9. The Department did not and does not require a new survey plan or approval for the remaining lands of an approved subdivision (see subsection 27.(3)). Therefore, the Department has permitted the new/relocated cottages on the remaining portion of plan number 1025B.*

[18] Clause 27.(1)(d) and subsection 27.(3) of the Planning Act Subdivision and Development Regulations read as follows:

*27. (1) Final approval for all or a portion of a subdivision application shall not be granted until:*

...

*(d) a survey plan, certified by an accredited member of the Association of Prince Edward Island Land Surveyors, has been submitted showing the location of all survey pins.*

...

*(3) Notwithstanding clause (1)(d), a certified survey plan shall not be required for the remaining portion of the original parcel from which a parcel was created.*

[19] In the present appeal, the Commission has carefully reviewed the file record provided by the Respondent (Exhibit R1). From this review, it appears that the Department of Transportation and Infrastructure Renewal has no objections as long as the number of rental units does not increase. It is also appears that the Respondent consulted with various other departments/agencies within the Provincial Government, including the Fire Marshal's Office, Provincial Planning and the Environmental Assessment Office. No objections were raised as a result of this consultation.

[20] Following a review of the available evidence, the Commission finds that the Respondent has satisfied the requirements set out in the Planning Act Subdivision and Development Regulations when it made the decision to grant Permit No. C-2014-0131.

[21] Based on the evidence presented at the hearing, the Commission finds that the subject property was lawfully subdivided as a result of being a remainder or remnant parcel.

[22] Although clause 27(3) of the Planning Act Subdivision and Development Regulations states that the remaining portion of an original parcel from which a parcel was created does not require a certified survey plan, the Respondent would be well advised to review its procedures to ensure that a remnant parcel gets certified as approved when the Respondent is presented with a survey plan of surrounding parcels that clearly delineates the boundaries to the remnant parcel. By doing this, the Respondent would remove any uncertainty as to whether a remnant is an approved subdivided parcel. This would be of benefit to the public, the land development and legal communities and, in the case at hand, would have prevented this appeal.

[23] Accordingly, the Commission finds that the Respondent lawfully issued Permit No. C-2014-0131 and therefore this appeal is denied.

## **4. Disposition**

[24] An Order denying this appeal follows.

**IN THE MATTER** of an appeal by Gary McLure of a decision of the Minister of Finance, Energy and Municipal Affairs, dated July 9, 2014.

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# Order

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**WHEREAS** the Appellant Gary McLure appealed a decision of the Minister of Finance, Energy and Municipal Affairs, dated July 9, 2014;

**AND WHEREAS** the Commission heard the appeal at public hearings conducted in Charlottetown on October 8, 2014 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 20th day of March, 2015.

**BY THE COMMISSION:**

(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd.) Doug Clow

Doug Clow, Vice-Chair

[Consented to, will sign upon his return]

John Broderick, 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)