

Curtis Doyle
Direct Dial: 902.629.4520
cdoyle@stewartmckelvey.com

17 March 2025

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

Michelle Walsh-Doucette
Island Regulatory and Appeals Commission
National Bank Tower
134 Kent Street, 5th Floor
Charlottetown, PE C1A 8R8

Dear Ms. Walsh-Doucette:

**Re: Planning Appeal LA25-001
Montgomery Cavendish Cottages Inc. v. Resort Municipality**

We represent the Resort Municipality in this appeal. In our respectful view, the appeal ought to be dismissed because it was filed outside of the 21-day appeal period prescribed by the [Planning Act](#).

The appellant's submissions on the appeal period (dated 21 February 2025) appear to presuppose that the *Planning Act* appeal period begins to run only when the would-be appellant receives actual notice of the relevant municipal decision. But this is not the case. The notice requirements are prescribed by s. 23.1 of the [Planning Act](#). Notice must be posted:

- on a public internet site; and
- at a location accessible to the public during business hours.

Here, the Resort Municipality fulfilled these notice requirements.¹ The appeal period therefore began to run on December 17.² It expired 21 days later and cannot be extended by the Commission.³ For these reasons, this appeal was filed out of time and ought to be dismissed.⁴

¹ See the enclosed affidavit of B. MacDonald (sworn 13 March 2025). The decisions in issue were made under the 2017 *Zoning & Subdivision Control (Development) Bylaw*, which remained in force until 19 December 2024, when the new [Land Use Bylaw](#) received ministerial approval. The Resort Municipality also sent notice by regular mail to the address listed on the applications. See the enclosed affidavit of B. MacDonald (sworn 13 March 2025).

² *Booth and Peake v. Island Regulatory and Appeals Commission*, [2004 PESCAD 18](#) (CanLII) at para 21.

³ *Goops Wooldridge, Laurena Wooldridge, Robin Boutillier and Brian Chandler*, [2022 PEIRAC 1](#) (CanLII) at para 27.

⁴ Additionally, we note that the appellant's submissions do not reveal when he received actual notice of the decisions under appeal. His submissions state only that the relevant email address was "old and little used". They do not state when the email(s) were received. Nor do they address the fact that notice was also sent by regular mail to the address listed on the applications. See the enclosed affidavit of B. MacDonald (sworn 13 March 2025).

Michelle Walsh-Doucette

17 March 2025

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Yours truly,

Stewart McKelvey



Curtis Doyle

Enclosures (2017 Bylaw; Affidavit of B. MacDonald sworn 13 March 2025)

- c. Philip Rafuse (pjrufuse@irac.pe.ca)
- Jessica Gillis (jgillis@irac.pe.ca)
- T. Daniel Tweel (office@tweellaw.ca)

ISLAND REGULATORY AND APPEALS COMMISSION

BETWEEN:

MONTGOMERY CAVENDISH COTTAGES INC.

APPELLANT

-and-

**RESORT MUNICIPALITY OF STANLEY BRIDGE, HOPE RIVER, BAYVIEW,
CAVENDISH AND NORTH RUSTICO**

RESPONDENT

AFFIDAVIT OF BRENDA MACDONALD

FILED ON BEHALF OF THE RESPONDENT

TWEEL LAW
208 Queen Street
Charlottetown, PE C1A 4B6

T. Daniel Tweel
Tel: (902) 368-8600
Fax: (902) 368-8810
Email: office@tweellaw.ca

Counsel for the Appellant

STEWART MCKELVEY
65 Grafton Street
Charlottetown, PEI C1A 8B9

J. Curtis Doyle
Tel: (902) 629-4520
Fax: (902) 566-5283
E: cdoyle@stewartmckelvey.com

Counsel for the Respondent

ISLAND REGULATORY AND APPEALS COMMISSION

BETWEEN:

MONTGOMERY CAVENDISH COTTAGES INC.

