

CANADA

PROVINCE OF PRINCE EDWARD ISLAND

IN THE MATTER of an appeal pursuant to s.28 of the Prince Edward Island *Planning Act*, R.S.P.E.I. 1988, c.P-8 by John Carroll with respect to the denial of a temporary permit application at PID 233080 located at 8808 Cavendish Road, Cavendish, Prince Edward Island

SUBMISSIONS ON JURISDICTION

Prepared on behalf of the Appellant, John Carroll

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River, Bayview, Cavendish, and North Rustico

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TAB 1

INTRODUCTION

1. The following submission with respect to the Commission's jurisdiction to hear Appeal #LA25014 is submitted on behalf of the Appellant, John Carroll.
2. The Appellant appeals the decision of Council for the Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish, and North Rustico (the "Resort Municipality") denying the Appellant's application for a Temporary Permit to allow a parking lot from September 13-15, 2025, at the Appellant's property located at 8808 Cavendish Road, Cavendish, Prince Edward Island, and identified as PID 233080 (the "Property").
3. Section 28.(1.1) of the *Planning Act*, R.S.P.E.I. 1988, c. P-8 (the "*Planning Act*"), provides as follows:

28.(1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of a council of a municipality

(a) that is made in respect of an application by a person under a bylaw for

(i) a development permit,

(ii) an occupancy permit, in relation to a matter under this Act or the regulations,

(iii) a preliminary approval of a subdivision, or

(iv) a final approval of a subdivision . . .

- *Planning Act*, R.S.P.E.I. 1988, c. P-8
[*Planning Act*] Section 28(1.1).

4. The Respondent has raised an issue as to whether the Commission has jurisdiction to proceed with Appeal #LA25014 pursuant to section 28.(1.1) of the *Planning Act* as the appeal related to the denial of a Temporary Permit for a parking lot under section 4.29 of the Resort Municipality's Land Use Bylaw. The Respondent relies on the decision of the Commission in *G. Willikers Ltd. v. Resort Municipality*, LA15-02 ("LA15-02").

APPELLANT'S SUBMISSION ON PAST DECISION OF THE COMMISSION: G. WILLIKERS LTD. v. RESORT MUNICIPALITY, ORDER LA15-02 AND RESORT MUNICIPALITY'S LAND USE BYLAW

5. The Commission, in LA15-02, the Commission considered its jurisdiction to hear appeals for temporary use permits and determined that it did not have jurisdiction to hear the appeal in LA15-02 because temporary uses are not specifically listed at section 28(1.1) of the *Planning Act*. Specifically, the Commission states that "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 reference to temporary uses . . .".

- *G. Willikers Ltd. v. Resort Municipality,*
LA15-02

6. The Appellant concedes that the appeal in this matter is with respect to a temporary use application, namely, for a temporary parking lot on the Property. However, the Appellant disagrees with the contention that the Commission does not have jurisdiction to hear an appeal of a temporary use application because it is not specifically listed at section 28(1.1) of the *Planning Act*.
7. The Appellant submits that a temporary use application falls under the broad definition of "development" provided in the *Planning Act*. Pursuant to the *Planning Act*, "development" includes the placement of *temporary* or permanent mobile uses or structures in, under, on or over the land.

- *Planning Act*, s.1(d).

8. While the definition of "development" is not specifically referenced in the appeals section of the *Planning Act*, the Appellant submits that the definition of development clearly includes potentially temporary or transient development, contrary to the decision of the Commission in LA15-02.

9. Section 4.29(1) of the Resort Municipality's Land Use Bylaw provides that "no Property Owner shall construct, Erect, place, allow or establish a Temporary Use on any Parcel or within any Structure within the Municipality without first applying for an receiving a permit from Council".

- Resort Municipality Land Use Bylaw,
s.4.29(1).

