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

Date Issued: **December 11, 2025**
Docket: **LA25005**
Type: **Planning Act Appeal**

INDEXED AS: Blair Sorrey v. Town of Three Rivers
2025 PEIRAC 62(CanLII)

Order No: LA25-09

BETWEEN:

D. Blair Sorrey

Appellant

AND:

Town of Three Rivers

Respondent

ACRE Development Corp.

Developer (Landowner)

REASONS FOR DECISION

Panel Members:

Pamela J. Williams, K.C., Chair
Gordon MacFarlane, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

Contents

Written Submissions Filed by:

1. **For the Appellant:**

   D. Blair Sorrey

2. **For the Respondent:**

   Counsel:
   Ewan Clark, Cox & Palmer

3. **For the Developer:**

   Mark Baker, President, ACRE Development Corp.

1. INTRODUCTION

1. This is an appeal of the decision of the Town of Three Rivers to approve a development permit for a 40-unit residential development comprised of two 16-unit buildings and one 8-unit building on Robertson Road in Brudenell, PEI.

2. The Notice of Appeal in this matter raises grounds of appeal in respect of environmental concerns with the subject property. As relief, the Appellant calls for a comprehensive review of the project by the Department of Environment, Energy and Climate Action ("Department of EECA"). Upon receipt of the Notice of Appeal, the Commission identified a preliminary issue regarding the jurisdiction of the Commission to make findings in respect of the Appellant's grounds of appeal and relief sought. This Order results from a hearing in writing with respect to that jurisdictional issue.

2. BACKGROUND

3. On May 27, 2025, the Town of Three Rivers issued a development permit (Number 46.25.DEP) approving the development of a 2-storey, 40-unit residential development comprised of two 16-unit buildings and one 8-unit building on Robertson Road in Brudenell, PEI (PID 199026).

4. The Appellant, D. Blair Sorrey, filed a Notice of Appeal with the Commission on June 16, 2025. The grounds of appeal and relief sought were stated as follows:

> Grounds: "No comprehensive review of this project was done by the Dept. of Environment despite the fact it borders on Gibsons Creek Watershed and also a legal [indenture] is attached to the property deed which states that approx. a third of the property is impacted by petroleum hydrocarbons that shall not be disturbed without strict environmental guidelines in place."
>
> Relief: "We call for a comprehensive review of this project by the Dept. of Environment in order to: (A) protect the private wells in the area, (B) to protect the Gibsons Creek Watershed, and (C) to ensure that a professional and experienced company is hired and is on site to deal with the threat of petroleum hydrocarbons in order to comply with the legal [indenture]."

5. On a review of the Notice of Appeal, the grounds of appeal and relief sought appeared to be based on environmental concerns related to the Department of EECA rather than on planning principles or the Town's Official Plan or Development Bylaw. Therefore, the Commission requested that the Appellant provide further particulars of the grounds of appeal and relief sought to clarify how they fall within the Commission's statutory authority to hear and decide appeals under the *Planning Act*. The Town and Landowner were also invited to make submissions.

6. All parties made submissions in writing to the Commission. In accordance with Rule 41 of the Commission's Rules of Practice and Procedure, the Commission exercised its discretion to determine this preliminary matter without an oral hearing.

3. ISSUES

7. The question for the Commission to consider at this preliminary stage is whether the grounds of appeal and relief sought in the Appellants' Notice of Appeal are within the statutory jurisdiction of the Commission to consider in an appeal pursuant to section 28 of the *Planning Act*, RSPEI 1988, P-8.

8. The Commission, as an administrative tribunal, is only authorized to hear and decide appeals within the jurisdiction that has been assigned to it by legislation. The question the Commission must consider in the present case, therefore, is whether the Commission is authorized to hear the Appellant's appeal and whether it can proceed before the Commission to a hearing on its merits.

9. Having received written submissions from the parties on the subject of jurisdiction, the Commission has determined this matter without an oral hearing, pursuant to Rule 41 of the Commission's Rules of Practice and Procedure.

4. DISPOSITION

10. The appeal is dismissed. The Commission is a statutory tribunal without inherent jurisdiction. The relief sought in the Notice of Appeal, requesting a comprehensive review of the development by the Department of EECA, is outside the jurisdiction of the Commission to consider or award in an appeal pursuant to section 28 of the *Planning Act*.