APPELLANT

AND

RESORT MUNICIPALITY OF STANLEY BRIDGE, HOPE RIVER, BAYVIEW,
CAVENDISH AND NORTH RUSTICO

RESPONDENT

AFFIDAVIT

I, Brenda MacDonald, of Stratford, Queens County, Province of Prince
Edward Island,

MAKE OATH AND SAY AS FOLLOWS:

1. I am the Chief Administration Officer of the Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the "**Resort Municipality**"). I have been employed in this position for approximately 30 years. I have personal knowledge of the matters sworn herein except for information that arises from sources other than my own personal knowledge and, as to that information, the sources are identified and I verily believe the information to be true.

Notices posted on an internet website accessible to the public

2. The Government of Prince Edward Island maintains a website that lists planning decisions that have been made by municipalities ("PEI Planning Decisions Website").
3. The PEI Planning Decisions Website is accessible to the public at the following internet address: <https://www.princeedwardisland.ca/en/feature/pei-planning-decisions#/service/PlanningDecisionsOnline/PlanningDecisionsOnlineSearch>

4. On December 17, 2024, I posted two notices on the PEI Planning Decisions Website. Copies of the notices that I posted on December 17 are attached to this affidavit as Exhibits "A" and "B".

Notices posted at a location accessible to the public during business hours

5. The Resort Municipality maintains a municipal office at 7591 Cawnpore Lane, Cavendish PEI, C0A 1N0 ("Municipal Office").
6. The Municipal Office is accessible to the public during business hours. More specifically, the Municipal Office is accessible to the public every Monday to Friday (except holidays), from 9:00 a.m. to 12 p.m. and again from 12:30 p.m. to 4:30 p.m.
7. On December 17, 2024, I posted in the Municipal Office notices of decisions in respect of permit numbers 24-C-107 and 24-C-108. Copies of the notices that I posted are depicted on Exhibit "C" to this affidavit.

Decision letters also sent by regular mail

8. On December 17, 2024, I sent two letters (with enclosures) by regular mail to the following mailing address:

**Montgomery Cavendish Cottages Inc.
c/o Monty Drummond
59 Sunset Lane
Cavendish, PE
C0A 1N0**

Copies of the two letters that I sent to this address are attached as Exhibits "D" and "E" to this affidavit.

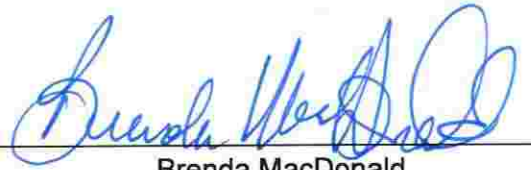
Purpose of affidavit

9. I make this affidavit for the purpose of providing evidence in a proceeding identified by the Island Regulatory and Appeals Commission as "LA25-001", and for no other or improper purpose.

SWORN TO at Charlottetown, in the
Province of Prince Edward Island, this 13th
day of March, 2025 before me:



A Commissioner for taking Affidavits in the
Supreme Court of Prince Edward Island



Brenda MacDonald



EXHIBIT A

Government of Prince Edward Island

Planning Decisions

[My Account](#) [Logout](#)

[Search](#) / [View](#)

Community	CAVENDISH
Application Type	Subdivision
Subdivision Type	Subdivision Case
Address	Sunset Lane
File Number	24-C-108
Nature of Decision	Denied
PID	232868
Consolidation PIDs	0
Decision Date	2024-12-17
Posted Date	2024-12-17
Application Details	Denied to subdivide 2 lots off of the property.
Proposed Number of Lots	2
Approved Number of Lots	0
Approving Authority	Resort Municipality
Administrative Notes	
Record Status	Active

Last modified on March 04, 2025 - 11:21:37 (Brenda MacDonald)

This is Exhibit A
to the affidavit of Brenda MacDonald
sworn to/affirmed before me this 13th day
of March, 2025.
Doyle
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND



EXHIBIT B

Government of Prince Edward Island

Planning Decisions

[My Account](#) [Logout](#)

[Search](#) / [View](#)

Community	CAVENDISH
Application Type	Subdivision
Subdivision Type	Subdivision Case
Address	32 Sunset Lane
File Number	24-C-107
Nature of Decision	Denied
PID	563908
Consolidation PIDs	0
Decision Date	2024-12-17
Posted Date	2024-12-17
Application Details	Denied to subdivide 3 lots off of the property.
Proposed Number of Lots	3
Approved Number of Lots	0
Approving Authority	Resort Municipality
Administrative Notes	
Record Status	Active

Last modified on March 04, 2025 - 11:23:20 (Brenda MacDonald)

This is Exhibit B
to the affidavit of Brenda MacDonald
sworn to/affirmed before me this 13th day
of March, 2025.

