



Date Issued: October 9, 2025
Docket: LA25001
Type: Planning Act Appeal

INDEXED AS: Montgomery Cavendish Cottages Inc. v. Resort Municipality
2025 PEIRAC 53 (CanLII)

Order No: LA25-08

BETWEEN:

Montgomery Cavendish Cottages Inc.

Appellant

AND:

Resort Municipality of Stanley Bridge, Hope River,
Bayview, Cavendish and North Rustico

Respondent

REASONS FOR DECISION

Panel Members:

Pamela J. Williams, K.C., Chair
Gordon MacFarlane, Commissioner

Compared and Certified a True Copy

(Sgd.) Michelle Walsh-Doucette

Commission Clerk
Island Regulatory and Appeals Commission

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Counsel

T. Daniel Tweel, Tweel Law

2. For the Respondent:

Counsel:

Curtis Doyle, Stewart McKelvey

1. INTRODUCTION

1. This is an appeal of two decisions of the Resort Municipality to deny subdivision of two properties, PID 232868 and PID 563908. The decisions under appeal were made December 17, 2024. The Notice of Appeal was filed on January 10, 2025.
2. The *Planning Act* provides that an appeal to the Commission is to be made “within 21 days after the date of the decision being appealed”.¹
3. This Order considers the preliminary issue of whether the Notice of Appeal was filed within the statutory appeal period prescribed by the *Planning Act*.

2. BACKGROUND

4. On January 10, 2025, the Appellant filed a Notice of Appeal with the Commission. The Notice of Appeal appeals two decisions of the Resort Municipality made December 17, 2024, to deny subdivision of two properties (PID 232868 and PID 563908).
5. The *Planning Act* provides that an appeal to the Commission is to be made “within 21 days after the date of the decision being appealed”.² Therefore, on its face, the appeal was to be filed by January 7, 2025.
6. Upon receipt of the Notice of Appeal, Commission staff sent a letter to the parties raising the preliminary issue of the appeal period and seeking submissions on the issue from the parties.
7. The Appellant made submissions on February 21, 2025. The Municipality responded on March 17, 2025, with written submissions and an affidavit of the Municipality’s Chief Administrative Officer, Brenda MacDonald. The Appellant made reply submissions on March 24, 2025. Finally, on May 2, 2025, the Municipality provided further reply submissions.

3. ISSUES

8. The issue for the Commission to consider in respect of this preliminary issue is whether the Appellant’s appeal was filed in accordance with the statutory appeal period prescribed at subsection 28(1.3) of the *Planning Act*.
9. As a statutory tribunal with no inherent authority, this question goes to the Commission’s jurisdiction and will determine whether this appeal can proceed before the Commission.
10. The question raised is a legal one. Having received written submissions from the parties on the subject of jurisdiction, the Commission will determine this matter in writing.

¹ *Planning Act*, s. 28(1.3).

² *Planning Act*, s. 28(1.3).

4. DISPOSITION

11. The appeal is dismissed. The Commission finds that the Notice of Appeal was not filed within 21-days after the date of the decision being appealed as prescribed by the *Planning Act*. The Commission does not have jurisdiction to waive or extend the appeal period prescribed in the *Planning Act*.

5. ANALYSIS

6. Subsection 28(1.3) of the *Planning Act* states:

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.

12. The Commission has previously held that it is without jurisdiction to hear appeals filed beyond the statutory appeal period³ and does not have authority to extend the time limit for appeals prescribed in the *Planning Act*.⁴
13. In the present case, the decisions under appeal were made December 17, 2024. Therefore, on its face, the appeal was to be filed by January 7, 2025 (being 21 days after December 17, 2024⁵).
14. The Appellant submits that the Municipality erred in giving him “proper and effective notice” and cannot, therefore, rely on the provisions of the *Planning Act* to argue the appeal was filed out of time. The Appellant states that both applications for subdivision (the “Applications”) were filed by Stuart M. Drummond, of 59 Sunset Lane, Cavendish. On both Applications, Mr. Drummond included his personal contact information. In particular, one of the Applications included a specific personal e-mail address for Mr. Drummond. The Appellant submits that, notwithstanding Mr. Drummond had included personal contact information on the Applications, the Municipality addressed the decision letters to Montgomery Cavendish Cottages Inc. and sent the letters by e-mail to “an old and little used” email address, rather than to Mr. Drummond directly, per the contact information he provided.
15. The Appellant’s submissions do not cite any case law or legislative support for this position. Also, notably absent from the Appellant’s submissions is the date by which they received *actual* notice of the decisions being appealed.
16. The Municipality’s position is that the appeal period began to run on December 17, 2024, when the Municipality posted public notice of the decisions in accordance with section 23.1 of the *Planning Act*. Therefore, they submit this appeal is out of time.
17. The Municipality provided affidavit evidence from the Municipality’s Chief Administrative Officer to support their position that the Municipality fulfilled the public notice requirements prescribed by the *Planning Act*. In particular, the CAO’s affidavit states that on December

³ Order LA17-05, *J. Anne Nicholson v. Community of Lower Montague*.

⁴ Order LA22-01, *Goops Woolridge, et al. v. City of Charlottetown*, at paras 14 and 20.

⁵ *Interpretation Act*, RSPEI 1988, I-8.1, s. 33(3).

17, 2024, she posted notices of the decisions on the PEI Planning Decisions website and posted notices of the decisions in the municipal office. The Municipality submits that the Appellant's submissions wrongly presuppose that the *Planning Act* appeal period begins to run only when the would-be appellant receives actual notice of the decision. In their submission, personal notice is not required and, in this case, they complied with the *Planning Act*'s requirement of general notice.