10. Section 4.29(1) of the Resort Municipality's Land Use Bylaw requires property owners within the Resort Municipality to apply for a temporary use permit prior to establishing a temporary use, which may include the construction or placement of temporary structures on property within the Resort Municipality. The Appellant submits that such temporary uses are considered "development" pursuant to the definition provided in the *Planning Act*.
11. While the definition of "development" is not specifically referenced in the appeals section of the *Planning Act*, the Appellant submits that the definition of development clearly includes potentially temporary or transient development, contrary to the decision of the Commission in LA15-02, and that the Commission has jurisdiction to hear the Appellant's appeal pursuant to section 28(1.1)(a).
12. Additionally, the Appellant submits that the decision of the Resort Municipality specifically accepts the Commission's jurisdiction to hear an appeal of the temporary permit application. The decision of the Resort Municipality dated August 1, 2025, states "any person who is dissatisfied with the decision of Council in respect to the administration of regulations or bylaws made under the Act, may appeal within twenty-one (21) days to the Island Regulatory and Appeals Commission".
13. The Appellant further submits that the Commission must hear the appeal in the interest of natural justice. While not the subject of this appeal, the Appellant has submitted multiple temporary permit applications to the Resort Municipality for a temporary parking lot since acquiring the Property in 2022, all of which have been denied. Should the Commission determine that it does not have jurisdiction to hear an appeal for a temporary use permit, there is no recourse available to the Appellant to challenge the purported planning decision of the Resort Municipality made pursuant to its Land Use Bylaw. The Appellant respectfully submits that the Commission cannot allow such a precedent to be set.

RELIEF SOUGHT

14. In light of the foregoing, the Appellant respectfully submits that this Commission finds that it has the jurisdiction to hear the appeal filed by the Appellant by Notice of Appeal dated August 22, 2025, and filed with the Commission on August 22, 2025.

All of which is respectfully submitted this 3rd day of September, 2025.



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TAB 2



PLANNING ACT

CHAPTER P-8

INTERPRETATION

1. Definitions

In this Act

- (a) “**Commission**” means the Island Regulatory and Appeals Commission established under section 2 of the *Island Regulatory and Appeals Commission Act* R.S.P.E.I. 1988, Cap. I-11;
- (b) “**council**” means the council of a municipality;
- (b.1) “**Department**” means the Department of Housing, Land and Communities;
- (c) “**developer**” means a person who, directly or indirectly, is authorized to apply for approval of a development or subdivision or to enter into an agreement regarding a development or subdivision;
- (d) “**development**” means
 - (i) site alteration, including but not limited to
 - (A) altering the grade of the land,
 - (B) removing vegetation from the land,
 - (C) excavating the land,
 - (D) depositing or stockpiling soil or other material on the land, and
 - (E) establishing a parking lot,
 - (ii) locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land,
 - (iii) placing temporary or permanent mobile uses or structures in, under, on or over the land, or
 - (iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;
- (e) “**development agreement**” means an agreement between a developer and a council, or between a developer and the Minister, or a tripartite agreement between a developer, a council and the Minister, respecting the terms and conditions under which a development may be carried out;
- (e.1) “**development permit**” means a permit issued for a development under the regulations or pursuant to a bylaw but does not include a building permit issued under the *Building Codes Act*;
- (f) “**Minister**” means the Minister of Housing, Land and Communities;

- (i) the quality of life of persons residing in the neighbourhood affected by the decision,
- (ii) the natural environment in the community affected by the decision, or
- (iii) features, structures or sites having significant cultural or recreational value in the community affected by the decision; or
- (f) an organization, the majority of whose members are individuals referred to in clause (d). 2023,c.31,s.18.

28. Appeals from decisions of Minister

- (1) Subject to subsections (1.2) to (4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of the Minister made in respect of an application for
- (a) a development permit;
 - (b) a preliminary approval of a subdivision or a resort development;
 - (c) a final approval of a subdivision;
 - (d) the approval of a change of use; or
 - (e) any other authorization that the Minister may grant or issue under the regulations.

Appeals from decisions of council

- (1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of a council of a municipality
- (a) that is made in respect of an application by a person under a bylaw for
 - (i) a development permit,
 - (ii) an occupancy permit, in relation to a matter under this Act or the regulations,
 - (iii) a preliminary approval of a subdivision, or
 - (iv) 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.

“bylaw”

- (1.2) In subsection (1.1) and subsection (1.4) “bylaw” means a bylaw made under this Act.

