



PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD



Date Issued: September 27, 2024
Docket: LA23009
Type: Planning Act Appeal

INDEXED AS: Andrea Battison v. City of Charlottetown
2024 PEIRAC 7 (CanLII)

Order No: LA24-07

BETWEEN:

Andrea Battison

Appellant

AND:

City of Charlottetown

Respondent

AND:

PEI Housing Corporation

Developer

REASONS FOR DECISION

M. Douglas Clow, Acting Chair

Kerri Carpenter, Commissioner

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Appearances

1. For the Appellant:

Andrea Battison

2. For the Respondent, City of Charlottetown:

Counsel:

Melanie McKenna and Maggie Hughes

3. For the Developer, PEI Housing Corporation:

Counsel:

Christiana Tweedy

1. INTRODUCTION

1. This appeal concerns the approval of a demolition permit issued by the City of Charlottetown for a building located at 231 Richmond Street ("Demolition Permit"). The property is owned by PEI Housing Corporation.
2. The appeal was originally scheduled for hearing by the Commission on November 14, 2023. However, on November 7, 2023, the Developer raised two preliminary jurisdictional issues for consideration by the Commission and requested those issues be determined prior to a hearing on the merits of the appeal.
3. On November 10, 2023, the Commission agreed to determine the jurisdictional issues prior to a hearing on the merits and requested submissions from the parties addressing those issues. The hearing scheduled for November 14, 2023, was postponed.
4. This Order is the Commission's determination of the jurisdictional issues.

2. BACKGROUND

5. On March 27, 2023, the City of Charlottetown (the "City") issued a Demolition Permit allowing the demolition of a 2-story house located at 231 Richmond Street. The property is owned by the Developer, PEI Housing Corporation.
6. On April 17, 2023, the Commission received a Notice of Appeal from the Appellant seeking to appeal the issuance of the Demolition Permit. The Notice of Appeal was accompanied by the Appellant's request to the City of Charlottetown to reconsider their decision to issue the Demolition Permit, as well as her request to the Commission to hold the appeal in abeyance pending the outcome of the City's reconsideration.¹
7. The Commission agreed to hold the appeal in abeyance.
8. On August 21, 2023, the City advised the Appellant via letter that the City reviewed the decision of March 27, 2023, and decided not to reverse the decision of the Development Officer to approve the Demolition Permit.
9. As a result, the Appellant's appeal before the Commission proceeded and was scheduled for hearing on November 14, 2023. However, on November 7, 2023, the Developer raised two preliminary issues for consideration by the Commission (paraphrased):
 1. Does the Commission have statutory jurisdiction to hear the appeal of a demolition permit under the *Planning Act*²?

¹ Section 3.15.7 of the City's Zoning & Development Bylaw states:

3.15.7 The City shall not consider an application for reconsideration if, at the same time, there is an appeal filed with the Island Regulatory and Appeals Commission; but the City may proceed with reconsideration if the applicant has instructed the Island Regulatory and Appeals Commission in writing to hold the appeal in abeyance, and the Commission has agreed in writing to hold their appeal until the appellant has exhausted the recourse of reconsideration with the City.

² *Planning Act*, RSPEI 1988, P-8.

2. In the alternative, is the appeal moot because the demolition permit is expired?
10. On November 10, 2023, the Commission agreed to determine the jurisdictional issues prior to a hearing on the merits and requested submissions from the parties addressing those issues. The hearing scheduled for November 14, 2023, was postponed.
11. The City provided written submissions on the jurisdictional question by December 13, 2023. The Appellant responded in writing by January 5, 2024. Finally, the City and the Developer provided reply submissions, in writing, by January 15, 2024.

3. ISSUE

12. The questions for the Commission to consider are:
 1. Do demolition permits meet the definition of “development permit” under the *Planning Act* such that they can be appealed to the Commission per subsection 28(1.1) of that Act?
 2. Is the appeal moot due to the expiry of the Demolition Permit?

