

# Notice of Appeal

(Pursuant to Section 28 of the *Planning Act*)

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The Island Regulatory  
and Appeals Commission

**NOTE:**

Appeal process is a public process.

**TO:** The Island Regulatory and Appeals Commission  
National Bank Tower, Suite 501, 134 Kent Street  
P.O. Box 577, Charlottetown PE C1A 7L1  
Telephone: 902-892-3501 Toll free: 1-800-501-6268  
Fax: 902-566-4076 Website: [www.lrac.pe.ca](http://www.lrac.pe.ca)

**TAKE NOTICE** that I/we hereby appeal the decision made by the Minister responsible for the administration of various development regulations of the *Planning Act* or the Municipal Council of Miltonvale Park (name of City, Town or Community) on the 15th day of July, 2020, wherein the Minister/Community Council made a decision to grant permission to Zack and Jade Stephens to erect a 1,084 square foot structure described as a "Private Utility Structure (Photovoltaic Solar Array)" on Parcel No. 658559 and 856922 located at 999 Loyalist Road, Springvale (the "Property"). (attach a copy of the decision).

**AND FURTHER TAKE NOTICE** that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, the grounds for this appeal are as follows: (use separate page(s) if necessary)

The decision is in conflict with the intent and objectives of the Rural Municipality of Miltonvale Park Zoning and Subdivision Control (Development) Bylaw;

The decision does not have merit based on sound planning purposes and is contrary to sound planning principles; Further grounds are explained on the attached two pages.

**AND FURTHER TAKE NOTICE** that, in accordance with the provisions of Section 28.(5) of the *Planning Act*, I/we seek the following relief: (use separate page(s) if necessary)

A hearing de novo, that the Commission substitute its own decision for the one appealed, that the Commission allow the appeal, quash the decision to approve the development permit application for the Property.

Name(s) of  
Appellant(s): William & Carol-Ann McLaine  
Please Print

Signature(s) of  
Appellant(s): 

ON BEHALF OF LYNN MURRAY

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Dated this 4th day of August, 2020.  
day month year

## IMPORTANT

Under Section 28.(6) of the *Planning Act*, the Appellant must, within seven days of filing an appeal with the Commission serve a copy of the notice of appeal on the municipal council or the Minister as the case may be.

**Service of the Notice of Appeal is the responsibility of the Appellant**

Information on this Form is collected pursuant to the *Planning Act* and will be used by the Commission in processing this appeal. For additional information, contact the Commission at 902-892-3501 or by email at [info@lrac.pe.ca](mailto:info@lrac.pe.ca).

## NOTICE OF APPEAL (CONTINUED)

(Pursuant to Section 28 of the *Planning Act*)

This appeal concerns the issuance of a building permit for a 1084 square foot ground-mounted solar array with an average height of 8'4" (the "Structure"). Photographs of the Structure taken from the Appellants' property are enclosed.

The grounds for this appeal are as follows:

1. The Rural Municipality of Miltonvale Park (the "Municipality") did not conform with its *Zoning & Subdivision Control (Development) Bylaw (2019)* (the "Bylaw").
2. Construction commenced on June 23, 2020 without any development permits, contrary to section 3.1(ii) of the Bylaw.
3. The Appellants have received conflicting information, namely:
  - a. The Municipality thought the solar panels were to be attached to the roof;
  - b. The Municipality and its officers advised that no permit was required;
  - c. While no permit was required, setbacks were provided;
  - d. The contractors who placed the Structure said he had communication with the Municipality several weeks in advance on July 4, 2020 but the Appellants have not been provided with any emails.
4. The Development Permit was not posted on the property in a place visible to the public contrary to Section 3.13 of the Bylaw.
5. The Development Permit issued July 15, 2020, did not take into consideration the provided setbacks from the roadway and the anchor posts had to be moved after July 15, 2020.
6. The Municipality lacked independence in the manner in which it dealt with this matter. Such lack of independence is evident in:
  - a. The Municipality inviting the Proponents and their contractor to a meeting the Appellants had scheduled with the Municipality on June 30, 2020;
  - b. The Municipality requested the Appellants to contribute \$5,000.00 to the Proponents' cost in moving the Structure on June 30, 2020 that they had no development permit for;
  - c. The Municipality refused to provide the Proponents application to the Appellants;
  - d. On July 15, 2020, the Municipality advised the Appellants that no development permit had been issued;
  - e. The Appellants submitted a petition to the Municipality on July 8, 2020 containing 104 names of residents living closest to the Structure. The Municipality responded to this petition by:
    - i. Issuing the Permit on July 15, 2020;
    - ii. Forwarding individual letters to each individual who signed the Petition dated July 20, 2020 that on an objective reading is:
      1. Unusual to say the least;
      2. Shows support for the Proponents and their contractor;
      3. Attempting to justify its decision.
7. The Municipality suggests that this Structure is a private utility and that pursuant to Section 4.24(2) of the Bylaw, no zone standards apply. The Appellants submit this is incorrect in a number of aspects namely:
  - a. There is no definition of public and private utility in the Bylaw;

- b. Section 4.24(2) of the Bylaw conflicts with the entire Bylaw:
  - i. Wind turbines are strictly regulated. Section 4.32 of the Bylaw lists the conditions under which wind turbines in excess of 100kw can be placed. Such structures are only permitted in the A-1 Agricultural Zone;
  - ii. Wind turbines and solar energy arrays are structures that produce energy. They are either both utilities or both not utilities. Given the restrictions on the design and location of wind turbines, it is clear that they are not utilities such that they "may be located in any zone and no zone standards shall apply."
  - iii. The reference to "solar collectors" in section 4.17 of the Bylaw would be unnecessary if solar arrays were considered private utilities. Section 4.17 exempts certain enumerated structures, including solar collectors, from the height restriction on building. If solar power arrays were a private utility already exempt from all zone standards, it would be unnecessary to exempt solar collectors from the height restriction;
  - iv. It would lead to inconsistent and illogical results to ban less intrusive structures and permit solar arrays without any regulation. According to section 4.25(2) of the Bylaw, satellites greater than two feet in diameter are not permitted in any zone. It is illogical that the Structure, with a 1,084 square foot footprint, can be put in any zone with no restrictions on its placement or design, and yet the restriction for a satellite is two feet in diameter. Satellites can also be used to deliver internet and could therefore also constitute a "utility";
  - v. That in common parlance, a "utility" produces a good, such as sewage works, telecommunications, electricity or internet access, to and for the public. As far as the Appellants are aware, the Structure is not producing a net contribution of energy to the grid that will result in a profit to the Proponents.
- 8. The Structure is not listed as a permitted use within the A1 Agricultural zone where the Proponents' property is located. By operation of section 4.25 of the Bylaw, uses that are not specified as permitted uses shall not be permitted.
- 9. It has been communicated to the Appellants by the Municipality that the failure to regulate independent solar arrays is an oversight that will be corrected during the next review of the Bylaw. It is the Appellants' position that until that time, structures such as the one built by the Proponents, are not permissible in the Municipality.
- 10. Further grounds may be advised upon receipt of the Municipality's complete record pertaining to the Structure.















