



**Date Issued:** July 5, 2023  
**Docket:** LA21027  
**Type:** Planning Act Appeal

INDEXED AS: Kent MacLean and Patti Sue Lee v. Rural Municipality of North Shore,  
2023 PEIRAC 06 (CanLII)

Order No: LA23-06

**BETWEEN:**

Kent MacLean and Patti Sue Lee

**Appellant**

**AND:**

Rural Municipality of North Shore

**Respondent**

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**ORDER**

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Panel Members:

J. Scott MacKenzie, K.C. Chair  
Murray MacPherson, Commissioner

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Philip J. Rafuse,  
Appeals Administrator  
Prince Edward Island Regulatory & Appeals  
Commission

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## 1. INTRODUCTION

1. This is an appeal of the decision of the Rural Municipality of North Shore to adopt the Rural Municipality of North Shore Land Use Bylaw (2021).
2. The 2021 Land Use Bylaw included a change to the zoning of PID #544940 (the “Property”) from Parks and Conservation (as zoned in the Community of North Shore 2014 Land Use Bylaw) to two zones: Parks and Recreation and Environmental Conservation.
3. The Appellants contend that their Property is the only private residential property to be changed by the 2021 Zoning Map, and that the permitted uses in the Parks and Recreation and Environmental Conservation zones are highly restrictive.
4. The Appellants ask the Commission to quash the Municipality’s decision to adopt the 2021 Zoning Map only as it relates to the Appellant’s Property. They also ask the Commission to “reinstate” the zoning of the Property to Residential, subject to a 50’ band of the Property being zoned Environmental Conservation.

## 2. BACKGROUND

5. Council for the Municipality adopted and passed the Rural Municipality of North Shore 2021 Land Use Bylaw (the “2021 Land Use Bylaw”) on October 13, 2021.<sup>1</sup> It replaced the previous Community of North Shore 2014 Land Use Bylaw.
6. The Appellants filed their Notice of Appeal on November 8, 2021.
7. Shortly thereafter, Commission Staff raised the issue of jurisdiction with the parties, highlighting past decisions from the Commission regarding its jurisdiction with respect to appeals of new land use bylaws versus those relating to bylaw amendments. The parties were asked to provide submissions on the issue of the Commission’s jurisdiction to hear this appeal.
8. On November 19, 2021, both the Appellants and the Municipality provided submissions in writing to the Commission on the issue of jurisdiction.
9. In the months that followed, both parties indicated their willingness to participate in mediation facilitated by Commission Staff. As such, mediation was held on May 6, 2022.
10. Following that time, the parties remained in discussions about resolution of this matter.
11. In January 2023, the Commission was advised that resolution efforts between the parties were not successful. The Commission advised that it would, therefore, issue an Order in respect of jurisdiction as that matter remained outstanding.

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<sup>1</sup> October 13, 2021, Approved Regular Council Meeting Minutes – Rural Municipality of North Shore.

### 3. ISSUE

12. Does the Commission have the jurisdiction, under the *Planning Act*, to hear this appeal of the Municipality's adoption of the 2021 Land Use Bylaw, which zones the Appellants' Property both Parks and Recreation and Environmental Conservation?

### 4. DISPOSITION

13. The Commission does not have jurisdiction to hear this appeal.

### 5. ANALYSIS

14. This appeal is made to the Commission under the *Planning Act*.<sup>2</sup> Clause 28(1.1)(b) of the Act provides a right of appeal to any person who is dissatisfied by a decision of the council of a municipality:

(b) to adopt an amendment to a bylaw, including

(i) an amendment to a zoning map established in a bylaw, or

(ii) an amendment to the text of a bylaw.

