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INDEXED AS: John Carroll v. Resort Municipality
2026 PEIRAC 11 (CanLII)

Order No: LA26-02

BETWEEN:

John Carroll

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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Written Submissions Filed by:

1. For the Appellant:

Maggie J. Grimmer, Carr, Stevenson & MacKay

2. For the Respondent:

Counsel:

Hilary A. Newman, Stewart McKelvey

1. INTRODUCTION

1. This is an appeal of the decision of the Resort Municipality of Stanley Bridge, Hope River, Bayview, Cavendish and North Rustico (the “Resort Municipality” or the “Respondent”) to deny the Appellant’s application for a permit for a temporary use to allow a parking lot at the Appellant’s property located at 8808 Cavendish Road, Cavendish, PE.
2. This Order considers a preliminary issue raised by the Resort Municipality as to whether the Commission has jurisdiction to hear the Appellant’s appeal in respect of a permit for a temporary use.
3. For the reasons that follow, the Commission finds that the Appellant can appeal the Resort Municipality’s decision to deny the permit for a temporary use pursuant to clause 28(1.1)(a) of the *Planning Act*. As will be discussed in more detail below, the Commission finds that – in the specific context of the Resort Municipality’s Land Use Bylaw – a permit for a temporary use is a development permit.

2. BACKGROUND

4. On April 17, 2025, the Appellant submitted a Temporary Permit Application to the Resort Municipality seeking approval for a parking lot on his property located at 8808 Cavendish Road, Cavendish, PE (PID233080) (the “Subject Property”).¹ The Temporary Permit Application specified that the Appellant was applying to use the Subject Property as a parking lot for concertgoers during the 2025 Sommo Festival (September 13-14, 2025).²
5. At its July 21, 2025, meeting, the Council of the Resort Municipality decided to deny the Appellant’s Application because, in their opinion, the application did not satisfy the requirements of subsection 4.29 of the Resort Municipality’s Land Use Bylaw, RM-2023-LUP-1 (“Land Use Bylaw”). The merits of the Resort Municipality’s decision are not the subject of this Order.
6. The Appellant was advised of the Resort Municipality’s decision via letter dated August 1, 2025.³ On August 22, 2025, the Appellant appealed the decision to the Commission.
7. On August 26, 2025, the legal counsel for the Resort Municipality raised a jurisdictional issue with respect to the appeal. The Resort Municipality argued that the Commission does not have jurisdiction to proceed with this appeal pursuant to s. 28(1.1) of the *Planning Act*.⁴ They submitted that the appeal relates to a decision by the Resort Municipality to approve a temporary use, and that the Commission has previously held that it does not have jurisdiction to hear an appeal from a decision to approve a transient or temporary use.⁵

¹ As the Appellant was the applicant, the Commission is satisfied the Appellant is an “aggrieved person” as defined at s. 27.1(a) of the *Planning Act*.

² On that same day, the Appellant also applied for a Temporary Use permit to use the Subject Property as a parking lot for concert goers during the 2025 Cavendish Beach Music Festival (July 10-12, 2025). That application is not the subject of this appeal.

³ The Commission notes that public notice of the decision was also posted on the PEI Planning Decisions website on August 1, 2025.

⁴ RSPEI 1988, c. P-8.

⁵ Order LA15-02, *G. Willikers Ltd. v. Resort Municipality* (February 12, 2015)

8. In response to the jurisdictional issue, Commission staff invited both parties to make substantive submissions on the question.
9. Both parties made submissions in writing to the Commission in response to the preliminary issue. The Commission is satisfied that the parties' submissions were comprehensive. Therefore, in accordance with Rule 41 of the Commission's Rules of Practice and Procedure the Commission exercised its discretion to determine this preliminary matter without an oral hearing.

3. ISSUES

10. The question for the Commission to consider at this preliminary stage is whether the Appellant's appeal of the Resort Municipality's decision to deny his Temporary Permit Application is permitted pursuant to 28(1.1) of the *Planning Act*.
11. The Commission, as an administrative tribunal, is only authorized to hear and decide appeals within the jurisdiction that has been assigned to it by legislation. Therefore, the question of whether this appeal can be brought pursuant to subsection 28(1.1) of the *Act* goes to the Commission's jurisdiction and whether the Commission can hear the appeal on its merits.

4. DISPOSITION

12. The Commission is satisfied that the Appellant is seeking to appeal a decision of the Resort Municipality that was made in respect of an application for a development permit, as authorized by subclause 28(1.1)(a)(i) of the *Planning Act*. Therefore, the Commission has the jurisdiction to hear this appeal.
13. The Commission accepts, based on a careful analysis of the Resort Municipality's Land Use Bylaw, that the Appellant's application for a permit for a temporary use was a "development permit" as defined in the Bylaw and the *Planning Act*.
- 14.

