



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA13011
Order LA13-08**

IN THE MATTER of an appeal by Dave
Morley of a decision of the Town of Stratford,
dated September 11, 2013.

BEFORE THE COMMISSION
on Tuesday, the 26th 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 light blue background.

Philip J. Rafuse
Appeals Administrator
Corporate Services and Appeals
Division

IN THE MATTER of an appeal by Dave
Morley of a decision of the Town of Stratford,
dated September 11, 2013.

Order

On October 17, 2013, the Appellant Dave Morley (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 11, 2013 decision of the Respondent Town of Stratford (the Respondent) to deny an application for a home occupation (oyster cleaning facility) for property number 531418 located at 17 Wren Drive in Stratford.

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 23, 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 when he had met with the Respondent's Director of Planning, there was no mention of a deadline for an appeal. The Appellant also submitted that he left PEI for Calgary right after he was informed of the decision and thus "... the letter from irac [the Respondent?] informing me of the deadline for the appeal was not received by myself until it was redirected to Calgary and then too late".

The Respondent's Director of Planning, Development and Heritage (Director of Planning) submitted that the Appellant's "...Notice of Appeal was clearly filed outside of the twenty-one (21) day appeal period". The Respondent submits that the appeal period had expired and therefore the Notice of Appeal is invalid and should therefore be dismissed.

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 2, 2013. The Appellant filed his appeal 15 days late.

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.

The Appellant was notified of the Respondent's decision in a September 12, 2013 Notice of Decision letter from the Respondent's Director of Planning. That letter informed the Appellant that he had the right to appeal and also informed him that the appeal period is 21 days. However, the letter incorrectly states that the appeal period begins to run when the actual notice of the decision is received. The Commission wishes to point out that the appeal period begins to run immediately following the decision date as long as notice has been given.

In the present appeal, the Appellant was provided with specific notice of the Respondent's decision, both in person and by written notice. That notice was addressed to the Appellant's Stratford mailing address, and the Respondent submitted that he left PEI for Calgary after receiving notice in person but before receiving the written notice.

The Commission finds that the Appellant's Stratford address was used on his Notice of Appeal and thus appears to be his permanent address. A permanent address is sufficient for notification purposes.

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 Dave Morley on October 17, 2013 is hereby dismissed, as the Commission does not have jurisdiction to hear the appeal.**

DATED at Charlottetown, Prince Edward Island, this **26th** 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)