



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA15008  
Order LA16-04**

**IN THE MATTER** of an appeal by  
Joseph Kopachevsky and Virginia  
Kopachevsky of a decision of the Minister of  
Communities, Land and Environment, dated  
June 4, 2015.

**BEFORE THE COMMISSION**  
on Thursday, the 14th day of July, 2016.

J. Scott MacKenzie, Q.C., Chair  
John Broderick, 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 Joseph Kopachevsky and Virginia Kopachevsky of a decision of the Minister of Communities, Land and Environment, dated June 4, 2015.

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# Parties to the Appeal

**1. The Appellants**

**Joseph P. Kopachevsky  
Virginia A. Kopachevsky**

**2. For the Respondent Minister of Communities, Land and Environment**

**Robert MacNevin, Counsel  
Jay Carr, Chief Safety Standards Officer**

**3. The Developer**

**Thomas J. Ogden**

**IN THE MATTER** of an appeal by Joseph Kopachevsky and Virginia Kopachevsky of a decision of the Minister of Communities, Land and Environment, dated June 4, 2015.

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# Reasons for Order

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## 1. Introduction

(1) On June 24, 2015, the Appellants Joseph P. Kopachevsky and Virginia A. Kopachevsky (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*”).

(2) The Appellants appealed a June 4, 2015 decision of the Respondent Minister of Communities, Land and Environment (the “Respondent”) granting Development Permit No. C-2015-0099 to the Developer Thomas J. Ogden (the “Developer”) to construct a summer cottage on Provincial Parcel Number 655290, Lot 2009-1, Subdivision Case #53640A, (the “subject property”) located on the east side of Whiskey Jack Lane in the Community of Alexandra.

(3) On July 30, 2015, the Commission received a copy of the file from the Minister and a copy of the Minister’s file was provided to the Appellants and the Developer on August 4, 2015 via email attachment. On September 3, 2015, Commission staff requested the Appellants to file written submissions and/or an amended Notice of Appeal with a deadline of September 22, 2015. On September 22, 2015, the Commission received an amended Notice of Appeal from the Appellants. A copy of the amended Notice of Appeal was forwarded to the Respondent and the Developer.

(4) On September 29, 2015, the Developer filed an email response to the Appellants’ amended Notice of Appeal.

## 2. Discussion

### Background

(5) The Appellants had previously filed an appeal of an earlier development permit (C-2014-0211) with respect to the subject property and involving the same parties to this present appeal. The earlier appeal was heard by the Commission at a public hearing held on February 5, 2015. After hearing the concerns of the Appellants, which included the location of the proposed dwelling on the subject property and surface water run-off concerns, and the response by the Developer demonstrating a willingness to address the location and run-off concerns, the Commission recommended that the hearing be adjourned to allow the parties an opportunity to meet with personnel from the government Planning Department to see if there could be an amicable resolution to the Appellants' concerns. The Commission has been advised that although the parties did attempt to resolve their differences no agreement could be reached. The Minister then issued a second permit being Permit C-2015-0099 which set out the following conditions:

- 1) *The proposal being developed in accordance with the site plans prepared by Mantha Land Surveys and Tom Odgen (copies attached).*
- 2) *Surface water management measures shall be implemented as proposed by the developer and his contractor in order to minimize surface water run-off impact on adjacent properties (See attached water management proposal).*
- 3) *This permit cancels permit number C-2014-0211 issued October 22, 2014.*

(6) The Appellants filed an appeal of the second permit being permit C-2015-0099, which is the subject of this present appeal. The Appellants ultimately withdrew their appeal of the earlier cancelled permit (C-2014-0211).

### The Appellants' Position

(7) The Appellants' amended Notice of Appeal raises numerous concerns, a brief summary of which includes the following:

- Topography, slope/grade, surface drainage and underground water flow
- Detrimental impact
- Public safety and health (including water safety and water management)
- Fire hazards
- Septic tank design/suitability, category of soil and appropriate placement of an on-site sewage disposal system (tank, tile field and overflow)
- Permit C-2015-0099 approves the site without the building stakes as promised and required by stated Department policy. The permit does not show the required indication of slopes of the building site.
- Concerns over power pole/line replacements and well location identified on the site plan – the poles are on top or near the well.