4. DISPOSITION

13. The Commission dismisses the appeal. The Commission does not have jurisdiction under the *Planning Act* to hear an appeal of a demolition permit that was issued in accordance with the *Building Codes Act*.³
14. The Commission declines to make any finding on the question of mootness.

5. ANALYSIS

1. Appeal of Demolition Permit per the *Planning Act*

15. The first question for the Commission to consider is whether demolition permits meet the definition of “development permit” under the *Planning Act* such that they can be appealed to the Commission per subsection 28(1.1) of that Act.

A. Developer’s Position

16. The Developer submits that the Commission does not have jurisdiction to hear or decide the appeal of a demolition permit. Their submissions focus on four main points.
 1. The Commission’s jurisdiction under the *Planning Act*.
 2. The *Building Codes Act* provides a comprehensive scheme to address demolition permits.
 3. City Council has adopted the *Building Codes Act* and *Regulations* under its Building Code Bylaw.

³ *Building Codes Act*, RSPEI 1988, B-5.1.

4. The appropriate appeal mechanism for a demolition permit is under the *Building Codes Act*.
17. With respect to the Commission's jurisdiction under the *Planning Act*, the Developer relies on the interplay between subsection 28(1.1) and the definition of "development permit" found at subsection 1(e.1). In particular, clause 28(1.1)(a)(i) authorizes an appeal of a decision of the council of a municipality made in respect of an application for "a development permit". The *Planning Act* defines "development permit" as meaning a permit issued for a development but "does not include a building permit issued under the *Building Codes Act*" (s. 1(e.1)).
18. The Developer submits that the *Building Codes Act* provides a comprehensive demolition scheme and explicitly states that both the *Building Codes Act* and the *Building Code Regulations* apply to the demolition of existing buildings. The *Building Codes Act* sets out the application process for the issuance of demolition permits, and no person shall commence demolition of a building unless a permit for the work has been issued.
19. For these reasons, the Developer submits that demolition permits are not appealable under clause 28(1.) (a)(i) of the *Planning Act*.
20. The Developer also cited a recent order of the Commission, *Douglas MacArthur v. City of Charlottetown*, Order LA22-06, for the finding that decisions made in relation to building permits are not appealable.

B. City's Position

21. The City submits that their position aligns with that of the Developer. Specifically, they agree that the Commission does not have jurisdiction to hear the appeal as an appeal of a demolition permit is not contemplated by subsection 28(1.1) of the *Planning Act*.
22. The City supplements the position of the Developer by arguing that demolition permits are issued by staff of the Planning and Heritage Department, and cannot, therefore, be appealed because they are not "decisions of the council of a municipality."

C. Appellant's Position

23. The Appellant's position is that demolition permits meet the definition of "development permit" under the *Planning Act* such that the Commission can hear the appeal pursuant to subsection 28(1.1) of the Act. Her submissions are summarized as follows:
 - i) Per the City's Zoning and Development Bylaw, 'development' has the same definition as in the *Planning Act* and a development permit must be issued before a development may be undertaken. The definition of 'development' in the *Planning Act* includes demolition and changing the intensity of use of a parcel of land. Therefore, the proposal for 231 Richmond Street is undoubtedly a development and requires a "Development Permit".
 - ii) Demolition is a recognized component of development for which development permits are issued. Therefore, an appeal regarding the demolition component of the development permit may be heard by the Commission.

