



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA07003
Order LA07-03**

IN THE MATTER of an appeal by David Kent and Brenda Boutilier of a decision of the Resort Municipality, dated March 23, 2007.

BEFORE THE COMMISSION
on Wednesday, the 23rd day of May, 2007.

Maurice Rodgerson, Chair
Weston Rose, Commissioner

Order

Compared and Certified a True Copy

(sgd.) Philip J. Rafuse

Land and Appeals Officer
Land, Corporate and Appellate Services Division

IN THE MATTER of an appeal by David Kent and Brenda Boutilier of a decision of the Resort Municipality, dated March 23, 2007.

Order

WHEREAS the Appellants David Kent and Brenda Boutilier filed an appeal of a March 23, 2007 decision of the Respondent Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico to: 1. rezone parcel number 233429 from RR (Rural) Zone to C1 (General Commercial) Zone, 2. issue a building permit to the Developer Maxine Delaney to construct an addition to the existing building on said parcel and 3. change the use of said building into a residence with a licensed 32 seat restaurant/cafe;

AND WHEREAS the Appellants' Notice of Appeal, although dated April 11, 2007, was not received by the Commission until April 18, 2007;

AND WHEREAS subsection 28(1) of the *Planning Act*, R.S.P.E.I. 1988, Cap. P-8, reads as follows:

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.

AND WHEREAS the Appellants' Notice of Appeal was not received by the Commission until the 26th day after the Respondent's decision;

AND WHEREAS the Respondent had provided written notice of its decision to the Appellants, said notice dated March 23, 2007;

AND WHEREAS on the evening of April 12, 2007 the Appellants emailed Commission staff to advise that a Notice of Appeal concerning parcel number 233429 had been mailed;

AND WHEREAS subsection 28(5) of the *Planning Act* reads as follows:

28. (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.*

AND WHEREAS a preliminary matter was identified, namely the purported late filing of the Notice of Appeal and Commission staff invited the parties to file written submissions on this preliminary matter;

AND WHEREAS written submissions on the preliminary matter were received from the Appellants, the Respondent and the Developer;

AND WHEREAS the Commission has thoroughly reviewed the appeal file including the written submissions and hereby makes the following findings:

1. The Appellants' Notice of Appeal was filed with the Commission after the appeal period, set out in subsection 28(1) of the *Planning Act*, had expired;
2. The Appellants' email of April 12, 2007, notifying the Commission that a Notice of Appeal had been mailed, was filed within the statutory appeal period;
3. The Appellants' email of April 12, 2007 did not contain the grounds for appeal and the relief sought;

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

IT IS ORDERED THAT

The Commission is without jurisdiction to hear the Appellants' appeal. The Notice of Appeal was filed beyond the appeal period set out in the *Planning Act*. The email advising that the Notice of Appeal had been mailed could not be considered a notice of appeal under the *Planning Act* as it did not contain the grounds for appeal and the relief sought.

DATED at Charlottetown, Prince Edward Island, this 23rd day of May, 2007.

BY THE COMMISSION:

Maurice Rodgerson, Chair

Weston Rose, 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.

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