5. ANALYSIS

15. The Commission has repeatedly accepted that the right to appeal to the Commission is a right created by statute and the Commission only has the jurisdiction that has been granted to it via its enabling and operating legislation. In other words, there is no inherent or common law right to appeal to the Commission.
16. In the present case, the Appellant has sought to appeal to the Commission a decision by the Resort Municipality to deny his Temporary Permit Application made pursuant to section 4.29 of the Resort Municipality's Land Use Bylaw.
17. Subsection 28(1.1) of the *Planning Act* states, in full:

28. Appeals from decisions of council

- (1.1) Subject to subsections (1.2) to (1.4), an aggrieved person may appeal, by filing a notice of appeal with the Commission, a decision of a council of a municipality
 - (a) that is made in respect of an application by a person under a bylaw for
 - (i) a development permit,
 - (ii) an occupancy permit, in relation to a matter under this Act or the regulations,
 - (iii) a preliminary approval of a subdivision, or
 - (iv) a final approval of a subdivision; or
 - (b) to adopt an amendment to a bylaw, including
 - (i) an amendment to a zoning map established in a bylaw, or
 - (ii) an amendment to the text of a bylaw.

18. The most applicable subclause in this case is 28(1.1)(a)(i) and the Commission must consider whether the Appellant's appeal is of a decision of the Council of the Resort Municipality that was made in respect of an application for a development permit.

19. The *Planning Act* enumerates a list of certain decisions that may be appealed to the Commission. The Commission is authorized per the *Island Regulatory and Appeals Commission Act* to hear and decide matters related to land use more generally.⁶ The Commission is satisfied, therefore, that it has the necessary jurisdiction to consider whether a certain decision is of the type enumerated by section 28 of the *Planning Act*.⁷

A. Parties' Positions

20. The Resort Municipality has submitted that the Commission has previously answered this question in the negative. The Resort Municipality cites Order LA15-02, *G. Willikers Ltd. v. Resort Municipality*, wherein the Commission said that if the legislature had intended that permits for temporary uses be the subject of an appeal to the Commission, the appeals section of the *Planning Act* would have included a reference to temporary uses within the list of municipal decisions that may be appealed to the Commission.

21. Relying on the Commission's finding in Order LA15-02, the Resort Municipality submits that the *Planning Act* contemplates appeals of applications in respect of a "development permit". The Resort Municipality says that, in this case, the decision at issue was in relation to a "temporary use permit", which is not included in the list of appealable decisions per subsection 28(1.1) of the *Planning Act*.

22. The Resort Municipality further submits that the permit application at issue, being for a temporary parking lot, does not involve development or land use planning from a permanent or relatively permanent perspective. They submit this is contrary to the definition of "development" in the *Planning Act*.

⁶ *Island Regulatory and Appeals Commission Act*, RSPEI 1988, I-11, s. 5(b) [*IRAC Act*].

⁷ *IRAC Act*, s. 6(1)(a); see also, *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, at para 73.

23. In response, the Appellant argues that a temporary use application falls under the broad definition of “development” in the *Planning Act*, which includes the placement of *temporary* or permanent mobile uses or structures in, under, or on over the land.
24. The Appellant submits that the Resort Municipality’s decision letter accepts the Commission’s jurisdiction in stating that the decision may be appealed to the Commission. Further to this, the Appellant argues that he has submitted multiple temporary permit applications to the Municipality since 2022, all of which have been denied. He argues that should the Commission determine it does not have jurisdiction, the Appellant has no recourse available to challenge the decision(s).

B. Commission Precedent – Order LA15-02

25. As a starting point to our analysis, this Commission acknowledges the previous findings of the Commission in Order LA15-02, *G. Willikers Ltd. v. Resort Municipality*. In that case, the Commission found that because subsection 28(1.1) does not list “temporary use permit” as a kind of decision that may be appealed to the Commission, therefore an appeal of this nature is not within the jurisdiction of the Commission. Order LA15-02 comments:

The Commission is a creature of statute obtaining its authority from the legislature. The legislature has established a list of municipal decisions that may be appealed to the Commission. Each item in the list is concerned with development and land use planning. Each enumerated item also reflects development and land use planning from a permanent, or relatively permanent perspective.

In summary, the Commission finds that it does not have the jurisdiction to hear the present appeal as transient or temporary uses are not among the list of appealable decisions set out in s.28(1.1).

