



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA13009
Order LA13-07**

IN THE MATTER of an appeal by
Bonnie MacLean of a decision of the Town of
Cornwall, dated September 18, 2013.

BEFORE THE COMMISSION
on Wednesday, the 20th day of November,
2013.

Maurice Rodgerson, Chair
John Broderick, Acting Vice-Chair

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
Bonnie MacLean of a decision of the Town of
Cornwall, dated **September 18, 2013**.

Order

On October 11, 2013, the Appellant Bonnie MacLean (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**).

The Appellant appealed a September 18, 2013 decision of the Respondent Town of Cornwall (the Respondent) to deny an application for a chicken coop for property number 755900 located at 22 Seymour Drive in Cornwall.

This appeal gives rise to a jurisdictional issue. *Prima facie* [at first sight] the appeal was filed beyond the 21 day appeal period set out in section 28 of the **Planning Act**.

On October 15, 2013, Commission staff wrote the parties, identified the jurisdictional issue, and invited the parties to file written submissions on the jurisdictional issue.

The Commission received written submissions from both parties on the jurisdictional issue.

The Appellant submitted that 21 days from the date of the decision would make October 8 the deadline for filing the appeal. However, the Appellant submitted an alternative interpretation to the calculation of the 21 day appeal period. The Appellant also submitted that due to her work schedule, the Commission's office hours and other such factors, the earliest that she could file the appeal was October 11, 2013.

The Respondent submitted that the Appellant missed the 21 day appeal period and therefore the Commission is without jurisdiction to hear the appeal.

The Commission's Decision

The Commission finds that it does not have the jurisdiction to hear this appeal.

The Commission finds that the deadline for filing the Notice of Appeal was October 9, 2013. The Appellant's alternative interpretation equated 30 days with four weeks; however, the Commission takes notice that four weeks equals 28 days.

The 21 day appeal period is set out in section 28 of the *Planning Act* and the Commission is required to follow the requirements set out in that statute. The *Planning Act* does not grant the Commission any discretion to extend the time period.

There is no requirement that the Notice of Appeal for a *Planning Act* matter be filed with the Commission by personal delivery or registered mail. Ordinary mail, fax, the email of a scanned signed Notice of Appeal are all acceptable forms of filing an appeal. The Commission also has a document drop off slot which allows documents to be deposited outside of Commission office hours.

In addition, a Notice of Appeal may be filed at an Access PEI site. Access PEI will then fax the document to the Commission. The Commission will treat the date of receipt by Access PEI as the filing date for the Notice of Appeal.

For the above reasons, the Commission is without jurisdiction to hear this appeal.

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

IT IS ORDERED THAT

1. **The appeal filed by the Appellant Bonnie MacLean on October 11, 2013 is hereby dismissed, as the Commission does not have jurisdiction to hear the appeal.**

DATED at Charlottetown, Prince Edward Island, this **20th** day of **November, 2013**.

BY THE COMMISSION:

(Sgd.) Maurice Rodgerson

Maurice Rodgerson, Chair

(Sgd.) John Broderick

John Broderick, Acting Vice-Chair

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.

IRAC141x-SFN(2009/11)