



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LT10002  
Order LT11-02**

**IN THE MATTER** of an appeal by Ivor Sargent of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 525576 located in St. Margarets.

**BEFORE THE COMMISSION**  
on Monday, the 31st day of October, 2011.

John Broderick, Commissioner  
Leonard Gallant, Commissioner  
Ferne MacPhail, Commissioner

---

# Order

Compared and Certified a True Copy

(Sgd.) Dawn Murphy

Land, Corporate and Appellate Services Division

**IN THE MATTER** of an appeal by Ivor Sargent of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 525576 located in St. Margarets.

---

# Contents

<b>CONTENTS</b> .....	<b>ii</b>
<b>APPEARANCES &amp; WITNESSES</b> .....	<b>iii</b>
<b>REASONS FOR ORDER</b> .....	<b>1</b>
1. <i>Introduction</i> .....	<i>1</i>
2. <i>Discussion &amp; Findings</i> .....	<i>1</i>
3. <i>Disposition</i> .....	<i>4</i>
<b>ORDER</b> .....	

**IN THE MATTER** of an appeal by Ivor Sargent of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 525576 located in St. Margarets.

---

# Appearances & Witnesses

**1. For the Appellant Ivor Sargent**

**Counsel:**

**T. Daniel Tweel**

**Witness:**

**Ivor Sargent**

**2. For the Respondent Minister of Finance and Municipal Affairs**

**Counsel:**

**Robert MacNevin**

**Witness:**

**Paul Olscamp**

**IN THE MATTER** of an appeal by Ivor Sargent of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 525576 located in St. Margarets.

---

# 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 Ivor Sargent (Mr. Sargent) of the decision of the Respondent Minister of Finance and Municipal Affairs (the Minister) with respect to the 2010 assessment of Provincial Property Number 525576 located at St. Margarets (the subject property).

[2] According to the Minister's Assessment Valuation Summary (AVS) the 2010 assessment of the subject property was determined to be \$127,200.

[3] On October 1, 2010, the Commission received a Notice of Appeal from Mr. Sargent. After suitable scheduling for the parties, the hearing of the appeal commenced on May 17, 2011. The hearing was then originally scheduled to continue on June 16, 2011. Mr. Sargent later advised the Commission that he had retained T. Daniel Tweel as legal counsel, and the continuation date of the hearing was postponed. The hearing was continued and concluded on September 22, 2011.

## 2. Discussion & Findings

### Mr. Sargent's Position

[4] The following excerpts from a September 7, 2011 letter from Mr. Tweel to Commission staff succinctly summarizes Mr. Sargent's position:

*The facts are very simple. Mr. Sargent bought this property in one block a number of years ago. It is dissected in part by the Queens Rd. or North Side Rd. as it is sometimes called. We understand that it is considered a non essential road by the province.*

*The crux of the appeal deals with the question of valuation of the land. It is currently assessed at approximately \$130,000 for property tax purposes. It has been surveyed. The capacity to subdivide is strictly limited because the owner can do little or nothing with it. He cannot even access the north side of his property by crossing what is known as the Queens Rd. to build a house on the water side. Effectively, through legislation under the Planning Act or otherwise the Province of Prince Edward Island has restricted Mr. Sargent from real or effective use of his property and has, by its regulations and or failure to acknowledge the rights incidental to his ownership of the property, has denied him an essential component of value.*

*The bottom line is that he has paid taxes on an assessed value that is inconsistent with the price paid or, the reasonable use, enjoyment or development of the property. It is our contention, following the Commission's decision in Bergman is that the province should be ordered to reduce the assessed value of the property to a nominal sum.*

[5] In his oral submissions before the Commission, Mr. Tweel submitted that access to a property is essential for the property to have value and no prudent purchaser would buy property with access only available at the "whim" of government. Mr. Tweel submitted that the provisions contained in the maintenance agreement are not reasonable, the value of the subject property is significantly diminished and therefore the assessed value of said property should be reduced.

### **The Minister's Position**

[6] In the AVS, the Minister's staff contends that the subject property is assessed uniformly with other similar properties. Sales information of comparable properties indicates that the subject property is not over assessed in relation to its market value.

[7] Robert MacNevin, legal counsel for the Minister, submitted Mr. Sargent does have access to the subject property pursuant to the maintenance agreement. Mr. MacNevin further submits that Mr. Sargent, or a subsequent purchaser, may terminate or seek to re-negotiate the maintenance agreement. Mr. MacNevin submitted that the *Bergman* decision was distinguishable based on the size of the subject property.

### **The Commission's findings**

[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 allow this appeal and order the reduction of the assessed value of the subject property. The reasons for the Commission's decisions follow.