Cheryl
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

RESORT MUNICIPALITY – PUBLIC NOTICE BUILDING PERMITS ISSUED 2024

Permit #	Date	Name	Approval	Property #	Location of Construction
24-C-102	December 3, 2024	Raspberry Point Oyster Co. 2023 Inc.	To renovate and change the use of the building into a fish market and take-out style restaurant.	771832	9539 Cavendish Road
24-C-103	December 4, 2024	Michael Smith and Roxanne Sigsworth	To enclose the existing deck of 10' X 16' and to enclose an exterior back porch of 10' X 11.5'.	233171	498 Grahams Lane
24-C-104	December 5, 2024	Joelle Tierney	To construct a summer cottage of 60' X 30' with decks on the property.	1013168	5 Briar Lane
24-C-105	December 10, 2024	Matthew Reid	To locate a container on the property of 38' X 8' for storage only.	1133826	330 Simpson Mill Road
24-C-106	December 12, 2024	Kris and Leslie Schattman	To change the use of the summer cottage into a rental cottage.	567123	18 Wygant Place
24-C-107	December 17, 2024	Montgomery Cavendish Cottages Inc.	Denied to subdivide 3 lots off of the property.	563908	Sunset Lane
24-C-108	December 17, 2024	Montgomery Cavendish Cottages Inc.	Denied to subdivide 2 lots off of the property.	232868	Sunset Lane

This is Exhibit C
to the affidavit of Brenda MacDonald
sworn to/affirmed before me this 13th day
of March, 2025.

C. Day
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND



Phone: (902)963-2698

7591 Cawnpore Lane
Cavendish, PE
C0A 1N0

December 17, 2024

Montgomery Cavendish Cottages Inc.
c/o Monty Drummond
59 Sunset Lane
Cavendish, PE
C0A 1N0

This is Exhibit D
to the affidavit of Brenda Macdonald
sworn to/affirmed before me this 13th day
of March, 2025.

C. Dwyer
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

RE: Property located at Sunset Lane - PID # 232868:

Dear Monty,

At its recent Council Meeting, the Council of the Resort Municipality of Stanley Bridge, Hope Riverview, Bayview, Cavendish and North Rustico (the "Resort Municipality") reviewed your subdivision permit application to subdivide the existing property into three (3) lots at property # 232868, Sunset Lane, Cavendish, Prince Edward Island (the "Property").

Parcel # 232868 does not front on a public road, which is required in order for a lot to be subdivided. Paragraph 17.3(1)(d) of the Resort Municipality's Zoning & Subdivision Control (Development) Bylaw (the "Bylaw") requires the subdivision to have "Street access" and paragraph 17.3(1)(j) of the Bylaw requires the Parcel of Land in respect of which the Subdivision is requested to have "Frontage on a Street". Under the Definitions Section of the Bylaw, a "Street" is a road that is vested in either the Province or the Municipality (and therefore doesn't include a privately owned road or the Gulf Shore Parkway). There is, however, an exception to paragraph 17.3(j). Subsection 17.3(2) of the Bylaw does allow Council to approve a subdivision on a private road if the private road meets the requirements in section 4.14 of the Bylaw, the access driveway is at least 66 feet, and the lot size conforms to the requirements of the Zone in which the lot is located. The "private road" that provides the access from a public road to this lot appears to be part of PID 826446 (geolinc indicates that this parcel is owned by Sergiu Dragos and Alysa Johannes) and the Gulf Shore Parkway. We understand that Parks Canada would have to consent to this intensified use of the access and we have written confirmation from Danny Cusack with Parks Canada that ***"Parks Canada will not enter into any Right-of-Way Agreement over PID # 232405 concerning a 66 foot right-of-way to Sunset Lane. The existing access does not allow for any increase in traffic for commercial or residential purposes"***. (e-mail attached from Parks Canada)

Based on the preliminary survey plan of the property, the private road falling within PID 826446 is 40 feet wide from the park boundary starting at Sunset Lane to PID # 232868. If the access driveway from the public road is not 66 feet, then it does not meet the requirement in subsection 17.3(2)(b) and subdivision is not permitted

Please see attached sections 4.14 on Access and 17.3 on Permission to Subdivide of the 2017 Zoning and Subdivision Control (Development) Bylaw.

