



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA16006
Order LA17-04**

IN THE MATTER of an appeal by
Natacha Freake of a decision of the Minister
of Communities, Land and Environment,
dated June 30, 2016.

BEFORE THE COMMISSION
on Monday, the 5th day of June, 2017.

J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair
John Broderick, Commissioner

Order

Compared and Certified a True Copy

Philip J. Rafuse
Appeals Administrator
Corporate Services and Appeals Division

IN THE MATTER of an appeal by
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Appearances & Witnesses

1. For the Appellant Natacha Freake

Written submissions filed by Natacha Freake

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

Written submissions filed by Robert MacNevin, Departmental
Solicitor

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Reasons for Order

1. Introduction

(1) The Appellant Natacha Freake (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*). The Notice of Appeal was received by the Commission on July 13, 2016.

(2) This appeal concerns a decision of the Minister of Communities, Land and Environment (the “Minister”) dated June 30, 2016 where the Minister denied the Appellant’s application for a change of use of parcel number 930990 located in Head of Cardigan from residential to residential/commercial in order to operate a motorcycle sales shop.

(3) A copy of the Minister’s file was received by the Commission on August 12, 2016 and Commission staff provided the Appellant with a copy of this file.

(4) On August 30, 2016 the Commission received a written submission from Robert MacNevin, Counsel for the Minister, dated August 29, 2016. A copy of this document was also forwarded to the Appellant.

(5) In the weeks that followed, the Commission staff on several occasions requested that the Appellant provide further particulars of her grounds of appeal.

(6) On December 21, 2016 the Commission staff, not having heard anything further from the Appellant, emailed the Appellant requesting that the Appellant advise the Commission whether or not the Appellant wished to have the appeal proceed to a public hearing before the Commission panel. The Appellant did not respond.

(7) On January 10, 2017, as no response had been received from the Appellant, Commission staff contacted the Appellant by email and advised that the Commission required a response from the Appellant on or before January 20, 2017. The Appellant was advised that if the Commission did not hear back from the Appellant by that date, then the Commission would determine the appeal based solely on the written documents and submissions that had been filed.

(8) No response was received from the Appellant.

2. Discussion

The Appellant's Position

(9) In her Notice of Appeal and follow up email correspondence filed on September 20, 2016 with the Commission, the Appellant describes the business she has proposed and expresses the view that the concerns raised by the Minister would be unfounded. The following portions of her September 20, 2016 email assist in setting out her position:

- Public health: impact of noise, exhaust fumes: I'm sorry but starting up a motorcycle or a car doesn't make much noise and barely has any exhaust fumes it's no different then starting up your own car or bike to lets say go for a ride or go to work (they are not big diesel truck). You could stand 20-30ft behind a bike or a car and not smell a thing. My neighbours are well aware of what I will be doing and did sign a letter stating they were fine with this.
- Hours of operation (really) like I stated in my last appeal letter I would be only open 8:30am -4:00(4:30) pm as I have 2 kids and would like my time with them as for neighbours one has kids the rest don't but it don't mean I don't respect them but I do think of them as well is why my hrs. would be strict to those hrs. If any one ever showed up at my door past my hours I would refuse to show them any thing till I was open again. They would be able to look around but like a any business if I'm closed then they will have to come back during business hrs. (you don't think in a big city dealership have more than I could count cars out test driving and around hospital and schools and public areas) I'm out in the country with none of those things are around me I would be if anything less harmful than the dealers in the city.
- Public safety: impact of increased traffic, explosive material: Where I live ... it's a main drag it's like your main road to go to town when you live around here, there's always traffic on this road. There wouldn't be any extra traffic. Were I am people fly by my house and there kids at play so if anything it may slow down the traffic and actually make it a bit safer, people may slow down to look in. (and no this is not another thing for you to point out to me and twist it around and say that my dealership would be a safety issue to kids) (I'm not going to be big like the dealers in town I wouldn't even have that much inventory) And I'm sorry I have to laugh at this one Explosive material really, if anything a motorcycle has less "Explosive" components then lets say a car or a big transfer truck. This is not a movie where if one of my motorcycle falls over it will "Explode". If anything it would be safer to have a dealership out in the country then in the city near hundreds of men women & children, hospitals, schools etc. I should also put in here All my repairs are going to a licensed mechanic away from my area (like 15 mins away) so no harm to the environment will come my way either.
- Subsection 3(2) No development permit : There would be no changes to my property except the name or which it would be change to commercial/residential just for the sole purpose of me needing a Gov. license for my dealership. No difference in the look of my property except have motorcycles on display at the line of my property with a sign.