15. The Commission has previously commented on the kinds of municipal decisions that fall within the purview of clause 28(1.1)(b). Order LA11-05, albeit over ten years old, remains good authority on this question and the principles contained therein continue to apply.<sup>3</sup>
16. In that order, the Commission found that clause 28(1.1)(b) pertains to bylaw amendments made as an administrative, rather than a legislative, function of a municipality. For example, a bylaw amendment that includes an amendment to a zoning map, and consequential amendments to an official plan (e.g. an amendment to the future land use map), in order to allow a specific development project to go ahead, is viewed as an administrative decision which may be appealed to the Commission. By contrast, a comprehensive review of the official plan and the accompanying review of the implementing bylaw, not pertaining solely to any one specific application, constitutes a legislative enactment made by the municipality. That kind of decision is not one which may be appealed to the Commission.
17. In this case, the Appellants have appealed the decision of Council to approve and adopt a new land use bylaw. They ground their appeal under clause 28(1.1)(b) of the *Planning Act*, and characterize it as seeking to quash "the amendment to a zoning map" included in the 2021 Land Use Bylaw. They say the Bylaw "amends" the zoning of their Property. They distinguish their appeal from the previous Orders of the Commission by arguing that they are requesting the adoption of the Bylaw be quashed only as it relates to the zoning change to their Property.

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<sup>2</sup> *Planning Act*, RSPEI 1988, P-8.

<sup>3</sup> Order LA11-05, *Wanda Wood and Heather McBeath v. Community of Victoria* (April 7, 2011).

18. The Appellants argue that the *Planning Act* clearly permits appeals of a decision of council to adopt an amendment to a bylaw, and that the new 2021 Land Use Bylaw and accompanying Zoning Map “amends the mapping” of the Property. While the Appellants agree that a comprehensive review of an official plan and accompanying review of an implementing bylaw are legislative decisions, they contend that the “decision to amend the mapping of the [Property] in the 2021 Land Use Bylaw and zoning map is an administrative decision subject to the jurisdiction of the Commission.”
19. In contrast, the Municipality explains that they enacted the new 2021 Official Plan and Land Use Bylaw because of the amalgamation of several municipalities, and that the new Official Plan and Bylaw incorporate many changes reflective of that amalgamation. For example, the municipal boundary is significantly different, some old zone names have been changed, and new zones have been created to better reflect certain categories of land uses. The Resolution of Council to adopt the Bylaw, as reflected in the Approved Regular Council Meeting Minutes from October 13, 2021, states that the Planning Board and Council undertook “a full review of the existing [Bylaw]”.
20. It is the Municipality’s position that they enacted a new bylaw, which is an exercise of a legislative function, and one that does not fall under the jurisdiction of the Commission to review.
21. The Commission accepts and agrees with the position of the Municipality.
22. The Commission understands that the zoning of the Appellants’ Property is different now than it was before. However, the 2021 Land Use Bylaw was enacted to replace the previous 2014 Land Use Bylaw. It did not *amend* the 2014 Land Use Bylaw. The Municipality’s Bylaw must be viewed as something more than a series of amendments to those that previously existed.<sup>4</sup>
23. Council’s decision to adopt the new 2021 Land Use Bylaw was not one in respect of the administration of bylaws. It was not a decision “to adopt an amendment to a bylaw” which attracts the appellate authority of the Commission. Instead, the Municipality was exercising a legislative function when it undertook a comprehensive review of the official plan and the implementing bylaw and, ultimately, adopted the new 2021 Land Use Bylaw and Zoning Map.

## 6. CONCLUSION

24. The Commission finds that a decision to enact a new land use bylaw is a legislative decision of a municipality and the Commission has no jurisdiction to hear an appeal of such a decision. Accordingly, the Commission does not have the jurisdiction to hear the Appellants’ appeal of the Municipality’s adoption of the 2021 Land Use Bylaw.
25. The Commission thanks the Appellant and the Municipality for their submissions in this matter.

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<sup>4</sup> Order LA00-11, *Arthur Jennings et al v. City of Charlottetown*.

## 7. ORDER

26. The Commission does not have jurisdiction to hear this appeal.

**DATED** at Charlottetown, Prince Edward Island, **July 5, 2023**.

### BY THE COMMISSION:

(sgd.) *J. Scott MacKenzie*

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J. Scott MacKenzie, K.C., Chair

(sgd.) *Murray MacPherson*

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Murray MacPherson, 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.*

**NOTE:** In accordance with IRAC'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.