...2/

Fax: (902) 963-2932 / e-mail: resortmunicipal@eastlink.ca

4.14 ACCESS

1. *No Development Permit shall be issued unless the Lot intended to be used or upon which the Building or Structure is to be Erected abuts and fronts upon a Street.*
2. *Notwithstanding Section 4.14(1) above, Council may approve a Development Permit for a residential or commercial Structure which fronts on a Private Road, provided that the following criteria are met:*
 - a. *no reasonable provision can be made to provide access to a Street;*
 - b. *safe ingress and egress from the Lot can be provided; and*
 - c. *an agreement providing for the long term ownership and maintenance of the Private Road is registered in the Province's Land Registry Office, binding on the Owner of the Private Road, the Lot Owner making application for the Development Permit, and their respective heirs, successors and assigns.*
3. *Council may issue a Development Permit for a Lot created pursuant to the provisions of subsection 17.3 (2) and subsection 17.3 (3) of this Bylaw.*

17.3 PERMISSION TO SUBDIVIDE

(1) *No Person shall subdivide land within the Municipality unless the Subdivision:*

- a) *conforms with the requirements of this Bylaw and any other laws which may be in force;*
- b) *is suitable to the topography, physical conditions, soil characteristics, and natural surface drainage of the land;*
- c) *will not cause undue flooding or erosion;*
- d) *has Street access;*
- e) *has adequate utilities and services available or can be conveniently provided with such utilities and services;*
- f) *will reasonably conform with existing land Use in the immediate vicinity;*
- g) *will provide for safe traffic flow;*
- h) *is designed so that Lots will have suitable dimensions, shapes, orientation and accessibility;*
- i) *is suitable to the Use for which it is intended, and the future Use of adjacent lands;*
- j) *the Parcel of Land in respect of which the Subdivision is requested has Frontage on Street.*

Page Three

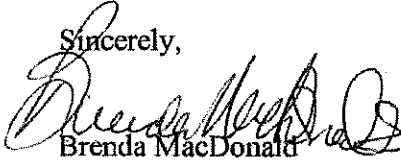
(2) *Notwithstanding clause 17.3(1)(j), above, Council may approve the Subdivision of a Lot which has Frontage on a Private Road if:*

- a) the Private Road meets the criteria set forth in section 4.14 of this Bylaw;*
- b) access to a Street is by way of a legally defined access driveway at least 66 feet in width;*
and
- c) the Lot size conforms to the requirements of the Zone in which the Lot is located.*

At this time, the Council has to deny your request for a subdivision of three (3) lots as the application does not meet the requirements of the 2017 Zoning and Subdivision Control (Development) Bylaw and cannot be approved.

Pursuant to Section 28 of the Planning Act, 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.

Sincerely,



Brenda MacDonald
CAO,
Resort Municipality

/bm

Encl. (e-mail from Parks Canada)

Brenda MacDonald

From: Daniel Cusack <daniel.cusack@pc.gc.ca>
Sent: Monday, November 25, 2024 7:41 AM
To: resortmunicipal@eastlink.ca
Subject: RE: subdivision permits

Hi Brenda,

As we discussed, Parks Canada will not enter into any Right of Way agreement over PID 232405 concerning a 66-foot Right of Way to Sunset Lane. The existing access does not allow for any increase in traffic for commercial or residential purposes.

Please let me know if this meets your needs.

