



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**  
Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA10026  
Order LA11-07**

**IN THE MATTER** of an appeal by  
Dunrovin Inc. of a decision of the Community  
of Victoria, dated December 3, 2010.

**BEFORE THE COMMISSION**  
on Wednesday, the 25th day of May, 2011.

Allan Rankin, Vice-Chair  
Michael Campbell, Commissioner  
Jean Tingley, 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

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# **Appearances & Witnesses**

**1. For the Appellant Dunrovin Inc.**

**Donald Wood  
Wanda Wood**

**2. For the Respondent Community of Victoria**

**Ben Smith  
Hillary Price  
Derek French**

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# Reasons for Order

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## 1. Introduction

[1] The Appellant Dunrovin Inc. (Dunrovin) has filed an appeal with the Island Regulatory and Appeals Commission (the Commission) under section 28 of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8, (the *Planning Act*). Dunrovin's Notice of Appeal was received on December 21, 2010.

[2] This appeal concerns a December 3, 2010 decision of the Respondent Community of Victoria (the Community) to require Dunrovin to reinstate trees and shrubs removed from the area to the south of Parcel 01, Open Area, identified in the Dunrovin Shores Subdivision.

[3] On January 28, 2011, the Commission received a copy of the file record from the Community of Victoria. Commission staff sent a copy of this file to Dunrovin. Commission staff also reviewed the file and on February 1, 2011, advised the parties, via email, of some jurisdictional concerns.

[4] A hearing was held on February 23, 2011. The Appellant filed a lengthy written submission and the Community filed a brief written submission. The Commission heard from the parties on the jurisdictional issue and an oral decision was given on jurisdiction.

## 2. Discussion

### Dunrovin's Position

[5] Dunrovin filed a lengthy written submission dealing primarily with the merits of the appeal, but touching on the issue of jurisdiction:

*We contend that the Commission has the jurisdiction to deal with the 11 conditions that were attached to the Survey Plan because the conditions pertained to the approval of the subdivision but were not part of the Subdivision Agreement.*

...

*We therefore contend that the Commission has jurisdiction to hear the appeal because the decisions made and the failure of Council to execute their responsibilities under appeal all relate to the final approval of the Dunrovin Shores Subdivision.*

### **The Community's Position**

[6] The Community filed a brief written submission:

*Statement re jurisdictional issue:*

*In our opinion as lay people representing the Community of Victoria, we believe that IRAC has no jurisdiction over this appeal. It is our feeling the appeal put forward by Dunrovin Inc. pertains to a contractual issue which would be a matter dealt with through the Supreme Court of PEI and not IRAC as it is the Supreme Court which has jurisdiction regarding general legal matters.*

## **3. Findings**

[7] The Commission finds that it does not have the jurisdiction to hear this appeal, for the reasons that follow.

[8] Subsection 28(1.1) of the **Planning Act** reads as follows:

*28(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality*

*(a) that is made in respect of an application by the person, or any other person, under a bylaw for*

- (i) a building, development or occupancy permit,*
- (ii) a preliminary approval of a subdivision,*
- (iii) a final approval of a subdivision; or*

*(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,*

*may appeal the decision to the Commission by filing with the Commission a notice of appeal.*

Emphasis added.

[9] A December 3, 2010 email from Derek French, Development Officer for the Community, to Donald Wood, for Dunrovin, constitutes the decision under appeal:

*Hello Donald*

*It has come to Council's attention that some trees have been removed from the southern limits of the proposed open area (01) in Dunrovin Shores subdivision. Council's acceptance of the open area included the*

*subject trees. Our development officer stipulated on a memo to your engineer (dated September 10, 2010) stipulating no removal of trees or shrubs in this area. Council insists that mature trees be professionally reinstated to Council's satisfaction no later than Spring 2011. Council must have a written confirmation that you agree to reinstate these subject trees at your cost. Council needs your reply no later than Monday at noon on December 6. Council is not prepared to address the final approval of the subdivision until this matter has been resolved.*

*Derek French*

[10] In the Community's file record provided to the Commission, the document which follows was signed by Donald L. Wood, with Dunrovin's corporate seal affixed. This same document was also signed by Ben Smith, Chair of the Community, and Hilary Price, Administrator of the Community, with the Community's seal affixed.

