



**THE ISLAND
REGULATORY
AND APPEALS
COMMISSION**

Charlottetown
Prince Edward Island
Canada

**Docket LA99009
Order LA99-06**

IN THE MATTER of an appeal by
George R. Schurman against a decision of
the Minister of Community Services and
Attorney General, dated May 25, 1999.

BEFORE THE COMMISSION
on Wednesday, the 20th day of October,
1999.

Wayne D. Cheverie, Q.C., Chairman
Norman Gallant, Commissioner
Mary Burge, Commissioner

Order

IN THE MATTER of an appeal by
George R. Schurman against a decision of
the Minister of Community Services and
Attorney General, dated May 25, 1999.

Contents

<i>Contents</i> _____	<i>ii</i>
<i>Appearances & Witnesses</i> _____	<i>iii</i>
<i>Reasons for Order</i> _____	<i>I</i>
1. Introduction _____	1
2. Discussion _____	1
3. Findings _____	2
4. Disposition _____	4
<i>Order</i>	

IN THE MATTER of an appeal by
George R. Schurman against a decision of
the Minister of Community Services and
Attorney General, dated May 25, 1999.

Appearances & Witnesses

1. For The Appellant

Represented By:
George R. Schurman

2. For The Respondent

Represented By:
Donald Walters

3. For The Developer

Legal Counsel:
Kevin J. Kiley

IN THE MATTER of an appeal by
George R. Schurman against a decision of
the Minister of Community Services and
Attorney General, dated May 25, 1999.

Reasons for Order

1. Introduction

This is an appeal under Section 28 of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8 by George R. Schurman (the Appellant) against a decision by the Minister of Community Services and Attorney General (the Respondent) to approve building permit number PBF-133-99. The permit was issued on May 25, 1999 to Catherine McKinnon to construct an entertainment barn on property number 91868, located in Stanley Bridge.

The Appellant filed a Notice of Appeal with the Island Regulatory and Appeals Commission (the Commission) on June 9, 1999. Following this and prior to the commencement of a hearing, both the Respondent (in Exhibit R17) and Developer (in Exhibit D3) raised preliminary matters.

The Commission heard arguments from all parties on the preliminary matters at a hearing held on September 27, 1999. The Commission also received a post-hearing brief submitted by the Developer on October 6, 1999 and a response from the Appellant dated October 15, 1999. The decision which follows relates to those preliminary matters only.

2. Discussion

The Developer raised a number of preliminary matters as set out in Exhibit D3 which focus essentially on two main issues:

1. the Developer submits that pursuant to subsection 28(6) of the *Act*, the Appellant failed to serve a copy of the notice of appeal on the Minister; and
2. the Developer submits that the Appellant's grounds for appeal as contained in the Notice of Appeal (Exhibit A2) are not specific enough to constitute proper grounds. The Respondent contends that many of the grounds raised by the Appellant do not relate to a specific section or sections of the *Planning Act* Regulations and therefore do not form a basis for which the Minister could have denied the permit.

For these reasons the Developer argues that such grounds should be dismissed.

The Respondent also made a submission (Exhibit R17) raising a number of issues which it believed were preliminary in nature. Upon consideration of this exhibit the Respondent deferred comment on this submission and decided to raise these issues at a later date should the hearing on substantive matters proceed.

In response to the Developer's submission on preliminary matters, the Respondent concurred with the position taken by the Developer with respect to the grounds for appeal and requests that the Commission dismiss the appeal. The Respondent offered no opinion on the issue raised by the Developer respecting the service of notice upon the Minister.

The Appellant's position is that the grounds, as stated in the Notice of Appeal are sufficient and that the Commission should proceed to hear the substantive issues of the case.

3. Findings

After considering the submissions and arguments from all parties on the preliminary issues and for the reasons hereinafter stated, the Commission will proceed to hear the substantive matters of the appeal.

In deciding this matter, the Commission reflected on Section 28 of the **Planning Act**. The relevant subsections are as follows:

Section 28.

(1) Subject to subsections (2), (3) and (4), any person who is dissatisfied by a decision of a council or the Minister in respect of the administration of regulations or bylaws made pursuant to the powers conferred by this Act may, within twenty-one days of the decision appeal to the Commission.

...

(5) A notice of Appeal to the Commission under subsection (1) shall be in writing and shall state the grounds for the appeal and the relief sought.

(6) The Appellant shall, within seven days of filing an appeal with the Commission, serve a copy of the notice of appeal on the council or the Minister, as the case may be.

...

