



February 2, 2023

VIA EMAIL – pjrafuse@irac.pe.ca

Philip J. Rafuse
Appeals Administrator
The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Appeal Docket LA23002 – *Betty Ann Bryanton. v. Minister of Agriculture and Land*
Our File: 25052

Please be advised that I represent the Minister of Agriculture and Land in respect of the above noted appeal. I am providing these submissions with regards to the question of jurisdiction only and reserve the right to provide submissions on the merits of the appeal after the issue of jurisdiction has been determined.

Minister's Submission Regarding Jurisdiction

The Minister's position is that the notice of appeal received by the Commission via email on January 3rd, 2023 at 4:09pm (the "Notice of Appeal") was filed outside the twenty-one-day limitation period prescribed at section 28(1.3) of the *Planning Act*.¹

The Minister submits that the amended Notice of Appeal filed with the Commission on January 4, 2023 is also clearly outside the prescribed timelines.

The Minister, therefore, requests that the Commission dismiss this appeal on the basis that it is without jurisdiction to extend or abridge the statutory appeal timelines.

Calculation of Limitation Period

Section 28(1.3) of the *Planning Act* provides that an appeal may be made "*within twenty-one days after the date of the decision being appealed*":

¹ Planning Act, RSPEI 1988, c. P-8.

“28. 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.

The *Interpretation Act* provides that a period of time expressed in days and described as beginning on, at or within a specified day excludes the specified day.²

In the Minister’s interpretation, section 28(1.3) of the *Planning Act* specifies the limitation period as beginning after (or from) the day “after the date of the decision.” Therefore, in calculating the limitation period, the day the decision was made is not counted.

The date of the decision of the Minister was December 13, 2022 (see Record). The decision of the Minister clearly states that, “An appeal must be filed within 21 days of the date of this letter...”

The Minister calculates that “*within twenty-one days*” of December 13, 2022 is by end of day January 3, 2023.

Pursuant to the Commissions Rules of Practice and Procedure all documents “must be filed with the Commission during business hours between 8:30am and 4:00pm. A document received by the Commission after 4:00pm or on a holiday shall be deemed to have been filed on the next day that is not a holiday.”³

Therefore, this appeal was to be **made by 4:00pm on January 3, 2023.**

Instituting an Appeal

Section 28(1) of the *Planning Act* allows an appeal by a person who is dissatisfied with a decision of the Minister in respect of a number of things including a development permit. All appeals are subject to sections 28(1.2) to 28(4) of the *Planning Act*.

² *Interpretation Act*, RSPEI 1988, I-8.1, subsection 33(1) provides:

“33(1) A period of time expressed in days and described as beginning on, at or with a specified day excludes the specified day.”

Alternatively, the *Interpretation Act*, subsection 33(3) may apply which provides that: “a period of time expressed in days and described as beginning before, after or from a specified day excludes the specified day”. The Department submits that the application of both subsections results in the same date calculation.

³ Commission Rules of Practice and Procedure at Rule 21.2.

Compliance with section 28(1.3) is a condition precedent to instituting an appeal. An appeal is commended “by filing with the Commission a notice of appeal.”⁴ The Notice of Appeal in this matter was not deemed to be filed until January 4, 2023.

Supporting Authorities

It is well-established that as a statutory tribunal, the Commission only has the jurisdiction granted to it by statute. This has been confirmed by the Commission in previous decisions.

For example, in LT00-04⁵, the Commission commented that it is a creature of statute and only has the authority expressly conferred upon it by the Legislature. In that case, the Commission commented that “*the Notice of appeal was received by the Commission after twenty-one days*”, and found that it had no authority to waive the provisions of the *Real Property Assessment Act* that stipulate a time limitation for the filing of an appeal. The Commission found that it was without jurisdiction to hear that appeal.

In LEV12-01⁶, the Commission commented that the time limit for appeals is statutory in nature and the Commission is not vested with the authority to extend the appeal period set out in the legislation. In that case, the Commission found that it did not have the jurisdiction to hear the appeal as the appeal period had expired before the appeal had been filed.

Application to the Instant Appeal

In the Minister’s submission, the Commission does not have the jurisdiction to waive the statutory requirement of a notice of appeal to be filed with the Commission within 21 days after the date of the decision being appealed.

As per the Commission’s letter to the Minister dated January 6, 2023 it was noted that, “On January 3, 2023 an unsigned Notice of Appeal with attachments was received via email at 4:09pm. The following day, Commission staff informed the Appellant that her appeal was unsigned. The Appellant then signed and filed the Notice of Appeal on January 4, 2023 along with revised attachments.”

While the Minister acknowledges that this Notice of Appeal is *dated* January 3, 2023, it was, nevertheless, not deemed to be *filed* by the Commission until January 4, 2023. As such, in this matter the Notice of Appeal was not filed within the prescribed period.

For these reasons, the Minister submits that this appeal was not made before the expiry of the limitation period on January 3, 2023, and must be dismissed accordingly for a want of jurisdiction

⁴ Planning Act at s. 28(1).

⁵ See also LT00-01

⁶ See LEV12-01, at paras 10 and 12

Conclusion

The Minister's position is that the Notice of Appeal was filed outside the twenty-one-day limitation period prescribed at section 28(1.3) of the *Planning Act*. The Minister, therefore, requests that the Commission determine this legal question in its favour and dismiss this appeal on the basis that the Commission is without jurisdiction to extend or abridge the statutory appeal timelines.

Yours truly,

A handwritten signature in blue ink, appearing to be 'M. O'Shea', written in a cursive style.

Mitch O'Shea

Enclosures: - Record of Decision of the Minister
- Letter from the Commission to the Minister dated January 6, 2023