- Concern that the surveyor's plan relocates the electrical service to the Appellants' home and "indicates replacement of the electrical mast".
- Concerns over well water quality and flow

(8) In their amended Notice of Appeal, the Appellants request that the Commission deny the permit.

(9) In a February 12, 2016 letter to the Commission which withdraws the earlier appeal of permit C-2014-0211, the Appellants express various concerns, a brief summary of which includes the following:

- A withdrawal of the present appeal of permit C-2015-0099 would jeopardize any action and enforcement of outcomes against the Developer or the Department for failure to meet the conditions of permit C-2015-0099.
- A professional engineer needs to be engaged by the Developer to design and oversee the implementation of water management and septic systems in this subdivision.
- The corners of the dwelling, attached deck and septic system must be staked in order to avoid contravention of the conditions of permit C-2015-0099.

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

(10) In the September 29, 2015 email response from the Developer, it was submitted in part:

*I feel that the Kopachevskys have had ample time to provide their grounds for appeal; however, in their amended notice, I see no new information nor any specific arguments highlighting violations of the Planning Act or other regulations within the purview of the Commission.*

### **3. Findings**

(11) The appeal is denied for the reasons that follow.

(12) The Commission has considered the Notice of Appeal, amended Notice of Appeal, the file record provided by the Minister and all submissions forwarded by the parties to this appeal.

(13) As referenced in permit C-2015-0099, the subject property was created as a result of a subdivision approved in 2009. The decision to create the subject property was not challenged on an appeal and thus the subject property stands as an approved residential building lot. Accordingly, this appeal is restricted to the issues relating to a development or building permit C-2015-0099.

(14) The Commission's jurisdiction in this matter is set out in Sec. 28 of the *Planning Act*. It 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 any 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.

(15) An appeal pursuant to this section, as filed by the Appellants, is an appeal of the decision of the Minister to issue the development permit. The Commission, therefore, must review and determine whether or not the development, as approved, is a development that is contemplated within the subdivision regulations for the subject property upon which the development is to be undertaken. The Commission also reviews and considers the regulations, requirements and restrictions that are attached to any development permit to ensure that they are in compliance with the conditions to be placed on such permit pursuant to the *Planning Act* and the regulations.

(16) Permit C-2015-0099 sets out conditions which must be followed by the Developer. The Commission finds that this development and the permit issued have met all of the requirements of the *Planning Act* and regulations for development on this subject property.

(17) The Appellants have expressed concern that the conditions as set out in the development permit might not be followed. The conditions are reasonable and is the responsibility of the Respondent, not this Commission, to ensure enforcement of the development permit, its attached conditions, and all of the relevant laws in the province that apply.

(18) The issuance of a development permit under the *Planning Act* works in tandem with other relevant laws of the Province, such as the *Environmental Protection Act* (“EPA”) and the EPA’s regulations. Compliance with these other relevant laws is assumed, expected and required.

(19) The Commission finds that the other concerns raised by the Appellants in the present appeal reflect matters which fall outside the requirements of the *Planning Act* and the regulations, specifically the Planning Act Subdivision and Development Regulations. The Commission has no jurisdiction to grant the Appellants the remedies they seek over and above the conditions which already form part of permit C-2015-0099.

(20) The Commission finds that there is no basis to conclude that permit C-2015-0099 was issued in contravention of the *Planning Act* or its regulations, and therefore this appeal is denied. The Commission, therefore, confirms permit C-2015-0099, its attached conditions and the Respondent’s obligation to enforce compliance.

## 4. Disposition

(21) An Order denying this appeal follows.

**IN THE MATTER** of an appeal by Joseph Kopachevsky and Virginia Kopachevsky of a decision of the Minister of Communities, Land and Environment, dated June 4, 2015.

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# Order

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**WHEREAS** the Appellants Joseph P. Kopachevsky and Virginia A. Kopachevsky have appealed a decision of the Minister of Communities, Land and Environment, dated June 4, 2015;

**AND WHEREAS** the Commission has considered the Notice of Appeal, amended Notice of Appeal, the file record provided by the Minister and all submissions forwarded by the parties to the appeal;

**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.
2. Development Permit No. C-2015-099, issued by the Minister on June 4, 2015, is hereby confirmed in its entirety.

**DATED** at Charlottetown, Prince Edward Island, this 14th day of July, 2016.

### BY THE COMMISSION:

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(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

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(sgd.) John Broderick

John Broderick, 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)