



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued:

July 5, 2023

Docket:

LA22012

Type:

Planning Act Appeal

INDEXED AS: *Willemina and Floyd Squires v. Minister of Housing, Land and Communities*
2023 PEIRAC 07 (CanLII)

Order No: LA23-07

BETWEEN:

Willemina and Floyd Squires

Appellants

AND:

Minister of Housing, Land and Communities

Respondent

AND:

Anthony McQuillan


Developer

ORDER TO HOLD MATTER IN ABEYANCE

Panel Members:

J. Scott MacKenzie, K.C., Chair
M. Douglas Clow, Vice-Chair

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

1. BACKGROUND

1. The Appellants filed a Notice of Appeal on June 17, 2022, appealing a decision of the Minister of Housing, Land and Communities¹ to issue a Development Permit to Anthony McQuillan. The permit allowed Mr. McQuillan to construct a non-commercial storage building on his property at 903 Village Green Road in the Community of Lake Verde. The Appellants live next door to this property.
2. The Notice of Appeal lists the single ground of appeal as: “boundary line is in dispute”. The Appellants allege that the building does not meet the required setbacks outlined in the *Planning Act Subdivision and Development Regulations*.² The Notice of Appeal requests that the location of the building be confirmed by a licensed surveyor prior to construction. In follow-up submissions the Appellants say they are appealing the decision to grant a development permit where the applicant has given insufficient or erroneous information to support the application.
3. Mr. McQuillan submits that all information submitted by him for the application was taken from the original “community boundary / property boundary line” and is in full compliance with the setbacks required by the *Regulations*. He says that he had a survey of the boundary prepared by a surveyor, but, to date, has not provided this to the Commission.
4. The Minister submits that Mr. McQuillan’s application included all information required by section 32 of the *Regulations*. The permit application submitted to the Minister was accompanied by a hand-drawn sketch showing that the rear-left corner of the building would be 28’ from the “community boundary property line” and the Development Officer’s Pre-Development and Subdivision Inspection Report indicates that the proposal meets the required minimum building setbacks.
5. The Minister submits that determining the location of a “community boundary/property line” is not within the purview of the Minister in issuing or denying a Development Permit Application.
6. The Record of decision prepared by the Minister includes a Plan of Survey of the Appellants’ property, dated May 18, 2018, and prepared by Serge J. Bernard. The Appellants have also submitted to the Commission a Plan of Survey of their property prepared by David R. J. Morris, dated June 6, 2022. These two Plans of Survey show the boundary line being in two different places.
7. Clearly, the Appellants and Developer do not agree on the location of the boundary line between their properties. The evidence before the Commission is not consistent with respect to the location of the boundary line, even without a third survey plan from Mr. McQuillan.

¹ Formerly the Minister of Agriculture and Land

² *Planning Act Subdivision and Development Regulations*, EC693/00.

8. The Commission does not have jurisdiction to determine boundary line disputes. The Commission has previously held, on more than one occasion, that its jurisdiction is statutory and not unlimited.³
9. The Commission has previously interpreted its jurisdiction to include: (i) the consideration of whether the Minister followed the proper process and procedure as required by the *Planning Act* and its regulations; and (ii) the consideration of whether the decision made by the Minister is based on sound planning principles.⁴
10. The Commission has also previously held that it does not have the authority to hear and determine issues that fall within the jurisdiction of the Supreme Court of Prince Edward Island.⁵
11. The PEI Court of Appeal has said that determining a boundary line is a legal issue, over which the court has the final decision.⁶
12. The Commission understands the position of the Appellants to be that a permit was granted based on erroneous information and without adequate attention to side yard requirements. However, faced with at least two different survey plans in evidence, the Commission is unable to even consider the Appellants' appeal on its merits while the location of the boundary line, and consequently the line from which setbacks are to be measured, is in dispute because the Commission does not have jurisdiction to determine boundary line disputes.
13. Therefore, the Commission has decided to issue this order to hold this matter in abeyance while the Appellant seeks to settle the location of the boundary line.

2. ORDER TO HOLD MATTER IN ABEYANCE

14. The Commission orders that:
 - a) this appeal be held in abeyance for nine months;
 - b) The Appellants are to provide the Commission with a status update as to their efforts to resolve the boundary line dispute by March 31, 2024;
 - c) At that time, the Commission will consider whether a further abeyance is warranted.

³ Order No. LA22-03, *Brian R. MacKay v. Minister of Agriculture and Land*, at para 10. See also, Order LA10-12 and Order LW22-001.

⁴ Order No. LA22-03, at para 12 (citing from Order LA17-06, at para 52).

⁵ Order No. LA22-03, at para 12 (citing from Order LA10-12).

⁶ *MacKay v. MacKenzie*, 2016 PECA 16, at para 15.

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

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, K.C., Chair

(sgd.) M. Douglas Clow

M. Douglas Clow, Vice-Chair

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.