



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA14006
Order LA15-02**

IN THE MATTER of an appeal by G.
Willikers Ltd. of a decision of the Resort
Municipality, dated July 22, 2014.

BEFORE THE COMMISSION
on Thursday, the 12th day of February, 2015.

Doug Clow, Vice-Chair
Michael Campbell, Commissioner
Jean Tingley, Commissioner

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 G.
Willikers Ltd. of a decision of the Resort
Municipality, dated July 22, 2014.**

Order

Background

The Appellant G. Willikers Ltd. (the Appellant) has filed an appeal 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's Notice of Appeal was received on August 8, 2014.

This appeal concerns a July 21, 2014 decision of the Respondent Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the Respondent) to deny an application by the Appellant for a transient or temporary use permit to locate a fish truck on the Appellant's property.

On September 8, 2014, the Commission received a letter from Jonathan M. Coady, Counsel for the Respondent. Counsel raised a preliminary issue as to the Commission's jurisdiction to hear the appeal. Counsel's concern was that the application at issue was not one found in the prescribed list contained within section 28(1.1) of the **Planning Act**.

On September 18, 2014, the Commission received a written submission from the Appellant with respect to the jurisdictional issue. The Appellant submitted that the Respondent's decision was made pursuant to its Zoning and Subdivision Control (Development) Bylaw (2004) (the **Bylaw**). The Appellant submitted that the Commission had the jurisdiction to hear the appeal as Bylaw was made under the authority of the **Planning Act**. The Appellant also quoted from the Respondent's decision letter a paragraph outlining a right to appeal to the Commission.

On September 24, 2014, Counsel for the Respondent responded to the Appellant's submission and filed a detailed submission with the Commission.

The Legislation

Germane to the jurisdictional issue is section 28(1.1) of the **Planning Act** which reads:

28.(1.1) Subject to subsections (1.2) to (1.4), any person who is dissatisfied by a decision of the council of a municipality

(a) that is made in respect of an application by the person, or any other person, under a bylaw for

- (i) a building, development or occupancy permit,
 - (ii) a preliminary approval of a subdivision,
 - (iii) a final approval of a subdivision; or
- (b) to adopt an amendment to a bylaw, including
- (i) an amendment to a zoning map established in a bylaw, or
 - (ii) an amendment to the text of a bylaw,

may appeal the decision to the Commission by filing with the Commission a notice of appeal.

Also germane to the jurisdictional issue is section 4.27 Transient or Temporary Uses of the Respondent's **Bylaw**.

The Commission's Decision

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

A careful review of section 4.27 reveals a common thread; uses of a temporary or transient nature. There are two classes of such uses set out in section 4.27 of the Bylaw; uses not to exceed 3 days and seasonal uses not to exceed 5 months.

Within section 28.(1.1) of the **Planning Act**, the only portion dealing with municipal permits as such is "(i) a building, development or occupancy permit,". The Commission is of the view that if the legislature had intended that permits for temporary uses be the subject of an appeal to the Commission, the appeals section of the **Planning Act** would have included a reference to temporary uses within the list of municipal decisions that may be appealed to the Commission.

The Commission is a creature of statute obtaining its authority from the legislature. The legislature has established a list of municipal decisions that may be appealed to the Commission. Each item in the list is concerned with development and land use planning. Each enumerated item also reflects development and land use planning from a permanent, or relatively permanent perspective.

In summary, the Commission finds that it does not have the jurisdiction to hear the present appeal as transient or temporary uses are not among the list of appealable decisions set out in s.28(1.1).

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

IT IS ORDERED THAT

1. **The Commission has no jurisdiction to hear the Appellant's appeal.**

DATED at Charlottetown, Prince Edward Island, this **12th** day of **February**,
2015.

BY THE COMMISSION:

(Sgd.) *Doug Clow*

Doug Clow, Vice-Chair

(Sgd.) *Michael Campbell*

Michael Campbell, Commissioner

(Sgd.) *Jean Tingley*

Jean Tingley, 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 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)