5. ANALYSIS

11. The Commission is an administrative body created by statute and has long held that it does not have inherent jurisdiction.[1] In the context of appeals pursuant to the *Planning Act*, the Commission is authorized by the *Island Regulatory and Appeals Commission Act*[2] to hear and decide matters relating to land use and by the *Planning Act*[3] to hear appeals of certain specific decisions of planning authorities. The fundamental principle of administrative law is that any tribunal exercising delegated statutory power must exercise its legal authority only in accordance with the provisions of its enabling and operating legislation.[4]

12. It has been long established that on an appeal pursuant to the *Planning Act*, the Commission will consider two primary questions:

    i) Whether the municipal authority followed the proper procedures as required in its land use planning bylaw in making a decision; and

    ii) Whether the decision has merit based on the municipality's Official Plan, land use planning bylaw and sound planning principles.

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[1] Order LA22-03, *Brian R. MacKay v. Minister of Agriculture and Land*, at para 10. See also, Order LA10-12, *Sigrid Rolfe and Sharon Labchuk v. Minister of Finance and Municipal Affairs*, at para 12.
[2] RSPEI 1988, I-11, s. 5(b).
[3] RSPEI 1988, P-8, s. 28.
[4] *City of Charlottetown v. IRAC*, 2013 PECA 10, at para 31.

13. In *Island Regulatory and Appeals Commission (Re)* (1997),[5] the PEI Court of Appeal considered the Commission's jurisdiction generally pursuant to the *Planning Act*. In that context, the Court of Appeal said that the purpose of grounds of appeal in *de novo* appeals are to alert the appeal tribunal and parties to "the nature of the appellant's complaint with the decision, and the form of redress being sought." The Court of Appeal went on the say that the Commission does not have unfettered discretion or unbridled power to deal with and decide appeals as it likes; rather, it is bound to hear, consider, and decide the issues of the case in accordance with the requirements and objects of the *Planning Act*.

14. With this framework in mind, the Commission must examine the Notice of Appeal and submissions of the Appellant as a whole to determine whether the appeal raises issues and seeks relief that fall within the Commission's jurisdiction to hear and decide on an appeal pursuant to the *Planning Act*. The search is for the true nature or essence of the appeal.[6]

15. The Notice of Appeal is appealing a development permit, approved by the Town of Three Rivers, for the development of a 2-storey, 40-unit residential development comprised of two 16-unit buildings and one 8-unit building on Robertson Road in Brudenell, PEI (PID 199026). The Notice of Appeal states that no comprehensive review of this project was done by the Department of EECA prior to its approval, despite its proximity to a watercourse and the alleged presence of petroleum hydrocarbons. As relief, the Appellant requests a comprehensive review of the project by the Department in order to address these concerns.

16. Upon receipt of the Notice of Appeal, the Commission requested further particulars regarding the Appellant's grounds of appeal and relief sought. In response, the Appellant made two primary submissions alleging that the Town failed to enforce or follow their own bylaws.

17. First, the Appellant submits that the Town failed to enforce section 5.22 of the Development Bylaw #2025-05 (the "Development Bylaw"). That section provides:

> **5.22. Watercourse Separation Distance**
>
> 1) Where a development is proposed adjacent to a waterbody, watercourse, or wetland, the development shall obtain all necessary permits under the Environmental Protection Act R.S.P.E.I. 1988, E-9 as a precondition of approval.

18. He submits this section was not complied with, contrary to the Development Bylaw.

19. The Appellant also submits that the Town failed to follow section 1.2(1)(a) of the Development Bylaw, which states:

> **1.2. Purpose**
>
> 1) The purpose of the Development Bylaw is to establish:
>
> a) Regulations with respect to planning and land use matters affecting the general welfare, health, safety and convenience of persons in the Town of Three Rivers;

[5] 1997 CanLII 4578 (PESCAD), at para 10.
[6] Order LA22-03, at para 13; see also, 1997 CanLII 4578 (PESCAD), at para 10

20. The Appellant submitted that in approving this Development, Council has placed private wells on Robertson Road in jeopardy and has endangered the nearby watercourse in approving this project. He submits this is an “existential threat” to the health and safety of the residents of Robertson Road, contrary to the Development Bylaw.

21. The Appellant also submitted to the Commission a copy of an indenture registered on title to the subject property. The indenture appears to include a well-exclusion provision on a portion of the subject property. It also authorizes access to the subject property for the purpose of accessing existing monitoring wells.

22. In a submission dated July 21, 2025, the Appellant wrote: “…this file should never have been approved without a full environmental impact review.”

23. In response, the Town submits that the grounds of appeal and relief sought do not fall within the Commission’s jurisdiction, and that the appeal does not relate to planning principles or the Town’s administration of its Official Plan or Development Bylaw. Overall, the Town submits that the Appellant has not raised any grounds or evidence to suggest the decision was not made in accordance with sound planning principles and that any consideration of environmental requirements falls under the purview of the Department of EECA, and not the Commission on a planning appeal.