- iii) The *Planning Act* only excludes building permits in subsection 1(e.1). A demolition permit is not a building permit. As there is no specific exclusion of demolition permits from the *Planning Act*, the Commission could use its discretion to consider the appeal on its merits.
- iv) The failure of the Developer to apply for, and the City to issue, a development permit is appealable under subsection 28(1.1) of the *Planning Act* 'in respect of an application'. Acts of omission are errors and reflect non-compliance with a bylaw. In effect, Council decided to not issue a Development Permit where one was required. Decisions of Council can be appealed under subsection 28 (1.1) of the *Planning Act*.
- v) Under the principle of delegated authority and subsection 11(2) of the *Interpretation Act*⁴, decisions of staff can also be appealed to the Commission. The Appellant relies on a previous order of the Commission in this respect: Order LA05-12 (*Guptill, Moore and Morneau v City of Summerside*).
- vi) The proposed development and its demolition component are directly related to objectives of the *Planning Act*; therefore the Commission can use its discretion and hear the appeal under subsection 11(2) of the *Interpretation Act*.
- vii) Demolition is not 'as-of-right' because it is subject to the City's Zoning and Development Bylaw and Heritage Preservation Bylaw which clearly establish objective restrictions, conditions, and criteria under which permits can be issued.
- viii) Neither the Building Code Bylaw nor the *Building Codes Act* address the process by which the City determined that issuing the demolition permit was within the restrictions and conditions as outlined in the Zoning and Development Bylaw and the Heritage Preservation Bylaw. Decisions of Council can be appealed under subsection 28(1.1).

D. Commission's Findings

- 24. For somewhat different reasons than those put forward by the Developer, the Commission agrees that it does not have jurisdiction to hear an appeal of a demolition permit that was issued in accordance with the *Building Codes Act*.
- 25. Subsection 28(1.1) of the *Planning Act* authorizes an appeal to the Commission of a decision of a council of a municipality:
 - (a) that is made in respect of an application by a person under a bylaw for
 - (i) **a development permit**, [emphasis added]
 - (ii) an occupancy permit, in relation to a matter under this Act or the regulations,
 - (iii) a preliminary approval of a subdivision, or
 - (iv) a final approval of a subdivision; or

⁴ Subsection 11(2) of the *Interpretation Act* states: "Acts and regulations shall be construed as being remedial and shall be given the fair, large and liberal interpretation that best ensures the attainment of their objects."

(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.

26. The *Planning Act* defines “development permit”, at subsection 1(e.1), as meaning a permit issued for a “development under the regulations or pursuant to a bylaw *but does not include a building permit issued under the Building Codes Act*” [emphasis added]. In other words, the *Planning Act* **expressly excludes** building permits issued under the *Building Codes Act* from the definition of development permit.

27. It follows, therefore, that a decision of a municipality “made in respect of a development permit” does not include a decision in respect of a building permit issued under the *Building Codes Act*. The Commission accepts that this means that appeals of building permits issued under the *Building Codes Act* do not fall under the Commission’s statutory authority to hear and decide appeals.

28. The Commission has previously made findings in respect of this conclusion in Order LA22-02 (*Clare Fagan*) and Order LA22-06 (*Douglas MacArthur*). In those Orders, the Commission found that it does not have jurisdiction to hear appeals of building permits. In LA22-06, the Commission stated that while one of the general functions of the Commission described in subsection 5(b) of the *Island Regulatory and Appeals Commission Act*⁵ is to hear and decide matters relating to land use, an appeal is a statutory process and if an appeal has not been specifically assigned to the Commission, then the Commission does not have the authority to hear and decide the appeal.

29. Accepting that the Commission does not have jurisdiction to hear appeals of building permits issued under the *Building Codes Act*, the question becomes whether the Demolition Permit issued by the City of Charlottetown is a “building permit issued under the *Building Codes Act*”.

30. For the reasons that follow, we conclude that the answer to that question is ‘yes’.

31. There is no definition of “building permit” in the *Building Codes Act*. However, at subsection 1(s), the *Building Codes Act* defines “permit” as meaning:

a valid and subsisting permit issued under this Act or the regulations in respect of construction **or demolition** or the occupancy or use of a building” [emphasis added].

32. Section 11 of the *Building Codes Act* prohibits the demolition of a building without “a permit”:

11. Prohibition

No person shall

(a) commence construction or order the construction of a building;

(b) **demolish or order the demolition of a building;** or

⁵ *Island Regulatory and Appeals Commission Act*, RSPEI 1988, I-11.