Grounds for Appeal

On the issue of grounds for appeal, subsection 28.(5) of the **Act** sets out the requirements that *a notice of appeal ... shall be in writing and shall state the grounds for the appeal and the relief sought*. In considering this issue, the Commission finds the **Act** is silent in providing any guidance in determining what may be considered grounds. However, Mitchell, J.A. in speaking for the Supreme Court of Prince Edward Island – Appeal Division, had this to say in a recent reference to that Court:

*The fact that an appellant must state the grounds of appeal and relief sought in writing in order to invoke the appeal procedure does not restrict the jurisdiction of IRAC in hearing or deciding the case. In situations where an appeal is by way of trial **de novo** grounds of appeal do not serve the same function as they*

*do for instance in appeals to this court. [See: Salhany, **Canadian Criminal Procedure**, Canada Law Book Ltd, 1968 at pp.203-4.] Their purpose in hearing **de novo** appeals is simply 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. However, IRAC does not have unfettered discretion or unbridled power to deal with and decide appeals as it likes. It would be bound to hear, consider, and decide the issues of the case in accordance with the requirements and objects of the **Planning Act**.¹*

The Commission's view is that as long as one can reasonably determine from the Notice of Appeal why the Appellant is dissatisfied with the decision, then the basic requirements of subsection 28(5) have been met. Notwithstanding that, the hearing then becomes the forum where the Appellant must present evidence to support these grounds.

Upon careful review of the Appellant's Notice of Appeal, the Commission is satisfied that the provisions of subsection 28(5) have been met. Therefore, the Developer's and the Respondent's motion to dismiss the appeal on the basis that the Appellant's grounds are insufficient is hereby dismissed.

Service of Notice upon the Minister

In Exhibit D3, the Developer raises an argument that the Appellant has failed to comply with the provisions of subsection 28(6) of the **Act**, in that the Appellant failed to serve the Minister with a copy of the Notice of Appeal. There is no doubt that subsection 28(6) of the **Act** requires a copy of the Notice of Appeal to be served upon the Respondent within seven days of filing an appeal with the Commission. However, the statute does not go on to provide that failure to do so brings an end to the appeal.

Section 9 of the **Interpretation Act**, R.S.P.E.I. 1988, Cap. I-8 states:

Every enactment shall be construed as being remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

What is the purpose of subsection 28(6)? Surely, it is there to make sure that the Minister, in this case, is notified in a timely fashion that the Appellant has launched an appeal with the Commission. The facts of the present case disclose that the Respondent has not been prejudiced in any way as a result of apparent non-compliance with subsection 28(6). In fact, it is the Developer who has raised this objection, and taken the lead, not the Respondent.

Regardless of whether the letter to the Minister dated June 2, 1999 (Exhibit A3) satisfies the provisions of subsection 28(6) of the **Act**, it would appear to the Commission that the Minister had knowledge of the Notice of Appeal and in fact it appears obvious that he had received a copy of the Notice of Appeal which was filed with the Commission as he was able to submit a letter to the Commission raising a number of issues with respect to the Appellant's grounds for appeal on August 24, 1999 (Exhibit R17). Furthermore, the Appellant in his submission of October 15, 1999, states that a copy of the Notice of Appeal was served on the Minister.

After full consideration of all the submissions of the parties; and after reviewing the facts of this case in light of Section 28 in its entirety against the backdrop of

¹ *In the matter of Section 14(1) of the Island Regulatory and Appeals Act (Stated Case)*, [1997] 2 P.E.I.R. 40 (PEISCAD)

Section 9 of the **Interpretation Act**, *supra*; it is the Commission's considered opinion that there has been no prejudice or compromise of the Respondent's position. Therefore, this argument fails and the appeal will proceed.

While this effectively disposes of this argument, the Commission notes in passing that the Developer has cited a prior decision of the Commission, Gary Paynter v. City of Charlottetown, Commission Order No. LA97-16, in support of the proposition that we are without jurisdiction if Section 28 of the **Planning Act** is not complied with. This statement appears at page 3 of the Developer's Post-Hearing Brief. The fact is that the Paynter case, *supra*, quite properly, stated that failure to file a Notice of Appeal within the 21 days allowed by subsection 28(1) of the **Planning Act** left the Commission without jurisdiction to hear the appeal. The Commission did not say that failure to comply with any other subsection of Section 28 rendered the matter at an end.

4. Disposition

An Order will therefore be issued dismissing the motions as raised by the Respondent and the Developer. The Commission will proceed to set a date forthwith, to hear the substantive matters of this appeal.

IN THE MATTER of an appeal by
George R. Schurman against a decision of
the Minister of Community Services and
Attorney General, dated May 25, 1999.

Order

WHEREAS George R. Schurman appealed a decision by the Minister of Community Services and Attorney General (the Respondent) dated May 25, 1999;

AND WHEREAS prior to the commencement of a hearing on this appeal the Respondent and Catherine McKinnon (the Developer) raised preliminary matters;

AND WHEREAS the Island Regulatory and Appeals Commission (the Commission) heard these preliminary matters at a hearing on September 27, 1999;

AND WHEREAS the Developer submitted a post-hearing brief on October 6, 1999 and the Appellant submitted a response on October 15, 1999;

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 preliminary issues raised by the Respondent and the Developer are hereby dismissed. The Commission will proceed to hear the substantive matters of this appeal on a date to be set.**

DATED at Charlottetown, Prince Edward Island, this 20th day of October, 1999.

BY THE COMMISSION:

Wayne D. Cheverie, Q.C., Chairman

Norman Gallant, Commissioner

Mary Burge, 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.

IRAC141A(99/2)