



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA15004
Order LA16-01**

IN THE MATTER of an
appeal by Michael Wheeler
of a decision of the Resort
Municipality, dated April 9,
2015.

BEFORE THE COMMISSION
on Tuesday, the 12th day of July, 2016.

J. Scott MacKenzie, Q.C., Chair
M. Douglas Clow, Vice-Chair
John Broderick, 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
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IN THE MATTER of an appeal by
Michael Wheeler of a decision of the Resort
Municipality, dated April 9, 2015.

Written Submissions

1. For the Appellant Michael Wheeler

Written submissions filed by Michael Wheeler

2. For the Respondent Resort Municipality

Written submissions filed by Jonathan M. Coady,
Solicitor for the Respondent

IN THE MATTER of an appeal by
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Reasons for Order

1. Introduction

(1) The Appellant Michael Wheeler (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 April 29, 2015.

(2) This appeal concerns a decision of the Respondent Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the Respondent) to deny a request by the Appellant for the Respondent to amend the Respondent's Zoning and Subdivision Control (Development) Bylaw (the Bylaw).

(3) On the Appellant's Notice of Appeal, the date of the decision is indicated as April 29, 2015, the same date the Appellant filed his appeal with the Commission. A review of email printouts attached to the Notice of Appeal indicates the following:

- On April 9, 2015 at 2:44 p.m. the Appellant requested that the Respondent amend section 4.1.2 of the Bylaw so that "materials for walkways include the use of wood".
- On April 9, 2015 at 4:27 p.m. the Respondent's Administrator advised the Appellant that his email had been sent to the Respondent's Council and they would consider his comments during the Respondent's comprehensive bylaw review.
- On April 10, 2015 the Appellant requested that the Respondent consider his bylaw amendment request at the next meeting of the Respondent's Council.
- On April 13, 2015 the Respondent's Administrator advised the Appellant:

Thank you for your e-mail. This message has been sent along to the planning board and the Council they will consider your comments during the bylaw review.

(4) On May 1, 2015 Jonathan M. Coady, legal counsel for the Respondent (Counsel) filed a letter with the Commission noting that there was a preliminary issue as to jurisdiction on the basis that there had been no decision by the Respondent that falls within the prescribed list of appealable decisions found in section 28(1.1) of the *Planning Act*.

(5) On May 8, 2015 Commission staff invited the Appellant and Counsel to file written submissions on the issue of whether the Commission had the jurisdiction to hear the appeal given the statutory wording under section 28(1.1) of the *Planning Act*.

(6) Written submissions were received from the Appellant on May 21, 2015 and from Counsel on May 22, 2015 and May 29, 2015.

2. Discussion

Appellant's Submissions

(7) The Appellant submitted that the language of the law is clear and cited section 28(1.1) of the *Planning Act*. He submitted that he is dissatisfied with a decision of the Respondent to not process his application to adopt an amendment to the Bylaw. He noted that the Respondent has effectively denied his application.

(8) The Appellant stated that an unreasonable delay or a decision not to make a decision is in itself a decision. The Appellant also submitted that the Respondent's decision is not in the best interests of the public. The Appellant also submits that the duty of fairness includes the duty to identify the reasons for the decision and communicate those reasons clearly. He submitted that he asked the Respondent why they decided not to process the bylaw amendment request. The Appellant submitted that he did not receive an answer.

Respondent's Submissions

(9) With respect to the Appellant's concerns requesting an answer as to why the Respondent decided not to process the bylaw amendment, Counsel filed a letter and attached emails on May 22, 2015 noting:

The enclosed email correspondence from the municipality demonstrates that the proposal from Mr. Wheeler is being considered as part of the bylaw review process that is currently underway.

(10) In his May 29, 2015 written submission, Counsel notes at page 3, paragraphs 23 to 28 inclusive:

23. The Planning Act grants jurisdiction to the Commission to hear appeals from some, but not all, decisions of a municipality. Jurisdiction exists only where the elements set forth in section 28(1.1) of the Planning Act are present. Section 28(1.1)(b) clearly provides that the Commission can only exercise its appellate jurisdiction in the following circumstance:

*... a decision of the council of a municipality ... **to adopt an amendment to a bylaw, including ... an amendment to the text of a bylaw.** [emphasis added]*

24. *The elements required by section 28(1.1)(b) of the Planning Act are not present in this case.*

25. *Also, there has been no “final reading [of] the amendment to the bylaw” within the meaning of section 28(1.4) of the Planning Act.*

26. *Council did not make a decision to adopt an amendment to the Bylaw.*

27. *Council did not make a decision to adopt an amendment to the text of the Bylaw.*

28. *The fact is that no decision was made by council for the Municipality on April 29, 2015 and the bylaw review process is ongoing.*

3. Findings

(11) After a careful review of the submissions of the parties and the applicable law, the Commission finds that it has no jurisdiction to hear this appeal for the reasons that follow.

(12) A determination of the Commission’s jurisdiction to hear this appeal is necessarily centred on the scope and meaning of subsection 28(1.1) of the **Planning Act**, as that subsection restricts the right of appeal to certain kinds of municipal decisions.

(13) Subsection 28(1.1) of the **Planning Act** reads as follows:

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.

(14) Not all municipal decisions may be appealed to the Commission. Indeed, not all municipal planning decisions may be appealed to the Commission.

(15) The Commission finds that subsection 28(1.4) of the **Planning Act** makes the legislative intent clear:

28(1.4) For greater certainty, where a person is dissatisfied by the decision of a council of a municipality to adopt an amendment to a bylaw, the 21-day period for filing a notice of appeal under this section commences on the date that the council gave final reading to the amendment to the bylaw.

(16) The Appellant requested an amendment to the Respondent's Bylaw and the Respondent advised it would consider the request, but only as part of its ongoing bylaw review process required under subsection 15.1(1) of the **Planning Act**. The Appellant was dissatisfied with this response as he wanted the amendment to be decided upon at the next meeting of the Respondent's Council. Clause 28(1.1)(b) of the **Planning Act** provides a right of appeal for municipal decisions to adopt a bylaw amendment and that amendment receives final reading as provided in Clause 28 (1.4). There is, however, no right of appeal when a municipality defers the decision or decides against amending its bylaws. Accordingly, the Commission finds it has no jurisdiction to hear this appeal.

4. Disposition

(17) The appeal is hereby dismissed on the basis the Commission has no jurisdiction to hear the appeal.

IN THE MATTER of an appeal by
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Order

WHEREAS the Appellant Michael Wheeler appealed a decision of the Resort Municipality ;

AND WHEREAS the Commission has reviewed subsection 28(1.1) of the *Planning Act* to determine whether it has the jurisdiction to hear this appeal;

AND WHEREAS the Commission has issued its findings in this matter in accordance with the Reasons for Order issued with this Order;

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

IT IS ORDERED THAT

1. The appeal is hereby dismissed on the basis the Commission has no jurisdiction to hear the appeal.

DATED at Charlottetown, Prince Edward Island, this 12th day of July, 2016.

BY THE COMMISSION:

(sgd.) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd.) M. Douglas Clow

M. Douglas Clow, Vice-Chair

(sgd.) John Broderick

John Broderick, 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.

IRAC141AA(2009/11)