Notice of appeal and time for filing

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

Council decision that requires Minister’s approval

- (1.4) For greater certainty, 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.

Elimination of appeal when development approved under *Environmental Protection Act*

- (2) Where the Lieutenant Governor in Council has by order declared that
- (a) a development for which approval is required under the *Environmental Protection Act* has met all the requirements of that Act and written approval has been given;
 - (a.1) a development for which approval is required under the *Water Act* has met all the requirements of that Act and written approval has been given; and

TAB 3



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

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)

TAB 4

- (i) be provided through the Single-Detached Dwelling; and
- (ii) in the case of an on-site sewage treatment system, be certified by a Professional Engineer.

4.26 SIDE YARD WAIVER

- (1) Notwithstanding any other provisions of this Bylaw, where Buildings on adjacent Lots share a Common Wall, the applicable Side Yard requirement shall be zero (0) along the common Lot Line.

4.27 SIGNAGE

- (1) No Person shall Erect, Alter or enlarge a Sign within the boundaries of the Municipality except in conformance with the Municipality's Signage Bylaw.

4.28 SWIMMING POOLS

- (1) The installation of a Swimming Pool shall be permitted in any Zone in accordance with the following provisions:
 - (a) a Development Permit has been issued for the Swimming Pool;
 - (b) a 1.8 m. (6 ft.) high Fence fully encloses the Swimming Pool and is constructed in such a manner so as to impede unauthorized persons from entering over or under said Fence;
 - (c) any gate on such Fence is self-closing and self-latching to prevent its opening from outside the fenced area;
 - (d) notwithstanding 4.28(1)(b), the Development Officer may allow one or more Buildings to take the place of a portion of the Fence so long as the Swimming Pool is fully enclosed by the Fence and Building(s);
 - (e) the Swimming Pool is placed not less than 4.57 m. (15 ft.) from the nearest Side Yard Line and not less than 6.10 m. (20 ft.) from the Rear Lot Line;
 - (f) no Swimming Pool is placed in any Front Yard or Flankage Yard;
 - (g) no Swimming Pool water is discharged on any adjacent public or private property or into any Watercourse or Wetland; and
 - (h) Swimming Pool water is either drained to a dry ditch on the Swimming Pool Owner's Property or carried off by trucks.

4.29 TEMPORARY USES, BUILDINGS AND STRUCTURES PERMITTED

- (1) No Property Owner shall construct, Erect, place, allow or establish a Temporary Use on any Parcel or within any Structure within the Municipality without first applying for and receiving a permit from Council.
- (2) Permits for Temporary Uses shall be for a period not exceeding 30 days.

- (3) Notwithstanding subsection 4.29(2) above, Council may grant a seasonal Temporary Use permit for a period not exceeding 5 months where, in the opinion of Council, the Temporary Use is compatible with an established or proposed permanent facility on the Parcel and does not represent a conflict or nuisance to Property Owners in the vicinity or the general Public.
- (4) No more than four (4) Temporary Use permits shall be issued for any Parcel in any calendar year and all permits issued shall be non-consecutive.
- (5) The hours of the Temporary Use shall be limited from 8:00 a.m. - 11:00 p.m. daily, or such other hours as approved by Council.
- (6) No Temporary Use permits shall be granted where in the opinion of Council:
 - (a) parking facilities are not adequate;
 - (b) ingress or egress or both to the site would create excessive congestion or a traffic hazard;
 - (c) washroom facilities are not adequate;
 - (d) garbage collection and storage facilities are not adequate; or
 - (e) the Use would create a conflict due to excessive noise, hours of operation, lighting or another nuisance.
- (7) Council may attach conditions to a Temporary Use permit relating to the following:
 - (a) parking;
 - (b) washroom facilities;
 - (c) Landscaping;
 - (d) lighting;
 - (e) physical appearance;
 - (f) maintenance;
 - (g) hours of operation;
 - (h) garbage collection and storage;
 - (i) staffing;
 - (j) policing; and
 - (k) any other matters which could represent a hazard or a nuisance to the Public.
- (8) No Temporary Use shall be permitted to encroach within the Front Yard, Rear Yard or Side Yards as required under this Bylaw.
- (9) All Temporary Uses shall comply fully with the provisions of the Municipality's Signage Bylaw.
- (10) No Temporary Use Permit for a Special Event shall be approved by Council unless:
 - (a) written notice to adjacent Property Owners is provided in accordance with section 15.3, including the details of the proposed Special Event and inviting written comments;
 - (b) a public meeting is held to receive comments on the proposed Special Event in accordance with the requirements of section 15.3; and

