STEWART MCKELVEY
LAWYERS • AVOCATS

65 Grafton Street, P.O. Box 2140
Charlottetown PE C1A 8B9 Canada tel: 902.892.2485 fax: 902.566.5283
stewartmckelvey.com

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Hilary A. Newman
Direct Dial: 902.629.4590
hnewman@stewartmckelvey.com

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Via Electronic Mail (mwalshdoucette@irac.pe.ca)

Island Regulatory and Appeals Commission
5th Floor, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Attention: Michelle Walsh-Doucette, Commission Clerk

Dear Ms. Walsh-Doucette:

Re: Appeal #LA25014 – John Carroll v. Resort Municipality

We are writing on behalf of the Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the "Resort Municipality") in reply to the submissions of the appellant dated September 3, 2025.

A. Rights to Appeal are Statutory Rights

The right to appeal a decision of a public body exists only because some statutory provision confers that right in the particular circumstance provided. Rights to appeal are creatures of statute. There is no inherent or common law right to appeal.

This point was recognized by Jenkins J. (as he then was) in *Big John Holdings Ltd. v. Island Regulatory and Appeals Commission* (1993), 18 Admin L.R. (2d) 307 at para. 14 (P.E.I.S.C. (T.D.)) **[Tab 1]**. As Jenkins J. (as he then was) observed, in order to know whether a right to appeal has been granted, one must examine the particular statutory provision.

B. Planning Act says that Only Certain Municipal Decisions can be Appealed

The *Planning Act,* RSPEI 1988, c P-8 ("*Planning Act*") grants jurisdiction to the Island Regulatory and Appeals Commission ("Commission") to hear appeals from certain decisions made by the council of a municipality. However, that jurisdiction exists only where the conditions set forth in section 28(1.1) of the *Planning Act* are present. One condition precedent to the Commission exercising its appellate jurisdiction is: "*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,*" **[Tab 2]**.

Unless the impugned decision is one of those listed in section 28(1.1) of the *Planning Act*, the Commission is without jurisdiction to hear an appeal under the *Planning Act*. The condition precedent required by the *Planning Act* is not present in this case. The decision at issue was in relation to an application for a temporary use permit. The Legislature has not included this type of decision in its list of appealable decisions under section 28(1.1) of the *Planning Act*.

This statutory direction is further illustrated when one compares s. 28(1) and s. 28(1.1) of the *Planning Act*. While "(*d) the approval of a change of use; or (e) any other authorization that the Minister may grant or issued under the regulations*" are appealable decisions by the Minister under s. 28(1), they are not listed as appealable decisions by the council of a municipality under s. 28(1.1). The Legislature deliberately excluded such approvals from the list of municipal decisions that are subject to appeal by the Commission. This legislative choice must be respected. When a statute uses different words or a different form of expression in relation to the same subject area, that choice is considered to be intentional and indicative that the legislator intended a change in meaning or a different meaning. See Ruth Sullivan, *Construction of Statutes*, 7th Ed. (Toronto: LexisNexis, 2022) at § 8.04 **[Tab 3]**.

C. Commission says that Only Certain Municipal Decisions can be Appealed

In Order LA15-02 **[Tab 4]** the Commission stated that:

> *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*.
>
> [emphasis added]

The Commission further observed that each item on the list of municipal decisions that may be appealed to the Commission were concerned with development and land use planning, and that each enumerated item also reflected development and land use planning from a permanent, or relatively permanent perspective. Ultimately, the Commission found that it did not have the jurisdiction to hear the appeal as transient or temporary uses were not among the list of appealable decisions set out in s. 28(1.1) of the *Planning Act*.

D. Submissions

The Commission's decision in Order LA15-02 was made under the *Planning Act* as it read as of February 12, 2015. The *Planning Act* definition of "development" as of February 12, 2015 read:

> *(d) "development" means the carrying out of any building operation, including excavation in preparation for building, on, over or under land, or the making of a material change in the use or the intensity of the use of any land, buildings or premises, and includes the placing of structures on, over or under land;*
>
> *Planning Act,* RSPEI 1988, c P-8 **[Tab 5]**
> (in force between June 28, 2014 and December 1, 2025)

Subsequent amendments have revised the definition of "development" in the *Planning Act* to include the following meaning: *"(iii) placing temporary or permanent mobile uses or structures in, under, on or over the land*". However, this revision which clarifies the definition of "development" cannot be read in isolation from the remainder of the revised definition of "development". The full statutory definition of "development" in the current *Planning Act* reads as follows:

> *(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;*
>
> *Planning Act,* RSPEI 1988, c P-8 **[Tab 2]**

All the enumerated statutory meanings of development have some reference to or are concerned with development and land use planning from a permanent, or relatively permanent perspective. Even the provision that the appellant points to for purposes of advancing the argument that the Commission has jurisdiction – section 1(d)(iii)) – references "permanent mobile uses" and compares this phrase immediately to "structures in, under, on or over the land".