- (c) change the use of a building, **unless**
 - (d) **a permit for the work has been issued** by a building official; and
 - (e) the proposed work conforms to
 - (i) the requirements of this Act and the regulations, and
 - (ii) the terms and conditions of the permit.
- [bold emphasis added]

33. We note that the word “building” is defined in the *Building Codes Act Regulations*⁶, at subsection 1(b), as meaning:

- (b) “building” means any structure used or intended for supporting or sheltering any use or occupancy;

34. Further, the words construction and demolition are each separately defined in the *Building Codes Act*, at subsections 1(h) and 1(m):

- (h) “construction” means anything done for the purposes of erection, installation, extension or material alteration or repair of a building and includes the installation of a building unit fabricated or moved from elsewhere;
- (m) “demolition” means anything done for the purposes of the removal of a building or any material part of a building;

35. Considering the above, in the Commission’s opinion, a “building permit” as referred to in the definition of “development permit” at subsection 1(d) the *Planning Act* must be interpreted to mean: a permit issued under the *Building Codes Act* in respect of a building, and includes both a permit to construct a building *and* a permit to demolish a building.

36. We also agree with the submissions of the Developer that: the *Building Codes Act* provides a comprehensive scheme to address demolition permits; City Council has adopted the *Building Codes Act* and *Regulations* under its Building Code Bylaw;⁷ and the appropriate appeal mechanism for a demolition permit is under the *Building Codes Act* at sections 24 and 25.

37. With respect to the arguments of the Appellant, on our review, a number of them seem to ignore that the *Planning Act* expressly excludes “building permit[s] issued under the *Building Codes Act*” from the definition of development permit.

38. Therefore, in conclusion, it is our finding that the definition of “development permit” under the *Planning Act* excludes a demolition permit issued pursuant to the *Building Codes Act* such that a demolition permit is not appealable to the Commission.

⁶ *Building Codes Act Regulations*, EC177/20, at s. 1(b); the *Building Codes Act* defines “building” as prescribed in the regulations (s. 1(d)).

⁷ City of Charlottetown Building Code Bylaw (PH-BC.3), s. 1.1.1.

39. We also wish to make a brief comment on the City's submission that demolition permits cannot be appealed because Council's approval is not required. We make no finding on that question in the context of this particular appeal as it is not required to dispose of this matter; however, as the Appellant rightly points out in her submissions, the Commission has previously rejected this argument in Order LA05-12 (*Guptill, Moore and Morneau v City of Summerside*). In that Order, the Commission commented that the nature of delegated authority and the equivalent to today's section 11(2) of the *Interpretation Act* serve to maintain the appeal rights of the public by tempering an overly literal reading of an enactment.

2. Is the Appeal Moot?

40. The Demolition Permit was signed by the Building Inspector on March 27, 2023. In accordance with section 3.5.6 of the City's Zoning and Development Bylaw, the Permit clearly indicates that "a Demolition Permit is valid for sixty (60) calendar days from the date of issue." Sixty (60) days from March 27, 2023, was on or about May 26, 2023.

41. In their submissions on November 7, 2023, the Developer submitted that because the permit has expired, the appeal is moot.

42. A finding in respect of this issue is not required to dispose of this appeal and, therefore, the Commission declines to make any finding on the question of mootness.

6. CONCLUSION

43. The appeal is dismissed. The Commission does not have jurisdiction to hear an appeal of a demolition permit issued in accordance with the *Building Codes Act*.

44. The Commission declines to make a finding on the question of mootness.

45. The Commission thanks the Appellant, the City and the Developer for their submissions in this matter.

7. ORDER

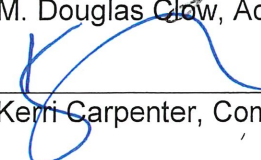
46. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, **September 27, 2024**

BY THE COMMISSION:



M. Douglas Clow, Acting Chair



Kerri Carpenter, 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.