26. Importantly, the *Planning Act* has been amended numerous times following the Commission’s decision in Order LA15-02. For example, the version of the Act in force at the relevant time (2014) included a different definition of “development” that did not include any reference to “temporary” uses. Most importantly, a definition of “development permit” was not added to the Act until 2020.⁸ Section 28 has also been amended since the Commission’s decision in Order LA15-02, though not materially.
27. Also notable is that some years following the Commission’s Order LA15-02, the Supreme Court of Canada released its decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65. Among many significant findings in *Vavilov*, the Supreme Court of Canada made the following comments around administrative decision-makers’ interpretation of their statutory authority:⁹

110 Whether an interpretation is justified will depend on the context, including the language chosen by the legislature in describing the limits and contours of the decision maker's authority. If a legislature wishes to precisely circumscribe an administrative decision maker's power in some respect, it can do so by using precise and narrow language and delineating the power in detail, thereby tightly constraining the decision maker's ability

⁸ 2017 c.61, [proc] Mar. 31/20

⁹ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, at para 110.

to interpret the provision. **Conversely, where the legislature chooses to use broad, open-ended or highly qualitative language — for example, "in the public interest" — it clearly contemplates that the decision maker is to have greater flexibility in interpreting the meaning of such language.** [...] All of this is to say that certain questions relating to the scope of a decision maker's authority may support more than one interpretation... [emphasis added]

28. While the Commission strives to maintain consistency in its decision-making, tribunals are not bound to follow their own previous decisions in the same way as a court.¹⁰ The Commission's decisions may reflect changing circumstances and evolving views. Therefore, for the reasons outlined above, this Commission will carry out its own interpretation of subsection 28(1.1) and its jurisdiction to hear appeals of decisions in respect of temporary use permits.

C. Commission's Findings

29. Clause 28(1.1)(a)(i) of the *Planning Act* authorizes an appeal to the Commission of a decision of a council of a municipality that is made in respect of an application for "a development permit". In their submissions to the Commission, the parties both primarily focussed on the definition of "development" in the *Planning Act*, each submitting that it supports their interpretation of clause 28(1.1)(a)(i). However, the Commission finds the *Planning Act* definition of "development permit" to be equally as relevant in this exercise.

30. The *Planning Act* defines "development" and "development permit" as follows:

- (d) **"development"** means
 - (i) site alteration, including but not limited to
 - (A) altering the grade of the land,
 - (B) removing vegetation from the land,
 - (C) excavating the land,
 - (D) depositing or stockpiling soil or other material on the land, and
 - (E) establishing a parking lot,
 - (ii) locating, placing, erecting, constructing, altering, repairing, removing, relocating, replacing, adding to or demolishing structures or buildings in, under, on or over the land,
 - (iii) placing temporary or permanent mobile uses or structures in, under, on or over the land, or
 - (iv) changing the use or intensity of use of a parcel of land or the use, intensity of use or size of a structure or building;
- (e.1) **"development permit"** means a permit issued for a development under the regulations or pursuant to a bylaw but does not include a building permit issued under the *Building Codes Act*;

31. First, the Commission notes that a "development permit" means a permit issued for a *development*. On a plain reading of these definitions, the Commission agrees with the submission of the Appellant that the definition of "development" in the *Planning Act* clearly

¹⁰ Sara Blake, *Administrative Law in Canada*, 7th ed., at §4.04(1), citing: *Domtar Inc. v. Québec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 SCR 756.

contemplates temporary uses (see clause 1(d)(iii)). Therefore, a decision of a council of a municipality in respect of a “development permit” can include, as its subject, a temporary use.

32. Going one step further, the Commission also notes that the definition of “development permit” explicitly links back to the bylaw under which the permit was (or was not) issued – e.g. “*a permit issued for a development ... pursuant to a bylaw*”. Therefore, the Commission accepts that we should also look to the Resort Municipality’s Land Use Bylaw to determine whether, in this case, the decision of the Council was made in respect of a “permit issued for a development” such that the decision can be appealed to the Commission.

33. The Resort Municipality’s Land Use Bylaw defines “Development Permit” as follows:

DEVELOPMENT PERMIT means the formal and written authorization for a Person to carry out any Development.

34. In the Commission’s view, this is a relatively general definition of the term and ties directly back to the definition of “Development”, which the Land Use Bylaw defines as:

DEVELOPMENT means the carrying out of any Building, engineering, excavation, dumping, filling or other operations in, on, over or under land, or the making of any material change in the Use, or the intensity of Use of any land, Buildings, or premises. [emphasis added]

35. As can be seen, the Land Use Bylaw considers a “Development” to include changing the “Use” of land. As this term is capitalized in the definition, this is a signal to the Commission that we must consider how that term is defined. Importantly, the Commission also notes that the definition of “Development” does not make any express reference to the permanency (or not) of the change in use.

36. The Land Use Bylaw defines “Use” as:

USE means any purpose for which a Building or other Structure or Parcel of land may be designed, arranged, intended, maintained or occupied, and includes any activity, occupation, Business or operation carried on, or intended to be carried on, in a Building or other Structure or on a Parcel.