Words and phrases take their meaning from their context. See Sara Blake, *Administrative Law in Canada*, 7th ed. (Markham, Ont.: Lexisnexis, 2022) at §8.05 **[Tab 6].** A careful review of the whole definition discerns the intent of the legislature for "development" (and consequently, "development permits") to concern development and land use planning from a permanent or relatively permanent perspective. In the context in which the word "temporary" is placed (in close proximity to "permanent mobile uses or structures") it can reasonably be inferred that the legislature intended to clarify the definition of "development" so as to ensure temporary structures *required* to be placed in, under, on or over the land *for the purpose of effecting* a development from a permanent or relatively permanent perspective are not excluded from appealable decisions to the Commission. The application at issue, for a temporary parking lot, does not involve development or land use planning from a permanent or relatively permanent perspective.

Moreover, if you look to the second step of the Commission's formalized a two-part test for deciding *Planning Act* appeals – it requires the Commission to determine whether an underlying decision "has merit based on sound planning principles". See *Charlottetown (City) v. Island Reg. & Appeals Com.*, 2013 PECA 10, at para 39 **[Tab 7]**. Sound planning principles is a broad term that may include an expansive list of principles. However, the consistent thread running through

those principles is the efficient use of land for current and future generations. In other words, sound planning principles are designed to address development and land use planning from a permanent or relatively permanent perspective. Sound planning principles are not particularly designed to address temporary land uses that generally do not affect the efficient use of land for current and future generations.

An administrative tribunal has no inherent power to take proceedings. Being created by statute, it has only those powers conferred on it by the statute. See Sara Blake, *Administrative Law in Canada*, 7th ed. (Markham, Ont.: Lexisnexis, 2022) at §4.01 **[Tab 8]**.

The Commission has no more authority than has been delegated to it by the Legislature. Like every administrative tribunal exercising delegated authority, if the Commission has not been conferred the jurisdiction to do something, then it does not have it. In the context of land use planning, the Commission has only the authority granted to it by the *Planning Act*. The Commission is, as it has so often said itself, a creature of statute.

Parties cannot confer power upon the Commission – whether by letter or otherwise – and they cannot consent to the Commission determining a particular matter. Acquiescence and waiver have no application when determining the jurisdiction of a statutory tribunal. Either the Legislature conferred the jurisdiction to the Commission or it did not. See Sara Blake, *Administrative Law in Canada*, 7th ed. (Markham, Ont.: Lexisnexis, 2022) at §4.01 **[Tab 8]**. Therefore, the appellant's submission that the Resort Municipality specifically accepts the Commission's jurisdiction to hear an appeal of the appellant's temporary use application bears no weight.

The Commission has no inherent jurisdiction to hear proceedings. The *Planning Act* provides "a specifically defined right of appeal" to the Commission. In other words, the Commission "does not have unfettered discretion or unbridled power to deal with and decide appeals as it likes." See *Re Island Regulatory and Appeals Commission*, [1997] P.E.I.J. No. 70 at paras. 8 and 10 (S.C. (A.D.)) **[Tab 9]**.

In this case, an application for a temporary use permit was denied. That application and permit are not listed as being appealable decisions under section 28(1.1) of the *Planning Act*. The Commission is without jurisdiction to hear this appeal.

This submission is further supported by the decision of the Commission in Order LA01-04 **[Tab 9]**, where the appellant sought to argue that the proposed development was actually a transient or temporary use. The Commission recognized the distinction between a development permit and a transient or temporary use permit. Given that the appellant had applied for a development permit (not so in this case), the Commission found that denial of the application was the proper subject of an appeal. The appeal was ultimately denied.

There is no jurisdiction under s. 28(1.1) of the *Planning Act* to appeal a decision of the council of a municipality that is made in relation to an application for a transient or temporary use permit. This conclusion is supported by the language chosen by the Legislature, the case law of the court, the transient nature of the permit in question, and the prior decisions of the Commission.

The appellant has made submissions that the Commission must hear the appeal in the interest of natural justice and made additional comments regarding the appellant having had submitted multiple temporary permit applications to the Resort Municipality for a temporary parking lot since

2022. These submissions appear to be an attempt to enlarge the statutory jurisdiction granted to the Commission by the Legislature. We will not address these submissions, but we will simply point out that the Commission is not the proper forum for these submissions from the appellants. Any concerned resident may contact members of council or the local administrator.

Thank you on behalf of the Resort Municipality for your time and consideration. We ask that the notice of appeal be dismissed.

Yours truly,

Stewart McKelvey

Hilary A. Newman

HAN/dr