



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA08003  
Order LA08-09**

**IN THE MATTER** of a request for  
review of Order LA08-04, issued by the  
Commission on June 20, 2008.

**BEFORE THE COMMISSION**  
on Thursday, the 18th day of December,  
2008.

Maurice Rodgerson, Chair  
John Broderick, Commissioner  
Anne Petley, Commissioner

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# Order

Compared and Certified a True Copy

(Sgd.) Philip J. Rafuse

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Appeals Administrator  
Land, Corporate and Appellate Services Division

**IN THE MATTER** of a request for review of Order LA08-04, issued by the Commission on June 20, 2008.

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# Order

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In Order LA08-04, issued by the Commission on June 20, 2008, the Commission allowed the appeal of the Appellant L & A MacEachern Holdings Ltd. (MacEachern) and ordered the Respondent City of Charlottetown (the City) to rezone parcel numbers 274480 and 274720 to Medium Density Residential (R3), subject to a requirement that the owner of said parcels enter into a development agreement pursuant to section 4.60 of the City of Charlottetown Zoning and Development Bylaw.

On August 7, 2008, the Commission received a request for reconsideration from the City. On August 12, 2008, the Commission received a request for reconsideration from the Harley Street and Surrounding Residents group (the Residents).

The Commission invited written submissions from MacEachern, the City and the Residents. Written submissions were received from all three stakeholders within the deadline of September 30, 2008.

During the Commission's review and analysis of the submissions, the Commission considered the possibility that the City may have been required under the City Zoning and Development Bylaw (the Bylaw) to have notified residents of the Idle Wheels Trailer Court located within the boundaries of parcel numbers 274480 and 274720. Commission staff brought this matter to the attention of the stakeholders in a letter dated October 27, 2008 and invited submissions with a deadline of November 19, 2008.

The notification issue was fully described in staff's October 27, 2008 letter and a brief summary contained in said letter follows:

*To summarize, under the Real Property Assessment Act (RPAA,) the Minister [Provincial Treasury] is required to maintain an assessment roll of all real property and provide this information to municipalities. Real property is defined under the RPAA as including a mobile home. Under the City's Bylaw, all Affected Property Owners within 100M of the property to be rezoned are to be notified. Under the Bylaw, Affected Property Owner means a property listed in the RPAA assessment roll.*

*It therefore appears that the Bylaw may have required the City to notify the owners of the mobile homes. There appears to be no evidence that the owners of the mobile homes were notified by the City as part of the rezoning procedure – and therefore it appears that the City may not have followed all its required procedures set out in the Bylaw.*

In response to staff's October 27, 2008 letter, legal Counsel for the City was of the view that, in retrospect, the City was required to notify all mobile homeowners in the Idle Wheels Trailer Court as affected property owners. Counsel submitted that such an oversight was honest and unintentional.

Legal Counsel for MacEachern was of the opinion that the City was not required to notify the mobile homeowners in the Idle Wheels Trailer Court. He cited Article 4.26.8 of the City's Bylaw which reads:

*4.26 AMENDMENTS TO THE ZONING AND DEVELOPMENT BY-LAW*

...

*.8 Before rezoning any parcel of land, the Development Officer Shall advise all Affected Property Owners within 100 m (328.1 ft.) of the boundaries of the subject property, through notification in writing at least one (1) week prior to the public meeting, of the date of the public meeting.*

Emphasis added by Counsel for MacEachern

Counsel for MacEachern submitted that:

*The mobile home owners are inside the boundaries of the subject property and not located outside the boundaries and within 100 metres of the boundaries of the subject property. If parties required to be given notice under the provisions of the Zoning and Development By-law of the City included those on the subject property then the By-law would not have included the term, "boundaries".*

In the view of the Commission, the best way to ensure that the principles of fairness and natural justice have been fully met is to provide an opportunity for the public to be heard through a supplementary hearing. In making this determination, the Commission notes that there is some confusion over whether or not the City was obligated by its Bylaw to notify the residents of the Idle Wheels Trailer Court. In addition, the Commission is mindful that a newspaper notice of the Commission's May 20, 2008 hearing was prepared but, due to holiday deadline issues, did not appear in the newspaper. Although there is no statutory requirement to advertise **Planning Act** appeal hearings, it is the Commission's usual practice to do so.

Accordingly, the Commission finds that it is appropriate to set this matter down for a supplementary public hearing. The date fixed for this hearing is Monday, January 26, 2009 commencing at 9:30 a.m. in the Commission's main hearing room. Mindful of winter weather conditions, the Commission fixes a storm date of Monday, February 2, 2009, also commencing at 9:30 a.m. as an alternate hearing date in the event that the Commission's offices are closed due to weather conditions.

The Commission and its predecessor, the Prince Edward Island Public Utilities Commission, have considered in the past the minimum criteria a person seeking a review or reconsideration must meet before the Commission will exercise its absolute discretion in the matter of reviewing its decisions under s. 12 of the **Island Regulatory and Appeals Commission Act**, and the identical predecessor to s. 12, s. 16 of the **Public Utilities Commission Act**. This test has been interpreted consistently by the Commission in its past decisions.

As noted in previous decisions, the onus rests upon the person seeking review or reconsideration to show that a *prima facie* case exists which will entitle that person to the review. A *prima facie* case will be shown only where the function of review should be exercised to correct an error of the Commission or to meet changed circumstances.

Changed circumstances may encompass either a situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced. Changed circumstances will dictate a review only if they are material.

Following the supplementary hearing, the Commission will deliberate on the evidence and submissions presented at that hearing with respect to whether there is sufficient cause to reconsider Order LA08-04.

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**NOW THEREFORE**, pursuant to the *Island Regulatory and Appeals Commission Act* and the *Planning Act*

**IT IS ORDERED THAT**

1. **The Commission hereby sets this matter down for a supplementary hearing to be held on Monday, January 26, 2009 commencing at 9:30 a.m.**
2. **In the event that the Commission's offices are closed on January 26, 2009 due to weather conditions, the supplementary hearing will be held on Monday, February 2, 2008 commencing at 9:30 a.m.**

**DATED** at Charlottetown, Prince Edward Island, this 18th day of December, 2008.

**BY THE COMMISSION:**

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(Sgd.) *Maurice Rodgerson*  
Maurice Rodgerson, Chair

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(Sgd.) *John Broderick*  
John Broderick, Commissioner

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(Sgd.) *Anne Petley*  
Anne Petley, 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 Appeal Division of the Supreme Court upon a question of law or jurisdiction.*

*(2) The appeal shall be made by filing a notice of appeal in the Supreme Court within twenty days after the decision or order appealed from and the Civil Procedure Rules respecting appeals apply with the necessary changes.*

IRAC141x-SFN(2007/08)