37. The transient – or temporary – nature of a “Use” is contemplated by the Land Use Bylaw in the following definition of “Temporary Use”:

TEMPORARY USE means any commercial or non-commercial facility or Use of a Parcel of Land or Structure which by its nature is not permanently established or has a limited duration and shall include but not be limited to the following: Special Events, Yard sales, tents, Awnings, lean-tos, kiosks, carts, prefabricated Structures, sheds, moveable Vehicles and moveable Structures with or without chassis or wheels, and any other facility, Structure, enclosure or device used or intended to be used for the

temporary Display or sale of retail goods, provision of services or sale of any food or beverage.

38. While the Land Use Bylaw does separately define a “Temporary Use”, the Commission notes that this definition ties back to the definition of “Use”. In other words, a “Temporary Use” is still a “Use” (though not all Uses will be temporary).

39. Finally, the definition of “Development” refers to a “*material* change in Use”. The Commission is satisfied that even a non-permanent (i.e. temporary) change in Use for the things contemplated in the definition of Temporary Use are “material” changes.

40. In conclusion, the Commission is satisfied that:

- a “Temporary Use” is a “Use”;
- a temporary change in “Use” is a material change;
- a material change in “Use” of land is a “Development”;
- a “Development” requires a “Development Permit”; and, therefore
- a permit for a “Temporary Use” is a “Development Permit”.

41. The Commission is of the opinion that this conclusion is strengthened when we examine Section 4.29 of the Land Use Bylaw that governs “Temporary Uses”. That section states, in part:

4.29 TEMPORARY USES, BUILDINGS AND STRUCTURES PERMITTED

(1) No Property Owner shall construct, Erect, place, allow or establish a Temporary Use on any Parcel or within any Structure within the Municipality without first applying for and receiving a permit from Council.

42. First, contrary to the submission of the Resort Municipality, the Commission is satisfied that even a permit for a Temporary Use relates to land use planning generally. For example, Section 4.29 includes several things the Council must consider before issuing a permit for a Temporary Use, many of which relate to general land use planning considerations. For example, land use conflicts (4.29(6)(a)), traffic congestion (4.29(6)(b)), and encroachment on the front, rear or side yard of the property (4.29(8)).

43. Further, section 4.29(10)(c) provides that before approving a Temporary Use Permit for a Special Event, Council must be satisfied that all other relevant provisions of the Bylaw are met including, but not limited to the requirements of both 4.29 and 3.12. Section 3.12 governs Development Agreements. In the Commission’s opinion, it would not be reasonable to accept that some Temporary Use permits may require a Development Agreement (e.g. those for Special Events) while also concluding that no Temporary Use permits can be classed as “Development Permits” because of their temporary nature.

44. The Commission notes that the application submitted by the Appellant was titled “Temporary Permit Application” and the Resort Municipality’s Land Use Bylaw does also include a definition of “Temporary Permit”:

TEMPORARY PERMIT means a permit for a fixed period of time with the intent to discontinue such Use upon the expiration of the time period.

45. The Commission has considered the impact of this definition, if any, on the analysis above; however, we remain satisfied that – for the reasons outlined – a “Temporary Permit” is also a “Development Permit”.
46. In conclusion, for all of the reasons outlined above, the Commission is satisfied that a permit for a Temporary Use issued (or applied for) under the Resort Municipality’s Land Use Bylaw is a “Development Permit” as defined by the Bylaw.
47. Taken together with the Commission’s earlier conclusion that a decision of a council of a municipality in respect of a “development permit” can include, as its subject, a temporary use, it follows that the Commission is satisfied that the present appeal can continue. The decision of the Council of the Resort Municipality in respect of the Appellant’s Temporary Permit Application was a decision in respect of a “development permit” that can be appealed to the Commission per subclause 28(1.1)(a)(i) of the *Planning Act*.
48. While the Commission accepts that it cannot extend its powers beyond those it was intended to have, the Appellant’s argument that he will be left with no recourse to challenge the decision of Council is compelling. The Commission also considers this to be a factor that weighs in favour of a reasonable interpretation that a permit for a Temporary Use is a “development permit” such that a decision can be appealed to the Commission.
49. As a parting comment, the Commission wishes to make clear – in the event it is not clear on its face – that this decision has been made in the specific context of the Resort Municipality’s Land Use Bylaw. This Order should not necessarily be taken as a general finding regarding the appeal of “temporary use permits” that applies beyond the wording of the Resort Municipality’s Land Use Bylaw.

6. CONCLUSION

50. The Commission is satisfied that the Appellant is seeking to appeal a decision of the Resort Municipality that was made in respect of an application for a development permit, as authorized by subclause 28(1.1)(a)(i) of the *Planning Act*. Therefore, the Commission has the jurisdiction to hear this appeal.

7. ORDER

51. The Commission has jurisdiction to hear this appeal.

DATED at Charlottetown, Prince Edward Island, March 10, 2026.

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.