



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

Prince Edward Island
Île-du-Prince-Édouard
CANADA

**Docket LA15009
Order LA17-05**

IN THE MATTER of an appeal by J.
Anne Nicholson of a decision of the
Community of Lower Montague, dated
October 6, 2014.

BEFORE THE COMMISSION
on Monday, the 5th day of June, 2017.

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".

Philip J. Rafuse
Appeals Administrator
Corporate Services and Appeals Division

IN THE MATTER of an appeal by J.
Anne Nicholson of a decision of the
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IN THE MATTER of an appeal by J. Anne Nicholson of a decision of the Community of Lower Montague, dated October 6, 2014.

Appearances & Witnesses

1. **For the Appellant J. Anne Nicholson**
Written submissions filed by J. Anne Nicholson

2. **For the Respondent Community of Lower Montague**
Written submissions filed by Nial S. MacKay, Development Officer

3. **For the Developer John Currie**
Notified by the Commission, no submissions received.

IN THE MATTER of an appeal by J. Anne Nicholson of a decision of the Community of Lower Montague, dated October 6, 2014.

Reasons for Order

1. Introduction

(1) On August 3, 2015, the Appellant J. Anne Nicholson (the “Appellant”) filed a Notice of 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*”).

(2) The Appellant appealed a decision of the Respondent Community of Lower Montague (the “Respondent”) to issue a building permit to the Developer John Currie for a private garage on parcel number 599084 in the Community of Lower Montague. The Appellant had indicated on her Notice of Appeal that the Respondent’s decision date was May 11, 2014. Upon receipt of the file from the Respondent, it became apparent that the decision date was actually October 6, 2014.

(3) On August 5, 2015 the three parties to the appeal were notified of the receipt of the appeal. The parties were also notified that the Commission had identified a jurisdictional issue, specifically that the appeal was filed beyond the twenty-one day appeal period set out in section 28 of the *Planning Act*. Submissions were invited from the parties and were received from the Respondent on August 24, 2015 and the Appellant on August 28, 2015. No submissions were received from the Developer.

(4) Following repeated requests from Commission staff, the Respondent provided the Commission with a copy of the Respondent’s file record on October 6, 2015. The file was distributed by the Commission to the Appellant and the Developer that same day.

(5) Although Commission staff made repeated requests for additional information from the Appellant and the other parties in the months which followed, no further response was received from the Appellant or any of the other parties.

2. Discussion

(6) The Commission reviewed the submission of the Appellant as set out in her letter of August 28, 2015, the response of the Community of Lower Montague as contained in an email from the Respondent's Development Officer and the file record of the Respondent. The evidence is clear that the decision of the Respondent was issued on October 6th, 2014 and that the Appellant did not file her appeal with the Commission until August 3, 2015.

3. Findings

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

(8) The Commission must review the applicable law and the facts in order to determine whether it has the jurisdiction to hear the appeal.

(9) Subsection 28.(1.3) of the **Planning Act** sets out the time limitations for filing an appeal:

A notice of appeal must be filed with the Commission within 21 days after the date of the decision being appealed.

(10) The Community of Lower Montague issued a building permit to the Developer on October 6, 2014. The Appellant filed an appeal of this decision on August 3, 2015, nearly ten months after the decision had been made.

(11) The Commission finds that the Appellant's Notice of Appeal was filed well beyond the statutory twenty-one day appeal period and accordingly, the Commission is without jurisdiction to hear this appeal.

4. Disposition

(12) The appeal is denied. As the appeal was not filed within 21 days after the date of the decision, the Commission has no jurisdiction to hear the appeal.

IN THE MATTER of an appeal by J. Anne Nicholson of a decision of the Community of Lower Montague, dated October 6, 2014.

Order

WHEREAS the Appellant J. Anne Nicholson has appealed a decision of the Community of Lower Montague, dated October 6, 2014;

AND WHEREAS the Commission identified a jurisdictional issue and invited written submissions from all parties to 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 denied. As the appeal was not filed within 21 days after the date of the decision, the Commission has no jurisdiction to hear the appeal.**

DATED at Charlottetown, Prince Edward Island, this 5th day of June, 2017.

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)