- (c) all other relevant provisions of this Bylaw are met including, but not limited to, the requirements set out in sections 3.12 and 4.29.
- (11) A Person applying for a Temporary Use permit for a Special Event shall submit an application to the Development Officer on the form prescribed by Council and in accordance with the requirements of Schedule F and any Special Event Guidelines adopted by Council, and the following process shall apply:
- (a) the Development Officer shall:
 - (i) receive from the Applicant sufficient funds to cover the application fee set out in Schedule C and the cost to advertise the public meeting and mail the written notices required under subsection (10) and section 15.3; and
 - (ii) if Council determines under subclause (11)(c)(ii) that a public meeting will be held, provide written notice in accordance with the requirements of clause (10)(a), explaining the details of the proposed application and the date by which written comments must be received;
 - (b) Planning Board shall review each Temporary Use permit application for a Special Event and provide a recommendation to Council as to whether it should proceed to a public meeting;
 - (c) Council shall:
 - (i) consider the recommendation of Planning Board; and
 - (ii) determine whether it will hold a public meeting in accordance with the provisions of subsection (10) and section 15.3 in this Bylaw and receive comments on the proposed Special Event;
 - (d) Following the public meeting:
 - (i) Planning Board shall consider the feedback received from the public by way of written responses and comments made at the public meeting;
 - (ii) the Applicant may be provided another opportunity to meet with Planning Board to answer any further questions that may have arisen at or following the public meeting; and
 - (iii) Planning Board shall make a recommendation to Council as to whether the application should receive preliminary approval.
 - (e) Planning Board and Council shall consider the following general criteria when reviewing Temporary Use permit applications for a Special Event, in addition to the items identified in subsection (6):
 - (i) adequacy of infrastructure to accommodate the Special Event;
 - (ii) impact of event timing and venue location(s) on municipal service delivery and public safety;
 - (iii) suitability of the site to accommodate the Special Event; and
 - (iv) the Applicant's ability to meet the requirements of other departments and agencies, including those of the Province.

- (f) Following the public meeting and after having considered the recommendation of Planning Board, Council shall determine whether or not to issue preliminary approval for the proposed Special Event and may identify conditions for final approval and matters to be included in the Development Agreement required pursuant to section 3.12.
- (g) Upon receipt of such information as is required to establish compliance with the requirements set out in both the preliminary approval and the Development Agreement, the Council may grant final approval for a Temporary Use permit for a Special Event.

4.30 VISIBILITY AT STREET INTERSECTIONS

- (1) On a Corner Lot, within a triangular area 6.1 m. (20 ft.) back from the intersecting Corner Lot Line, no Fence, Sign, hedge, shrub, bush or tree or any other Structure or vegetation shall be Erected or permitted to grow to a Height greater than 0.6 m. (2 ft.) above Grade of the abutting streets.

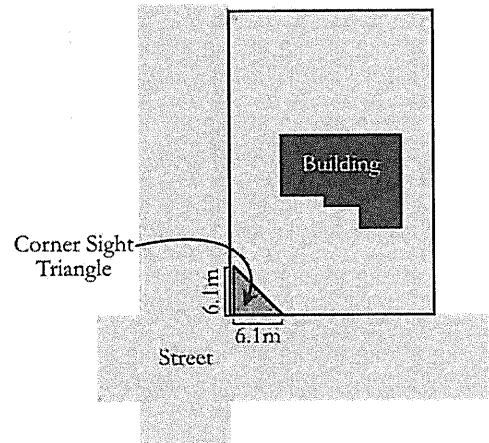


Figure 5 - Corner Sight Triangle

