



PRINCE EDWARD ISLAND
Regulatory & Appeals Commission
Commission de réglementation et d'appels
ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: January 27, 2022
Docket: LA21022 and LA21023
Type: Planning Act Appeal

INDEXED AS: Goops Wooldridge, Laurena Wooldridge, Robin Boutillier and Brian Chandler

v.

The City of Charlottetown

Order No: LA22-01

BETWEEN:

Goops Wooldridge, Laurena Wooldridge, Robin Boutillier and Brian Chandler

Appellants

AND:

The City of Charlottetown

Respondent

AND:

Gordon Perry

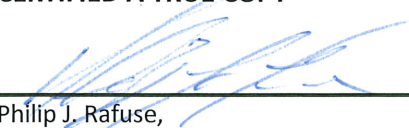
Owner

ORDER

Panel Members:

J. Scott MacKenzie, Chair
M. Douglas Clow, Vice-Chair
Erin T. Mitchell, Commissioner

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Philip J. Rafuse,
Appeals Administrator
Prince Edward Island Regulatory & Appeals
Commission

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1. INTRODUCTION

1. This proceeding requires the Commission to consider whether it has the jurisdiction to hear two appeals from a decision by a municipal council to give first reading to a bylaw amendment. A secondary question raised in this case is whether the Commission has the statutory authority to extend the time for filing an appeal under s. 28(1.3) of the *Planning Act*.¹

2. BACKGROUND

2. On July 16, 2021, Gorden Perry (the “Owner”) made an application to the City of Charlottetown (“City”) to allow an automotive service centre to be operated at 247 Royalty Road in Charlottetown, Prince Edward Island.² The application required an amendment to the Zoning & Development Bylaw (“Bylaw”) in order to grant a site-specific exemption from certain existing requirements in the Bylaw.
3. On August 24, 2021, the City held a public meeting and the application was considered.
4. On September 13, 2021, the City gave first reading to the amendment and “approved” the proposed amendment to the Bylaw. Notice of this decision was posted on the City website. The notice stated that the application was “approved to proceed to second reading.” The deadline for filing an appeal was stated by the City to be October 4, 2021.³
5. On October 1, 2021, two notices of appeal were filed with the Commission by Brian Chandler, Robin Boutilier, Goops Wooldridge, and Laurena Woolridge (the “Appellants”). The appeals challenged the decision by the City to “approve” the application for a site-specific amendment under the Bylaw.
6. The appeals were consolidated by the Commission because they related to the same decision by the City, being the approval of the proposed amendment to the Bylaw on September 13, 2021.
7. On October 12, 2021, the City gave second reading to the amendment and “adopted” the amendment to the Bylaw. Notice of the decision was posted on the City website. The notice stated that the application “passed second reading [and was] awaiting Ministerial approval.” The deadline for filing an appeal was stated by the City to be November 2, 2021.
8. No appeal from the adoption of the amendment to the Bylaw by the City on October 12, 2021 was filed with the Commission.

¹ R.S.P.E.I. 1988, c. P-8.

² Record at 6-19.

³ Record at 163.

9. On October 27, 2021, the City notified the Minister of the adoption of the amendment to the Bylaw.⁴
10. On November 12, 2021, the Commission received the record from the City.
11. On November 18, 2021, the Commission alerted the parties to the question of whether the Commission had jurisdiction to hear the appeals and invited written submissions on that question.

3. ISSUES

12. The written submissions filed by the parties raise one main question for the Commission. That question is whether the Commission has the jurisdiction to hear an appeal from the first reading of a bylaw amendment. In other words, the Commission must determine whether giving first reading to a bylaw amendment is a municipal decision that is appealable to the Commission under s. 28(1.1) of the Planning Act. A secondary question also arises from the submissions and that is whether the Commission has the authority to extend the 21-day time period for filing appeals which is prescribed by s. 28(1.3) of the Planning Act.
13. The questions raised are legal ones. There is no material dispute between the parties as to the timeline of events or the facts relevant to the question of jurisdiction. No issues of credibility are present. Having received written submissions from the parties on the subject of jurisdiction, the Commission will determine these matters in writing.

4. DISPOSITION

14. The appeals are dismissed. For the reasons that follow, the Commission, as a statutory tribunal without inherent authority, does not have the jurisdiction to hear an appeal from the first reading of a bylaw amendment. Approval of a bylaw amendment at first reading is not one of the appealable decisions listed by the Legislature in s. 28(1.1) of the Planning Act. The appealable decision occurred when council for the City adopted the amendment to the Bylaw on October 12, 2021. No appeal was filed in the 21 days which followed that decision as required by s. 28(1.3) of the Planning Act. The Commission does not have statutory authority to extend the time limit prescribed by the Legislature. The Commission also cannot assume jurisdiction by the consent or acquiescence of the parties. The authority to hear and decide an appeal has to be granted by the Legislature in the Planning Act.