*To; Derek French, Victoria Village Council  
From; Donald L. Wood, President per Dunrovin Inc.  
Re; e-mail received from council on December 3, 2010  
Date; December 3, 2010*

*I have received the following e-mail in regards to the removal of some trees upon my property that is slated to become public park land for the Community of Victoria upon final approval of the Dunrovin Shores subdivision;*

*"Hello Donald*

*It has come to Council's attention that some trees have been removed from the southern limits of the proposed open area (01) in Dunrovin Shores subdivision. Council's acceptance of the open area included the subject trees. Our development officer stipulated on a memo to your engineer (dated September 10, 2010) stipulating no removal of trees or shrubs in this area. Council insists that mature trees be professionally reinstated to Council's satisfaction no later than Spring 2011. Council must have a written confirmation that you agree to reinstate these subject trees at your cost. Council needs your reply no later than Monday at noon on December 6. Council is not prepared to address the final approval of the subdivision until this matter has been resolved.*

*Derek French"*

*If this is the decision of Council then I agree to abide by the terms as stated in the above e-mail.*

*Dunrovin Inc.*

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*Per Donald L. Wood President*

[11] The Commission wishes to emphasize that under the principles of delegated authority, duly authorized officials may lawfully act on behalf of a municipal council.

[12] In the December 21, 2010 Notice of Appeal, the following remedy is requested:

*The demand by Council and my letter agreeing to it be declared null and void.*

[13] The Commission wishes to emphasize that it does not have the jurisdiction to declare Dunrovin's agreement null and void.

[14] Subsection 28(1.1) of the **Planning Act** requires an appellant to be dissatisfied by a municipal decision in order to invoke the right to appeal. Unless Dunrovin can be considered to be dissatisfied, it has no right to appeal.

[15] In determining whether or not a person or corporation is dissatisfied under subsection 28(1.1), a mere claim of dissatisfaction is not enough. Rather, a review of the record must persuade a reasonable person that the person or corporation, by their actions, was objectively dissatisfied.

[16] In the present appeal, Dunrovin's president signed an agreement and affixed the corporate seal. Unless such document is declared null and void by the Supreme Court of Prince Edward Island, that agreement should be considered as lawful, binding and attesting to Dunrovin's agreement to the document.

[17] The evidence before the Commission suggests that Dunrovin was under some pressure to sign the agreement, as final subdivision approval was pending. However, such pressure was tempered by the statutory right to appeal pursuant to clause 28(1.1)(a)(iii): if the Community had refused to issue final subdivision approval, such refusal could have been appealed to the Commission. Dunrovin signed the agreement on December 3, 2010, and then the Community gave Dunrovin's subdivision final approval mere days later. Once subdivision final approval was secured, it appears that Dunrovin had a change of heart and sought to be released from its agreement.

[18] Accordingly, the Commission finds that Dunrovin cannot objectively be considered to be dissatisfied within the context of subsection 28(1.1) of the **Planning Act**, as Dunrovin signed the agreement. While the Court can determine whether or not the agreement is legally binding, there is currently no evidence before the Commission that Dunrovin has been released from the agreement. In the absence of such evidence, the December 3, 2010 agreement is legally binding, Dunrovin is deemed to be satisfied under subsection 28(1.1) of the **Planning Act** and the Commission has no jurisdiction to hear this appeal.

## 4. Disposition

[19] An Order stating that the Commission has no jurisdiction to hear this appeal will be issued.

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# Order

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**WHEREAS** the Appellant Dunrovin Inc. appealed a decision of the Community of Victoria, dated December 3, 2010;

**AND WHEREAS** the Commission heard the appeal at a public hearing conducted in Charlottetown on February 23, 2011 after due public notice;

**AND WHEREAS** the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

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

## IT IS ORDERED THAT

1. The Commission does not have the jurisdiction to hear this appeal.

**DATED** at Charlottetown, Prince Edward Island, this 25th day of May, 2011.

**BY THE COMMISSION:**

\_\_\_\_\_  
(Sgd.) *Allan Rankin*  
Allan Rankin, Vice-Chair

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(Sgd.) *Michael Campbell*  
Michael Campbell, Commissioner

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(Sgd.) *Jean Tingley*  
Jean Tingley, 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.*

## NOTICE: IRAC File Retention

In accordance with the Commission'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.

IRAC141AA(2009/11)