



**THE ISLAND REGULATORY AND  
APPEALS COMMISSION**

Prince Edward Island  
Île-du-Prince-Édouard  
CANADA

**Docket LA14001  
Order LA15-01**

**IN THE MATTER** of an appeal by  
Margaret MacKay of a purported decision of  
the Community of Linkletter, dated June 3,  
2014.

**BEFORE THE COMMISSION**  
on Friday, the 16th day of January, 2015.

J. Scott MacKenzie, Q.C., Chair  
Douglas Clow, Vice-Chair  
John Broderick, Commissioner

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# Order

Compared and Certified a True Copy

A handwritten signature in blue ink, appearing to read "Philip J. Rafuse", is written over a horizontal line.

Philip J. Rafuse  
Appeals Administrator  
Corporate Services and Appeals Division

**IN THE MATTER** of an appeal by  
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## **Written submissions filed by:**

1. **For the Appellant Margaret MacKay**  
**Margaret MacKay**
  
2. **For the Respondent Community of Linkletter**  
**David Linkletter, Chair, Community of Linkletter**

**IN THE MATTER** of an appeal by Margaret MacKay of a purported decision of the Community of Linkletter, dated June 3, 2014.

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# Reasons for Order

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## 1. Introduction

[1] On June 17, 2014, the Appellant Margaret MacKay (the Appellant) filed a Notice of Appeal form 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*).

[2] The Appellant appealed a June 3, 2014 purported decision of the Respondent Community of Linkletter (the Respondent) to allow the construction of an eight to nine foot high fence on parcel number 439216 in the Community of Linkletter.

## 2. Discussion

### The Appellant's Position

[3] The Appellant takes the position in her Notice of Appeal that the fence is over six feet high and is therefore a "structure" under the Respondent's 2006 Zoning and Subdivision Control Bylaw (the Bylaw). As a structure, a building permit is required prior to the commencement of construction. The Appellant contends that no building permit was issued and submits that the fence is in violation of the Bylaw.

[4] The Appellant seeks as a remedy the removal of the fence situate on parcel 439216. The Appellant also seeks various listed costs.

### The Respondent's Position

[5] Following the filing of the appeal, the Respondent's Chair contacted Commission staff via email on July 1, 2014 to advise that the developers of parcel 439216 made no formal application for a permit. The developers had sent a letter to the Respondent requesting permission and the Respondent had concluded that no permit was required. The Respondent's Chair stated in part:

*We do realize now that a formal application was required for a fence over six feet in height, what do you suggest we do to correct this situation?*

[6] In a follow up email dated July 11, 2014, the Respondent's Chair provided a copy of the minutes of the June 3, 2014 Council meeting. The Respondent's Chair stated in part:

*... the council thinking we had no Bylaws for fences gave permission to build the fence pending Provincial Bylaws which we discovered did not have any. I may also add this was the first time anyone in the Community ever asked permission to build a fence even though lots of fences were built.*

### 3. Findings

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

[8] The Respondent's Bylaw defines a "structure" as "...any construction fixed to, supported by or sunk into land or water, but excludes concrete or asphalt paving or similar surfacing, and a fence six (6) feet or less in height". The Commission interprets this definition as rendering a fence of over six feet in height a "structure" for the purposes of the Respondent's Bylaw. Section 7.1 of the Bylaw applies to any building or structure and requires that a person apply for and have received "...a building permit from the Administrator **prior** to commencing any construction, erection, demolition, movement, change of use or site excavation".

[9] Section 28 of the **Planning Act** sets out a list of the kinds of decisions that may be appealed to the Commission and the process for doing so. Subsection 28(1.1) is noteworthy for the purposes of this decision on jurisdiction:

*Appeals from decisions of council*

(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.*

[10] In the present appeal, there was no application for a building permit. The Respondent's Council mistakenly believed that their Bylaw did not address fences. The Respondent thus failed to make a decision pursuant to the Bylaw. There is no decision to appeal and therefore the Commission has no jurisdiction over the matter at this time.

[11] The Respondent has sought direction from the Commission in order to “correct this situation”. The Commission encourages the Respondent to obtain planning and legal advice as to the appropriate path to resolve the matter.

[12] With respect to the remedies requested by the Appellant in her Notice of Appeal, the Commission wishes to point out that neither the ***Planning Act*** nor the ***Island Regulatory and Appeals Commission Act*** gives the Commission the authority to award costs.

## 4. Disposition

[13] An Order stating that the Commission has no jurisdiction to hear this appeal follows.

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# Order

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**WHEREAS** the Appellant Margaret MacKay appealed a purported decision of the Community of Linkletter;

**AND WHEREAS** the Commission has reviewed subsection 28(1.1) of the Planning Act to determine whether it has the jurisdiction to hear this appeal;

**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 16th day of January, 2015.

**BY THE COMMISSION:**

*(Sgd.) J. Scott MacKenzie*

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J. Scott MacKenzie, Q.C., Chair

*(Sgd.) Douglas Clow*

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Douglas Clow, Vice-Chair

*(Sgd.) John Broderick*

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John Broderick, 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)