⁴ Record at 193-194.

5. SUBMISSIONS FROM THE PARTIES

City

15. In its submissions on jurisdiction, the City does not object to the Commission hearing the appeals. However, the City does note that the Commission has traditionally decided that appeals filed outside the statutory appeal period will not be entertained. According to the City, it did “approve” the amendment to the Bylaw on September 13, 2021 and that amendment was not further amended at second reading. In support of this point, the City relies on s. 43.6 of its Procedural Bylaw which, in turn, relies on s. 125(3) of the *Municipal Government Act*.⁵

Owner

16. In his submissions on jurisdiction, the Owner does not agree that the Commission has jurisdiction to hear these appeals. The Owner relies on s. 28(1.4) of the Planning Act, which directs that, when a person is dissatisfied with a decision to “adopt” an amendment to a bylaw, the statutory appeal period begins on the date when council gave final reading to the amendment. According to the Owner, that second and final reading was given by the City on October 12, 2021. The Owner, therefore, states that no appeal was filed within the statutory time period.

Appellants

17. In their submissions on jurisdiction, the Appellants state that they made an error and mistakenly believed that the approval at first reading on September 13, 2021 was the final reading of the bylaw amendment. The Appellants acknowledge that they filed the appeal prematurely and would have filed an appeal after the final reading of the amendment to the Bylaw if they had better knowledge of the statutory appeal process. The Appellants do not have legal training and ask that the appeal not be dismissed by the Commission.

6. ANALYSIS

Legislation

18. Subsection 28(1.1) of the Planning Act states that any person who is dissatisfied with a decision by a municipal council “to adopt an amendment to a bylaw” may appeal to the Commission by filing a notice of appeal. This right of appeal is subject to subsections (1.2) to (1.4). Subsection 28(1.2) states that a bylaw is one made under the Planning Act. Subsection 28(1.4) states that that, where a person is dissatisfied with a decision to adopt an amendment to a bylaw, the appeal period for filing a notice of appeal “commences on the date that the council gave final reading to the amendment to the bylaw.”
19. It is the adoption of the bylaw amendment that may be appealed to the Commission. This is confirmed by the text of ss. 28(1.1) and 28(1.4) of the *Planning*

⁵ R.S.P.E.I. 1988, c. M-12.1.

Act which speak of the decision to “adopt” an amendment. The provisions do not speak of the decision to “approve” an amendment. The surrounding context of the *Planning Act* also confirms this interpretation in s. 19, which distinguishes between a bylaw “approved” by council and a bylaw being “adopted” by council after the bylaw has been read a second time.⁶ The practice of the City, as recorded by the record, further confirms that there is a distinction between the approval of a bylaw amendment and its adoption after second reading.⁷ According to the record, the amendment to the Bylaw was “approved” on September 13, 2021 but not “adopted” until October 12, 2021.⁸

20. On the subject of the time limit for filing an appeal, s. 28(1.3) of the *Planning Act* states that a notice of appeal “must be filed with the Commission within 21 days after the date of the decision being appealed.” Subsection 28(1.4) goes on to further clarify that, when a person is dissatisfied by a decision to adopt an amendment to a bylaw, the 21-day period “commences on the date that the council gave final reading to the amendment to the bylaw.” The record confirms that, in this case, final reading of the amendment to the Bylaw was given by council for the City on October 12, 2021.⁹
21. The purpose of ss. 28(1.1) through (1.4) of the *Planning Act* is to make certain municipal decisions subject to appeal to the Commission. Not all municipal decisions are liable to appeal. In the case of bylaw amendments, the Legislature has determined that only the decision to adopt an amendment may be appealed to the Commission within 21 days.

Case law

22. The Commission has often repeated that it is a creature of statute.¹⁰ It only has the authority granted by the Legislature. The Legislature has prescribed the list of municipal decisions that can be appealed to the Commission in s. 28(1.1) of the *Planning Act*. Other municipal decisions cannot be appealed to the Commission.

Application to this record

23. In this case, the Appellants filed notices of appeal challenging the decision made by the City on September 13, 2021. That decision was to approve a proposed amendment to the Bylaw at first reading. It was not a decision “to adopt an amendment to a bylaw” within the meaning of s. 28(1.1)(b) of the *Planning Act*. The decision to adopt the amendment of the Bylaw did not occur until October 12, 2021. The decision that the Appellants seek to challenge is therefore not one listed

⁶ This legal distinction between “approval” of a bylaw and “adoption” of a bylaw after second reading is also reflected in s. 124 of the *Municipal Government Act*, R.S.P.E.I. 1988, c. M-12.1.