18. In *Booth and Peake v. Island Regulatory and Appeals Commission*⁶ the Court of Appeal held that the appeal period pursuant to section 28 of the *Planning Act* begins to run when an appellant has received notice of the decision, whether through actual notice or general notice through a public posting process. The Court said:⁷

[21] I find that [...] the appeal period will begin to run when an appellant has received notice of the decision. This may be specific notice or general notice through posting or publication or by some other means. [...]

19. At the time of the Court of Appeal's decision in *Booth*, the *Planning Act* did not specify the manner in which notice to the public must be given, but the Court found that the law required there "must be some public notice of a decision—or specific notice to persons affected by the development—before an appeal period [could] be said to run."⁸ The Court went on to say that an appellant could not abuse this right by deliberately delaying inquiry after they had been put on notice that a decision appears to have been made.⁹
20. Ultimately, the Court of Appeal dismissed the appeal in *Booth* because the appellants in that case had *actual* notice of the impugned decision more than 21-days before they filed their appeal.¹⁰
21. Following the Court of Appeal's decision in *Booth*, the *Planning Act* was amended in 2009 to legislate a process of public notice. Subsection 23.1(1) provides (in respect of the council of a municipality):

23.1 Notice of decision of Minister or council

(2)[sic] Where

[...]

- (b) the council of a municipality makes a decision of a type described in subsection 28(1.1)

the [council] shall, within seven days of the date the decision is made, cause a written notice of the decision to be posted

- (c) on an Internet website accessible to the public; and
(d) at a location accessible to the public during business hours,

[...]

- (ii) if the decision is made by the council of a municipality, in that municipality.

⁶ 2004 PESCAD 18 [*Booth*].

⁷ *Booth*, at para 21.

⁸ *Booth*, at para 23.

⁹ *Booth*, at para 23.

¹⁰ *Booth*, at para 24.

22. In Order LA11-01, *Biovectra Inc. v. City of Charlottetown*,¹¹ the Commission commented:

[56] Fundamental to the appeal process is a balance of rights. A dissatisfied "person" has the right to file an appeal provided they do so within the requirements of section 28 of the *Planning Act*, most importantly, the appeal must be filed within 21 days. Provided the decision maker, be it a municipality or the Minister, has followed the notice requirements set out in section 23.1 of the *Planning Act*, the decision maker has every right to expect that the decision will not be challenged if no appeal has been filed with the Commission during the 21 day appeal period. [...]

23. In the Commission's opinion, the principle expressed in Order LA11-01 continues to apply.

24. Therefore, the Commission finds that the present appeal was filed outside the statutory appeal period. We are satisfied that the Municipality posted public notice of the decisions in accordance with section 23.1 of the *Planning Act* on December 17, 2024. This constituted public notice of the decision and the 21-day appeal period, therefore, began to run from December 17, 2024. The Notice of Appeal was not filed until January 10, 2025, three days after the expiry of the appeal period. In this case, we note that the date of the decision and the date of posting were the same; therefore, we do not need to determine whether a delay in complying with section 23.1 impacted the appeal period.

25. We are also satisfied in this case that *actual* notice was provided to the Appellant, being Montgomery Cavendish Cottages Inc. The affidavit of the Municipality's CAO provides that she sent two letters by regular mail to the Appellant at 59 Sunset Lane, Cavendish, PE. This is the same mailing address included on the Applications. The Appellant did not in any way suggest that these letters were not received in a timely manner, thereby impacting the timeline to appeal.

26. For the reasons outlined above, the Commission dismisses this appeal.

27. As a final comment, we note that the Appellant's arguments raise the fact that the Applications were made in the personal name of Stuart Drummond while the letters were sent to Montgomery Cavendish Cottages Inc. It was the latter who ultimately appealed the decisions to the Commission. On our review, this issue does not have bearing on the preliminary jurisdictional issue—as we noted above, notice of the decision was posted publicly in accordance with 23.1 of the *Planning Act* and the decision letters were mailed to the mailing address on the Applications (despite naming the corporation rather than Mr. Drummond personally). However, going forward, we caution the Municipality to be mindful of these details when notifying applicants of decisions. Similarly, we caution prospective appellants to be mindful of these details when filing an appeal with the Commission and identifying the most appropriate appellant.

¹¹ Order LA11-01, *Biovectra Inc. v. City of Charlottetown*.

7. CONCLUSION

28. The appeal is dismissed. The Commission finds that the Notice of Appeal was not filed within 21-days after the date of the decision being appealed as prescribed by the *Planning Act*. Therefore, the Commission does not have the jurisdiction to hear this appeal.

8. ORDER

29. The appeal is dismissed.

DATED at Charlottetown, Prince Edward Island, **October 9, 2025**

BY THE COMMISSION:

[sgd. Pamela J. Williams, K.C.]
Pamela J. Williams, K.C., Chair

[sgd. Gordon MacFarlane]
Gordon MacFarlane, Commissioner

NOTICE

Section 12 of the *Island Regulatory and Appeals Commission Act* reads as follows:

12. The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

Parties to this proceeding seeking a review of the Commission's decision or order in this matter may do so by filing with the Commission, at the earliest date, a written Request for Review, which clearly states the reasons for the review and the nature of the relief sought.

Sections 13(1) and 13(2) of the *Act* provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.