24. The Town submits that they do not have authority to enforce or consider the private covenants in the indenture. Further, they say the issues raised with respect to hydrocarbons, contamination and watercourses are governed under other authorities and legislation. For example, they say that any consideration of the environmental matters falls under the purview of the Department of EECA and their enforcement of the *Environmental Protection Act*.

25. For his part, the Landowner submits that the appeal is not within the jurisdiction of the Commission. His submissions included copy of a “closure letter” in relation to the subject property from the Department of Communities, Land and Environment (as it was at the time) stating there was no further risk on the property and that the only condition to remain was a well-exclusion zone. He stated that all monitoring wells have been decommissioned. The Landowner submits that there should be no further concern regarding the watercourse as there are clear parameters outlined in the *Environmental Protection Act* in establishing a buffer zone. He notes that the Department of EECA attended the subject property and marked the buffer zone.

26. The Landowner’s submissions also cite a 2007 Order from the Commission, Order LA07-12, which involved the same parties. The Landowner refers this Commission to the findings in Order LA07-12 where the Commission said it does not have jurisdiction to hear an appeal of a decision made under the *Environmental Protection Act*.

27. At this stage of the proceedings, the Commission is only considering whether the grounds of appeal and relief sought fall within the Commission’s jurisdiction on an appeal pursuant to the *Planning Act*. Though the submissions of the parties bordered on whether the Development Permit was properly issued, the Commission must be careful to not conflate the merits of the decision under appeal with whether or not the grounds of appeal and relief sought fall within the Commission’s jurisdiction to consider.

28. The Commission has carefully reviewed the Notice of Appeal and the submissions of the parties, in particular the further submissions of the Appellant. The Commission finds that the true nature of the Appellant's appeal and his relief sought relate to environmental concerns and remedies that are outside the jurisdiction of the Commission to consider and award on appeal pursuant to the *Planning Act*.

29. The Notice of Appeal seems clear, even on a generous interpretation, that the Appellant is seeking a comprehensive review of this development by the Department of EECA before it is allowed to proceed. In this case, similar to the Commission's finding in Order LA07-12, while environmental issues with any new development are always of great importance, in the present appeal the concerns raised by the Appellant – and the remedy sought – appear to fall within the jurisdiction of the province.

30. The Appellant's additional submissions do invoke the Town's Development Bylaw as grounds for the appeal; however, the permits required by section 5.22 of the Development Bylaw must be obtained from the Department of EECA and are issued under the *Environmental Protection Act*. They cannot be ordered by the Commission.

31. The Appellant has been clear that he is requesting a comprehensive review of this project by the Department of EECA before it is allowed to proceed. This remedy is outside the jurisdiction of the Commission to grant on an appeal under the *Planning Act*. In Order LA10-12, the Commission said:[7]

> [13] […] Section 28 of the *Planning Act* is a statutory grant of jurisdiction to the Commission. A decision to order, or not to order, an environmental impact assessment is a decision made pursuant to the *Environmental Protection Act*. The Commission has not been provided with a statutory grant of jurisdiction to hear appeals of decisions to order, or not to order, an environmental impact assessment under the *Environmental Protection Act*. […]

32. The Commission accepts that this finding remains good authority on this question and continues to apply.

33. In the Appellant's additional information submitted June 23, 2025, he states that the Town failed to enforce section 5.22 of the Development Bylaw. The Commission has been clear in previous decisions that it does not have jurisdiction over matters of bylaw enforcement.[8]

34. Finally, as it relates to the indenture provided and referred by the Appellant, the Commission accepts the submission of the Town that they do not have the authority to enforce or consider private covenants. The Commission, similarly, is not authorized to enforce private covenants.

35. In conclusion, on a careful review of the Appellant's Notice of Appeal and written submissions, the Commission is not satisfied that the true nature of the Appellant's appeal relates to planning principles or land use matters. Rather, we conclude that the true nature

[7] Order LA10-12, at para 13.
[8] Order LA22-03, at para 12 (citing Order LA14-05 and LA13-02)

of the Appellant's appeal concerns environmental matters that cannot be considered by the Commission on an appeal pursuant to the *Planning Act*.

36. As previously commented by the Commission in Order LA22-03, the Commission must guard against hearing and deciding issues that fall within the authority or jurisdiction of another decision-maker.[9]

37. For these reasons, the Commission finds that it does not have the jurisdiction to consider the grounds of appeal raised and relief sought in the Appellant's Notice of Appeal.

6. CONCLUSION

38. The appeal is dismissed.

7. ORDER

39. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island**, December 11, 2025**

BY THE COMMISSION:

[sgd. Pamela J. Williams]
Pamela J. Williams, K.C., Chair

[sgd. Gordon MacFarlane]
Gordon MacFarlane, 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.

[9] Order LA22-03, at para 15.

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.