⁷ Record at 188.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ See e.g. Order LA09-11, *629857 N.B. Inc. et al. v. City of Charlottetown* (November 10, 2009), at para. 14; and Order LA15-02, *G. Willikers Ltd. v. Resort Municipality* (February 12, 2015).

by the Legislature in s. 28(1.1) of the *Planning Act* and is not subject to appeal to the Commission. The Commission has no jurisdiction to hear an appeal from the first reading of a proposed amendment to a bylaw.

24. The Commission acknowledges that the Appellants are without legal training. The Commission also notes that the City has not registered any serious objection to the appeal being heard. However, it is well-settled that neither waiver nor consent can bestow jurisdiction upon an administrative tribunal like the Commission where none exists in statute.¹¹
25. The City places some reliance upon s. 43.6 of its Procedural Bylaw and s. 125(3) of the *Municipal Government Act* to suggest that the amendment to the Bylaw was “approved” on September 13, 2021 and not subsequently amended by council at second reading. There are at least two problems with this submission. First, it does not take account for the language chosen by the Legislature in the *Planning Act* which limits appeals to the adoption – not the approval – of bylaw amendments. The City’s own submission recognizes that the decision made on September 13, 2021 was only an approval.¹² Second, when s. 43.6 of its Procedural Bylaw and s. 125(3) of the *Municipal Government Act* are read in their proper context, they address a different situation where council wishes to amend a proposed bylaw after its first reading. These provisions allow for changes to be made if the amendment is read word by word by council. In short, these provisions do not extend the statutory jurisdiction of the Commission.
26. Having found the Commission has no jurisdiction to hear the appeals from the approval of the proposed bylaw amendment at first reading, a secondary question arises as to whether the Commission is able to extend the time for filing an appeal from the decision to adopt the bylaw amendment on October 12, 2021. In these types of cases, courts will often examine the surrounding circumstances for a demonstrated intention to appeal and the absence of prejudice to the parties. The City, for its part, does not object to the Commission hearing an appeal in this case. The Owner does not agree. And the Appellants ask that their appeals not be dismissed.
27. While the Commission certainly understands the circumstances of the Appellants as self-represented persons, it lacks the statutory authority to waive or extend the time period fixed by the Legislature in s. 28(1.3) of the *Planning Act*. The *Planning Act* grants no power to the Commission to extend the time for filing appeals. The case law also confirms that an intermediate appellate tribunal like the Commission

¹¹ *Essex County Council v. Essex Incorporated Congregational Church Union*, [1963] A.C. 808 at 820-21 (H.L.). See also *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 29, where a majority of the Supreme Court of Canada confirmed: “A decision maker may not exercise authority not specifically assigned to him or her.” See further Sara Blake, *Administrative Law in Canada*, 5th ed. (LexisNexis: Markham, Ont., 2011) at 123.

¹² Written submissions from the City related to jurisdiction (November 22, 2021).

cannot waive or extend the time limit for filing an appeal without express statutory authority to do so.¹³.

28. Before concluding this matter, the Commission wishes to bring one error to the attention of the City in an effort to avoid similar cases in the future and to encourage consistent communication with residents about their right to appeal certain municipal decisions under s. 28(1.1) of the Planning Act. Following its decision on September 13, 2021, the City posted a notice on its website which correctly noted that the proposed amendment had been “approved to proceed to second reading.” However, that notice by the City incorrectly noted that the deadline for filing an appeal was October 4, 2021. In fact, the appeal period did not yet begin. The appeal period commenced only after the amendment was adopted after second reading on October 12, 2021. This commencement date is stated expressly in s. 28(1.4) of the Planning Act. By carefully reviewing notices before they are posted on its website, the City may have avoided this result for its residents.

7. CONCLUSION

29. For the reasons above, the Commission dismisses the appeals. The Commission thanks the parties for their helpful submissions in writing. The Commission also encourages the City to exercise greater care when publishing notice of its municipal decisions on the City website. Not all decisions made by a municipal council are subject to appeal to the Commission, and appeal dates ought to be listed only for those decisions that are actually subject to appeal in s. 28(1.1) of the Planning Act.

8. ORDERS

30. For the reasons set out above the Commission hereby dismisses the appeals.

DATED at Charlottetown, Prince Edward Island, Wednesday, January 27, 2022.

BY THE COMMISSION:

(sgd) J. Scott MacKenzie

J. Scott MacKenzie, Q.C., Chair

(sgd) M. Douglas Clow

M. Douglas Clow, Vice-Chair

(sgd) Erin T. Mitchell

Erin T. Mitchell, Commissioner

¹³ See *Pagee v. Director (Winnipeg Central)*, 2000 MBCA 12 at para. 10. See also *Re Van Feggelen*, 2004 NSUARB 10 at para. 8. See further Sara Blake, *Administrative Law in Canada*, 5th ed. (LexisNexis: Markham, Ont., 2011) at 123.