Regards,
Danny

From: Brenda MacDonald <resortmunicipal@eastlink.ca>
Sent: Saturday, November 9, 2024 11:22 AM
To: Daniel Cusack <daniel.cusack@pc.gc.ca>
Subject: subdivision permits

COURRIEL EXTERNE – FAITES PREUVE DE PRUDENCE / EXTERNAL EMAIL – USE CAUTION

Danny,

Please find attached two subdivision permits for PID #'s 563908 and 232868 belonging to Montgomery Cavendish Cottages Inc. – Monty Drummond on Sunset Lane.

He is looking to do a subdivision on each parcel of land as you will see from the proposed survey plans.

Please review and forward your comments.

Any questions, please advise.

Thanks.

Brenda MacDonald, CAO
7591 Cawnpore Lane
Cavendish, PE
COA 1N0
Phone: 902-963-2698
Fax: 902-963-2932
e-mail: resortmunicipal@eastlink.ca
webmail: resortmunicipal@typei.com



Phone: (902)963-2698

7591 Cawnpore Lane
Cavendish, PE
C0A 1N0

December 17, 2024

Montgomery Cavendish Cottages Inc.
c/o Monty Drummond
59 Sunset Lane
Cavendish, PE
C0A 1N0

This is Exhibit E
to the affidavit of Branda MacDorval
sworn to/affirmed before me this 13th day
of March, 2025.

C. Boyle
A COMMISSIONER OF THE SUPREME COURT
OF PRINCE EDWARD ISLAND

RE: Property located at Sunset Lane - PID # 563908:

Dear Monty,

At its recent Council Meeting, the Council of the Resort Municipality of Stanley Bridge, Hope Rivew, Bayview, Cavendish and North Rustico (the "Resort Municipality") reviewed your subdivision permit application to subdivide the existing property into two (2) lots at property # 563908, Sunset Lane, Cavendish, Prince Edward Island (the "Property").

Parcel # 563908 does not front on a public road, which is required in order for a lot to be subdivided. Paragraph 17.3(1)(d) of the Resort Municipality's Zoning & Subdivision Control (Development) Bylaw (the "Bylaw") requires the subdivision to have "Street access" and paragraph 17.3(1)(j) of the Bylaw requires the Parcel of Land in respect of which the Subdivision is requested to have "Frontage on a Street". Under the Definitions Section of the Bylaw, a "Street" is a road that is vested in either the Province or the Municipality (and therefore doesn't include a privately owned road or the Gulf Shore Parkway). There is, however, an exception to paragraph 17.3(j). Subsection 17.3(2) of the Bylaw does allow Council to approve a subdivision on a private road if the private road meets the requirements in section 4.14 of the Bylaw, the access driveway is at least 66 feet, and the lot size conforms to the requirements of the Zone in which the lot is located. The "private road" that provides the access from a public road to this lot appears to be part of PID 826446 (geolinc indicates that this parcel is owned by Sergiu Dragos and Alysa Johannes) and the Gulf Shore Parkway. We understand that Parks Canada would have to consent to this intensified use of the access and we have written confirmation from Danny Cusack with Parks Canada that ***"Parks Canada will not enter into any Right-of-Way Agreement over PID # 232405 concerning a 66 foot right-of-way to Sunset Lane. The existing access does not allow for any increase in traffic for commercial or residential purposes"***. (e-mail attached from Parks Canada)

Based on the preliminary survey plan of the property, the private road falling within PID 826446 is 40 feet wide from the park boundary starting at Sunset Lane to PID # 563908. If the access driveway from the public road is not 66 feet, then it does not meet the requirement in subsection 17.3(2)(b) and subdivision is not permitted

Please see attached sections 4.14 on Access and 17.3 on Permission to Subdivide of the 2017 Zoning and Subdivision Control (Development) Bylaw.

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Fax: (902) 963-2932 / e-mail: resortmunicipal@eastlink.ca

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Sincerely,


Brenda MacDonald
CAO,
Resort Municipality

/bm

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Brenda MacDonald, CAO
7591 Cawnpore Lane
Cavendish, PE
C0A 1N0
Phone: 902-963-2698
Fax: 902-963-2932
e-mail: resortmunicipal@eastlink.ca
webmail: resortmunicipalitype1.com

J. Curtis Doyle
T : 902.892.2485
F : 902.566.5283
cdoyle@stewartmckelvey.com