[9] In Order LT05-01, *Bergman and Adams v. The Provincial Treasurer (Bergman)* the Commission observed at paragraph 9:

*[9] While the Appellants have provided the Commission with extensive written submissions on the legal access issue, it is important to emphasize that in an appeal under the Act such information is relevant solely for the purpose of establishing the assessment for the parcels*

*under appeal. The Commission does not have the jurisdiction under the Act to address the legal access issue per se.*

[10] The Commission went on to find in paragraph 12 of the *Bergman* decision:

[12] The Commission finds that all land has value. However, when residential building lots cannot be developed because lawful access required by development legislation is lacking, then the current value of such land is only nominal. While the present value of the land may be considered by some to be much higher if one considers that in future the access issue may be rectified, the Commission is concerned with the present value for assessment purposes given the limitations which go with the land. Assessment value should not be based on speculation value, especially where the basis for determining such a valuation rests on the selling price realized for a single parcel sold at a tax sale.

[11] In the present appeal, the Commission finds that the Minister's assessed value of the subject property would be fair, perhaps even running below market value, if there were no access issues for Mr. Sargent to contend with. However, the reality is that the interaction of land use development regulations in the Province with the presence of an ancient public road, apparently unused for generations, would deny Mr. Sargent the necessary access to develop the otherwise valuable portion of the subject property lying between this ancient road and the coastline. The Development and Maintenance Agreement (the Agreement), entered into between the Government of Prince Edward Island and Mr. Sargent, can best be viewed as an attempt to work around the bizarre situation created when development regulations clash with the presence of a "non-essential road", a road which, from a common sense perspective, has neither been used or been in existence for a very long period of time. This Agreement purports to give Mr. Sargent the ability to develop the subject property by giving Mr. Sargent:

"... permission to maintain and upgrade the Non-Essential Highway for the sole purpose of ingress and egress to the Grantee's [Mr. Sargent's] lands to enable the proposed development ..."

[12] A review of the legality or enforceability of this rather unusual Agreement is not within the scope of this appeal. That said, the Commission finds that this Agreement, with numerous obligations and liability issues placed on the owner of the subject property, would appear to permit development of said property, but at a relatively high cost from both a financial and legal liability perspective.

[13] The Commission finds that the interaction of current land use development regulations with the status of this "Non-Essential Highway" places a cloud on the market value of the subject property and the presence of the Agreement does little to rectify this situation.

[14] The Commission finds that what amounts to a nominal value for the one-half acre parcels which were the subject of the matter in *Bergman* cannot be directly translated into a nominal value for the 89 acre subject property. The Commission notes from the AVS that the 1986 purchase price of the subject property was \$35,000. Based on the current evidence before the Commission, the Commission assigns a nominal value of \$35,000 to the subject property.

[15] As in the *Bergman* decision, the Commission wishes to caution Mr. Sargent that the market value of the subject property will likely increase sharply upon a resolution of the underlying issues that currently cloud its market value.

[16] With respect to the issue of retroactivity, section 32 of the *Act* reads as follows:

*32. A decision of the Commission has effect from January 1 in the year for which the assessment appealed from was made, and any changes required to be made by the Minister as a consequence of the decision shall be made by the Minister within thirty days after the Commission has made its decision. R.S.P.E.I. 1974, Cap. R-5, s.30; 1991, c.18, s.22 {eff.} Nov. 4/91.*

[17] Accordingly, this Order has effect retroactive to January 1, 2010.

### **3. Disposition**

[18] An Order allowing this appeal and varying the 2010 assessment of Provincial Property Number 525576 to the nominal value of \$35,000 will therefore issue.

**IN THE MATTER** of an appeal by Ivor Sargent of a decision of the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 525576 located in St. Margarets.

---

# Order

---

**WHEREAS** the Appellant Ivor Sargent has appealed the decision by the Minister of Finance and Municipal Affairs regarding the 2010 assessment of Provincial Property Number 525576 located in St. Margarets;

**AND WHEREAS** the Commission heard the appeal at a public hearing conducted in Charlottetown on May 17 and continuing on September 22, 2011 after suitable scheduling for 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 *Real Property Assessment Act*,

## IT IS ORDERED THAT

1. The appeal is allowed.
2. The 2010 assessment for Provincial Property Number 525576 is hereby varied to the nominal value of \$35,000.

**DATED** at Charlottetown, Prince Edward Island, this 31st day of October, 2011.

### BY THE COMMISSION:

\_\_\_\_\_  
(Sgd.) John Broderick

John Broderick, Commissioner

\_\_\_\_\_  
(Sgd.) Leonard Gallant

Leonard Gallant, Commissioner

\_\_\_\_\_  
(Sgd.) Ferne MacPhail

Ferne MacPhail, 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.*

## 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.

IRAC142A(2009/11)