



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LT05027
Order LT06-01**

IN THE MATTER of an appeal by
James B. MacAulay of a decision by the
Provincial Treasurer regarding the 2005
assessment of Provincial Property Number
746511 located in Charlottetown.

BEFORE THE COMMISSION

on Friday, the 22nd day of September, 2006.

Brian J. McKenna, Vice-Chair
Norman Gallant, Commissioner
Kathy Kennedy, Commissioner

Order

Compared and Certified a True Copy

(sgd.) Philip J. Rafuse

Land and Appeals Officer
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by James B. MacAulay of a decision by the Provincial Treasurer regarding the 2005 assessment of Provincial Property Number 746511 located in Charlottetown.

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ORDER	

IN THE MATTER of an appeal by James B. MacAulay of a decision by the Provincial Treasurer regarding the 2005 assessment of Provincial Property Number 746511 located in Charlottetown.

Appearances & Witnesses

1. **For the Appellant**
James B. MacAulay

2. **For the Respondent**
Kevin Dingwell
Walter White

IN THE MATTER of an appeal by James B. MacAulay of a decision by the Provincial Treasurer regarding the 2005 assessment of Provincial Property Number 746511 located in Charlottetown.

Reasons for Order

1. Introduction

[1] This is an appeal under the *Real Property Assessment Act*, R.S.P.E.I. 1988, Cap. R-4 (the *Act*), by James B. MacAulay (the Appellant) of the decision by the Provincial Treasurer (the Respondent) with respect to the 2005 assessment of Provincial Property Number 746511, an apartment building located on the Beach Grove Road in Charlottetown (the subject property).

[2] According to the Respondent's written submission (Exhibit R1) the assessment history for the subject property is as follows:

1996	\$432,800
1997	\$432,800 - On referral reduced to: \$397,100
1998	\$397,100
1999	\$397,100
2000	\$397,100
2001	\$416,500
2002	\$422,500
2003	\$422,500
2004	\$422,500
2005	\$422,500

[3] On October 17, 2005 the Commission received a Notice of Appeal from the Appellant appealing the 2005 assessment of \$422,500. After suitable scheduling for the parties, the appeal was heard on August 24, 2006.

2. Discussion & Findings

The Appellant's Position

[4] The Appellant states that he finds a 51% increase from 1995 to 2005 in his property taxes to be very difficult to comply with when he can have as many as seven empty units in the subject property. He notes that when West Royalty was amalgamated with Charlottetown his taxes went from over \$4,000 per year to over \$7,000 per year. He expresses concern that documentation obtained by him some time ago revealed that an apartment building on the Maypoint Road, owned by the TD Bank, did not have an increase in property taxes.

[5] The Appellant states that the allowable rent increases are not large enough to compensate for increases in property taxes. The Appellant requests that the Commission lower the property taxes payable on the subject property.

The Respondent's Position

[6] The Respondent states that it is the assessment of property taxes which may be appealed under the **Act**. The assessment of the subject property has remained at \$422,500 from 2002 to 2005 inclusive. The Respondent acknowledges that there was a major increase in taxes payable as a result of amalgamation in 1995: however, this increase in taxes due to amalgamation cannot be appealed. Further, the increase in taxes paid as a result of the Waste-Watch program fees cannot be appealed under the **Act**.

[7] The Respondent submits that the tax assessment of the subject property is in line with comparable properties in the area and the tax increase over the past ten years has also been consistent for the subject and comparable properties. Accordingly, the Respondent requests that the Commission deny the appeal.

The Commission's Decision

[8] After giving careful and full consideration to the evidence presented in this case, and upon a review of the applicable law, it is the decision of the Commission to deny this appeal. The reasons for the Commission's decisions follow.

[9] The Commission wishes to point out that the property tax rate cannot be appealed under the **Act** or under any other legislation in the Province of Prince Edward Island. The **Act** does, however, provide a right of appeal concerning property tax assessment.

[10] The issues which may be considered by the Commission on an appeal under the **Act** are whether the assessments under appeal are uniform in relation to other assessments and whether the assessments under appeal are at market value.

[11] The principle of uniformity is clearly reflected in subsection 28.(1) of the **Act** which reads as follows:

*28.(1) Subject to subsection (2), in any appeal to the Commission, **the Minister shall demonstrate the uniformity of the assessment in relation to other assessments.** (emphasis added)*

[12] The onus is thus placed upon the Respondent Minister to demonstrate that the assessment of the subject property met the essential principle of uniformity.

[13] The principle of market value is referred to in subsection 3.(2) and defined in paragraph 1.(f) of the **Act**. Taken together, these provisions reflect the principle of market value for the purposes of the **Act** and read as follows:

3.(2) All real property owned by the crown or any person shall be assessed at its market value, either

- (a) as commercial realty; or*
- (b) as non-commercial realty.*

1.(f) "market value" means the most probable sale price indicated by consideration of the cost of reproduction, the sale price of comparable properties and the value indicated by rentals or anticipated net income;

[14] In the documentation provided by the Respondent, the assessments of the subject property and five other comparable properties were reviewed. Of these six properties, the subject property had the lowest assessment. The Commission is satisfied that these properties are comparable and the Commission is also satisfied that the Respondent has demonstrated the uniformity of assessment in relation to other assessments.

[15] The Commission further takes note that the assessment of the subject property has remained unchanged from 2002 to 2005.

[16] The Appellant contends that he viewed documents a few years ago showing that the taxes payable on a similar apartment building were less at the time than on his own building. However, the Appellant did not provide the Commission with a copy of such documentation. Without such documentation, the Commission cannot determine whether the Appellant's understanding of these documents in fact represented the actual taxes assessed.

[17] Accordingly, as the Respondent has demonstrated uniformity of assessment, the appeal is denied and the Commission confirms the 2005 assessment at \$422,500.

3. Disposition

[18] An Order will therefore be issued denying the appeal and confirming the 2005 assessment for Provincial Property Number 746511 at \$422,500.

IN THE MATTER of an appeal by James B. MacAulay of a decision by the Provincial Treasurer regarding the 2005 assessment of Provincial Property Number 746511 located in Charlottetown.

Order

WHEREAS James B. MacAulay has appealed a decision by the Provincial Treasurer pertaining to the 2005 assessment of Provincial Property Number 746511 located in Charlottetown;

AND WHEREAS/UPON the Commission heard the appeal at public hearings conducted in Charlottetown on August 24, 2006;

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 *Real Property Assessment Act*,

IT IS ORDERED THAT

1. The appeal is denied.
2. The 2005 assessment for Provincial Property Number 746511 is hereby confirmed at \$422,500.

DATED at Charlottetown, Prince Edward Island, this 22nd day of September, 2006.

BY THE COMMISSION:

Brian J. McKenna, Vice-Chair

Norman Gallant, Commissioner

Kathy Kennedy, 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 33 and 34 of the *Real Property Assessment Act* provide as follows:

33. *Notwithstanding anything in any public or private Act, an appeal lies to the Supreme Court of the province from any order, decision, or award of the Commission, if notice of the appeal is given the other parties within forty-five days after the making of the order, or decisions sought to be appealed from.*

34. *The rules and practices of the Supreme Court respecting appeals apply with the necessary changes to any appeal.*

IRAC142A(99/4)