

Municipal Planning Appeals on the Island: A 15 Year Review

The Island Regulatory and Appeals Commission (“IRAC” or the “Commission”) is an independent quasi-judicial tribunal that, among other things, hears appeals relating to land use, including municipal and ministerial planning decisions, under the Planning Act and other provincial statutes¹.

A 15-year review (2005-2020) of appeals of municipal planning decisions before the Commission shows that in a majority of cases, IRAC did not overturn decisions of municipal council. In fact, of the 93² substantive IRAC decisions released during the 15-year period, only 33 appeals were successful (35%). Where the appeal concerns a decision by the Charlottetown City Council, whereby Council followed the recommendations of the City Planning Staff and the Planning Board, this is especially true.

During the 15-year period, there have been 24 appeals to IRAC from Charlottetown City Council decisions (1.6 appeals / year on average); however, in one of these instances, the Commission could not hear the appeal due to a lack of jurisdiction.

- Of the 23 appeals of Council’s decisions heard by IRAC, Council’s disposition of the matter was upheld by the Commission on 16/23 decisions.
- On *all* of the 7/23 decisions where the appeal was allowed and Council’s decision was overruled by IRAC, Council had declined to follow the recommendation of City Staff or the Planning Board.
- On 1/16 decisions where IRAC confirmed Council’s decision and denied the appeal (i.e. Order LA10-06), Council had not followed Planning Staff/Planning Board’s recommendation.³

In cases where Council followed Planning Staff/Planning Board’s recommendations, Council had a 65% success rate (i.e. 15/23) with decisions challenged in IRAC. In cases where Council did *not* follow Planning Staff/Planning Board’s recommendations, Council’s success rate was 12.5% (i.e. 1/8).

¹ Island Regulatory and Appeals Commission, “*Planning Act Appeals*”, online: <https://irac.pe.ca/planning/planning/>

² During the 15-year period, a total of 135 IRAC decisions were released. In 30 of those decisions, the Commission held that it did not have jurisdiction to hear the matter. In 10 of the 135 decisions, the Commission did not allow or deny the appeal, but made an alternative finding.² Additionally, 2 of the 135 matters concerned reconsideration requests brought by a municipality. Therefore, there remains 93 substantive decisions in which an appeal brought by an applicant/developer or concern citizen was either allowed or denied.

³ This IRAC decision was a split 2-1 decision with the Chairperson dissenting.

Based upon the legal jurisprudence, including these 23 decisions and many other IRAC and Supreme Court decisions, at law, Council has the final decision on those matters reserved for its decision under its Zoning & Development Bylaw. Council is not legally bound to accept each and every recommendation of Planning Staff/Planning Board; nonetheless, as detailed by the Commission in Order LA12-02, where Council determines not to follow the recommendation of Planning Staff/Planning Board, there should be a credible reason grounded in good planning principles:

[23] The Commission is of the view that Council certainly may reach a decision different than Planning Board's recommendation. Planning Board's recommendation is just that, a recommendation, something to be considered seriously but not tying the hands of Council. When Council follows Planning Board's recommendations, it may fairly be said that in doing so, Council is adopting the reasoning and analysis used by the Planning Board. However, the Commission is also of the view that when Council makes a decision against Planning board's recommendation, it is expected that Council clearly and methodically set out its own thought process and analysis leading up to its decision.

In Order LA10-06, the only decision over the last 15 years where IRAC upheld a decision of Council, which was contrary to the Planning Board's recommendation, the decision was split 2-1.⁴

Order LA10-06:

While the two majority Commissioners found the proposed zoning would result in better land use planning, the existing zoning was "reasonable", had support in the City's Official Plan, and was consistent with the area residents' expectations when they bought their properties. Thus, the majority deferred to Council's decision. The Chairperson wrote a strongly worded dissenting judgment concluding Council's decision was based more upon "political than planning considerations".

Given that this occurred just once over the last 15 years, it is likely fair to conclude that Order LA10-06 was a "high water mark" decision for deferring to a City Council decision, which goes against Planning Board recommendations. While held to be "consistent" with good planning principles, the decision was acknowledged by the 2-1 majority not to be the "better" land use planning for the subject property.

Overall, Charlottetown City Council has a 70% success rate (i.e. 16/23) with decisions challenged by developers or concerned citizens in IRAC; however, where Council declines to follow the recommendations of the Planning Staff / Board, that success rate drops to 12.5% (1/8). In general, it therefore follows that where a majority of Council are not inclined to follow a recommendation from City Planning Staff/Planning Board, Council must ensure that their rationale is sound.

⁴ Order LA10-06.

Appendix 'A'

Breakdown of all IRAC Decisions: 2005-2020

During the 15-year period, a total of 135 IRAC decisions were released (see Table 2). In 30 of those decisions, the Commission held that it did not have jurisdiction to hear the matter. In 10 of the 135 decisions, the Commission did not allow or deny the appeal, but made an alternative finding.⁵ Additionally, 2 of the 135 matters concerned reconsideration requests brought by a municipality. This article focusses on the remaining 93 substantive decisions in which an appeal brought by an applicant/developer or concerned citizen was either allowed or denied. This article also specifically addresses the 24 appeals to IRAC from Charlottetown City Council decisions.

Overall, of the 93 substantive decisions released during the 15-year period, only 33 appeals were successful (35%). In other words, 60 appeals were denied (65%).

As indicated in Table 1, of the 93 appeals, 49 were brought by concerned citizens with only 15 of these appeals being successful. 44 appeals were brought by an applicant/developer; 18 of which, were successful. Ultimately, developers have been marginally more successful when launching an appeal, with a success rate of 41%, while only 31% of appeals brought by concerned citizens were allowed.

Table 1: Substantive IRAC Decisions

	Concerned Citizen	(#) / (total # of appeals launched by Concerned Citizen)	Developer	(#) / (total # of appeals launched by Developer)	Total appeals allowed/denied (% of all appeals launched):
Allowed	15	31%	18	41%	33 (35%)
Denied	34	69%	26	59%	60 (65%)
Total appeals launched (% of all appeals launched):	49 (53%)		44 (47%)		

⁵ E.g. appeal was dropped, the Commission found it had jurisdiction, the Commission ordered a public hearing be held, a party was ordered to provide disclosure and etcetera.

Table 2: Total IRAC Decisions

	Concerned Citizen	Developer/ Applicant	Reconsideration Request by Municipality	Total (and % of all decisions):
Allowed	15	18	1	25%
Denied	34	26	1	45%
No Jurisdiction	16	14	0	22%
Other	9	1	0	7%
Total (and % of all decisions):	74 (55%)	59 (44%)	2 (1%)	135