



Date Issued: September 18, 2024
Docket: LA24008
Type: Planning Act Appeal

INDEXED AS: George Crawford et al. v. City of Charlottetown,
2024 PEIRAC 6 (CanLII)

Order No: LA24-06

BETWEEN:

George Crawford and Myles Stewart

Appellants

AND:

City of Charlottetown

Respondent

AND:

New Age Investment Group Inc.

Developer

REASONS FOR DECISION

Panel Members:

Kerri Carpenter, Commissioner

M. Douglas Clow, Acting Chair

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk

Island Regulatory and Appeals Commission

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Appearances & Witnesses

1. For the Appellants:

N/A

2. For the Respondent, City of Charlottetown:

Counsel:

Melanie McKenna

3. For the Developer, New Age Investment Group Inc.:

Will Zafiris

1. INTRODUCTION

1. On Thursday, September 12, 2024, at a hearing of this matter, the Commission deemed this appeal abandoned, with a written order to follow. This is the Order that follows that decision.

2. OVERVIEW OF PROCEEDINGS

2. This is an appeal of the decision of the City of Charlottetown, made April 9, 2024, whereby Council approved a Rezoning and Amendments Application submitted by the Developer, New Age Investment Group Inc., to rezone PID 1047564 from Low Density Residential Single Zone (R-2S) to Apartment Residential Zone (R-4) (the "Rezoning Decision").
3. On April 15, 2024, the Island Regulatory and Appeals Commission (the "Commission") received Notices of Appeal in respect of the City's Rezoning Decision from seven (7) residents of the community.
4. We note that as of the writing of this Order, five (5) of those residents have written to the Commission to formally withdraw their participation in the appeal. Specifically, two appellants withdrew on July 3, 2024, one withdrew on August 22, 2024, and two withdrew on September 11, 2024. Therefore, only two (2) appellants remain, being George Crawford and Myles Stewart.
5. By letter dated July 15, 2024, Commission Staff advised the parties that the Commission scheduled this appeal for a public hearing, beginning Wednesday, September 11, 2024, at 9:30 a.m.
6. On Monday, September 9, 2024, at 3:15 p.m., the Commission received an email with attached letter from George Crawford, purportedly on behalf of the appellants. The letter concluded:

The Appellants will not attend the September 11th IRAC hearing without legal representation and witnesses.

7. Mr. Crawford also hand delivered a copy of this letter to the Commission at 4:00 p.m. on the same day.
8. As of this date and time, there were four (4) appellants participating in the appeal, being George Crawford, Myles Stewart, and Kim and Alan Watts.
9. Following receipt of that letter from Mr. Crawford, on Tuesday, September 10, 2024, the Commission made several attempts, via email and voicemail messages, to confirm with the four appellants their intention with respect to moving this matter forward. In particular, the Commission stated, in writing:

If it is not the intention of the Appellants to withdraw the appeal and your correspondence is a request for a postponement or adjournment of the scheduled hearing to provide you with time to seek legal advice and retain an expert witness, please clarify that to us in writing as soon as possible. The Commission will consider your request in accordance with Rule 30.5

of the Prince Edward Island Regulatory & Appeals Commission Rules of Practice and Procedure.

10. The Commission received no written communication from any of the four appellants on Tuesday, September 10, 2024.
11. On Wednesday, September 11, 2024, at approximately 9:45 a.m., the Commission opened the hearing as scheduled. The appellants were not in attendance. Therefore, the Commission adjourned the hearing until 9:30 a.m. on Thursday, September 12, 2024, to allow more time to communicate with the appellants to clarify the intention with respect to moving the appeal forward.
12. On Wednesday, September 11, 2024, Commission Staff prepared letters and served them on the four appellants via email and process server. The letters requested a response from the Appellants to the following questions:

Is it your intention to request a postponement or adjournment of the Scheduled Hearing to provide you with time to seek legal advice and/or retain an expert witness? If so, please clearly make this request in writing, and the Commission will consider the request in accordance with Rule 30.5 of the Prince Edward Island Regulatory & Appeals Commission Rules of Practice and Procedure.

Is it your intention to withdraw your participation in this appeal? If so, please advise the Commission in writing in accordance with Rule 28 of the Commission's Rules of Practice and Procedure.

[Bold emphasis in original]

13. The correspondence directed the parties to respond to the Commission's inquiries by 9:00 a.m. on Thursday, September 12, 2024.
14. The correspondence also gave notice to the appellants that a failure to respond to the Commission's request or failure to attend the hearing on Thursday, September 12, 2024, at 9:30 a.m., could result in the Commission deeming the appeal abandoned, in accordance with Section 29 of the Commission's Rules of Practice and Procedure, which would mean the appeal process would come to an end.
15. After service of this letter, Kim and Alan Watts wrote to the Commission to withdraw their participation in the appeal.
16. However, as of 9:00 a.m. on Thursday, September 12, 2024, the Commission did not have communication in writing from George Crawford or Myles Stewart in response to the Commission's correspondence. Further, the Commission re-opened the hearing at 9:30 a.m., and neither of those appellants were in attendance.

3. ANALYSIS

17. As a result of the foregoing proceedings, the issue for the Commission to consider at the hearing on September 12, 2024, was whether the Commission should deem this appeal

abandoned in accordance with Rule 29 of the Commission's Rules of Practice and Procedure.

18. Rule 29 states:

29. Abandonment of an Appeal or Application

1. The Commission may deem an appeal or application to have been abandoned where, upon notice to the appellant or applicant, they have failed to:
 - (a) communicate with the Commission in a timely manner;
 - (b) respond to Commission inquiries, requests, or direction;
 - (c) file submissions or documentation with the Commission when directed to do so; or
 - (d) appear at a pre-hearing conference, preliminary hearing, or a hearing.

19. The Commission made several attempts to communicate with the appellants to request clarification about their intention to proceed with this appeal. We also gave notice to the appellants on September 11, 2024, that their appeal may be deemed abandoned if they did not respond to the Commission's request for clarification or attend at the hearing on Thursday, September 12, 2024. As of that date and time, the Commission had not heard in writing from George Crawford or Myles Stewart.

20. In these circumstances, the Commission is satisfied that the Appellants have:

- 1) Failed to communicate with the Commission in a timely manner;
- 2) Failed to respond to the Commission's inquiries, requests and direction; and
- 3) Failed to appear at the public hearing of this matter.

21. Previous Orders of the Commission have applied Rule 29 to deem appeals abandoned where appellants have failed to communicate with the Commission in a timely manner or respond to the Commission's requests or direction. See, for example, the Commission's Order LA24-04 and Order LR24-50.

4. DISPOSITION

22. The Commission deems this appeal abandoned in accordance with Rule 29 of the Commission's Rules of Practice and Procedure.

5. ORDER

23. The appeal is hereby deemed abandoned.

DATED at Charlottetown, Prince Edward Island, **September 18, 2024**

BY THE COMMISSION:

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting 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.