(10) The Appellant requests that the Commission "... approve of me starting my small business at home so I may make a better future for my family ..."

The Minister's Position

(11) In a letter dated August 29, 2016 Robert MacNevin, Counsel for the Minister, replied to the appeal and stated that the Appellant's application to the Minister was one that would require a change of use of the Appellant's property from residential use to residential/commercial use. Mr. MacNevin wrote that such a change of use in this situation could have a "detrimental impact" on the protection of the surrounding land uses by creating an incompatible use that is inconsistent with the surrounding residential properties. Mr. MacNevin also noted that the Appellant's proposed use of the property could have a detrimental impact on the surrounding residential properties with regard to public health (i.e. impact of increased noise, exhaust fumes, hours of operation, etc.) and public safety (i.e., impact of increased traffic, explosive materials, etc.). Mr. MacNevin referred the Commission to Sec. 1(d) and 1(f.3) of the Subdivision and Development Regulations. Further, Mr. MacNevin advised that in accordance with subsection 3(2) of the regulations, that no development permit shall be issued where a use or change of use would not conform with the regulations or other regulations pursuant to the *Planning Act*.

3. Findings

(12) After a careful review of the Minister's file, 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.

(13) Section 28 of the ***Planning Act*** sets out a right of appeal to the Minister for certain kinds of land use planning decisions, including decisions pertaining to a change of use:

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.

(14) Subsection 28.(5) of the ***Planning Act*** requires an Appellant to set out grounds for appeal:

28.(5) A notice of appeal to the Commission under subsection (1) shall be in writing and shall state the grounds for the appeal and the relief sought.

(15) Appeals filed with the Commission sometimes contain grounds for appeal that are vague and general, and this is understandable when an appellant is not initially aware of the reasons for a decision maker's decision. Once an appellant has obtained a copy of the decision maker's file through the Commission's disclosure process, the appellant will be in a better position to either advance or withdraw their appeal. In such circumstances where the initial grounds for appeal require clarification or further detail, the Commission will specifically request that an appellant revise their grounds for appeal after they have had a reasonable chance to review the disclosed file. By providing such revised grounds, opposing parties can better understand the case to be met. These more complete grounds for appeal also assist the Commission in determining whether there is an arguable case before it so that the Commission is able to set the matter down for a public hearing that is efficient and fair to all parties. Notwithstanding repeated requests from Commission staff the Appellant did not provide any further submission with respect to the Appellant's grounds of appeal and did not provide any further information or evidence as to what errors, if any, were committed by the Minister.

(16) In the present appeal, the Appellant was clearly unhappy with the Minister's decision and presented her appeal in the form of a business proposal. She implied that the concerns raised by the Minister would be unfounded. She was unable to indicate where the Minister had erred in his decision. She was ultimately asked if she wished her appeal to go forward to a public hearing, but she did not respond.

(17) In reviewing the Minister's file, the Commission notes that the Minister followed the advice of an experienced land use planner who is currently the Manager of Provincial Planning. The primary basis for the Minister's concern was that the Appellant's request for a partial change of use would create a new use that is incompatible with the surrounding residential properties. This consideration is very much in accordance with sound planning principles. Concerns were also expressed over the possibility of detrimental impact, as noted in Mr. MacNevin's letter of August 29, 2016 referenced earlier in the Commission's reasons.

(18) While the Appellant is clearly unhappy with this decision, the Commission is unable to identify any errors of law or procedure on the part of the Minister.

(19) The Commission finds that the Minister's denial of the Appellant's application was appropriate and that the Minister did not err in this finding. Therefore, this appeal is denied.

4. Disposition

(20) An Order denying this appeal follows.

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Order

WHEREAS the Appellant Natacha Freake has appealed a decision of the Minister of Communities, Land and Environment dated June 30, 2016;

AND WHEREAS the Commission has reviewed the Notice of Appeal, the file provided by the Minister and written submission filed by the parties;

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 denied.

DATED at Charlottetown, Prince Edward Island, this 5th day of June, 2017.

BY THE COMMISSION:

(Sgd.) J. Scott MacKenzie
J. Scott MacKenzie, Q.C., Chair

(Sgd.) M. Douglas Clow
M. Douglas Clow, Vice-Chair

(Sgd.) John Broderick
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)