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March 1, 2023

VIA EMAIL - pjrafuse@irac.pe.ca

Philip J. Rafuse
Appeals Administrator
The Island Regulatory and Appeals Commission
National Bank Tower, Suite 501
134 Kent Street, Charlottetown PE C1A 7L1

Re: Alleged Late Receipt of my Notice of Appeal

Dear Mr. Rafuse:

This is in response to the Jurisdiction Submission of the Minister, in which it is claimed my Appeal Notice was received outside of prescribed timelines.

The Minister's letter of decision provides the legalese, but does not actually indicate the date. This makes it very difficult for a lay person. However, the Minister's PEI Planning Decisions website¹ indicates each of its own decisions and provides the Appeal By Date.

Looking at this screenshot of that information, you will note that it very clearly indicates the Appeal By Date is **January 4, 2023**.

PID	Address, Community	Application Type	Application Details	Nature of Decision	Appeal By Date
931741	158 Paradise Drive, LITTLE POND	Development Permits	Cottage	Approved	2023-01-04
931741	158 Paradise Drive, LITTLE POND	Development Permits	Storage	Approved	2023-01-04
931741	158 Paradise Drive, LITTLE POND	Development Permits	Storage	Denied	2023-01-04
931741	158 Paradise Drive, LITTLE POND	Development Permits	Storage	Denied	2023-01-04
931741	158 Paradise Drive, LITTLE POND	Development Permits	Storage	Denied	2023-01-04

Showing results 1-5 of 5

¹ <https://www.princeedwardisland.ca/en/feature/pei-planning-decisions>

As the Minister's letter of decision does not indicate the actual date, but their website does, it is that date that I went by.

As noted by Mitch O'Shea for the Minister, the *Planning Act*, a written law passed by the PEI legislature, prescribes the "period of time expressed **in days**." The Act does not command that a notice of appeal must be filed by a certain time, only by days. Thus, according to Mitch O'Shea's calculation (which is contrary to the PEI Planning Decision website), my notice of appeal was, indeed, filed on January 3, 2023, in accordance with the Act.

As per the Merriam-Webster dictionary, "file", as a verb, is defined as "to initiate (something, such as legal action) through proper formal procedure" or "to submit documents necessary to initiate a legal proceeding." The definitions do not speak of the quality of submitted documents (i.e., signed or unsigned) or of a time period, but simply of submitted. Thus, I assert that my notice of appeal was filed by the prescribed date indicated by Mitch O'Shea, as per the *Planning Act* and the definition of the word "file."

Mitch O'Shea has quoted Supporting Authorities to which I do not have access. This is unfair; thus, I cannot confirm or comment on the points being made. However, as noted in Mitch O'Shea's letter, the Commission advised that my Notice of Appeal was received on January 3, 2023. This is according to the statute.

Mitch O'Shea is asserting that my notice of appeal, received on January 3, 2023, should be disallowed because it was received 9 minutes after the Commission's indicated time frame (at 4:09 pm). Having worked in a policy area in the federal government, administrative tolerance and fairness is applied in these situations.

The Commission's own *Rules of Practice and Procedure* (not statutes passed by the PEI legislature; not laws, but rules and procedures set forth by the Commission, itself) support this. As per those rules:

- They are founded upon the principles of natural justice and fairness (rule 1);
- They are intended to ensure all parties are afforded a reasonable opportunity to be heard (rule 1.3 (a));
- Unless the Commission grants an extension... all time limits are final (rule 3);
- The Commission may, in its sole discretion, dispense with, amend, vary, or supplement all or part of these rules (rule 6).
- The Commission may extend or abridge the time requirements fixed by these rules or otherwise fixed by the Commission, and may do so on its own initiative or in response to a request by any party (rule 7.1).

These rules indicate that the Commission has the authority to be reasonable, fair, and may grant an extension to the time limit.

Further, the Commission shall acknowledge receipt of a Notice of Appeal and notify parties of any error or omission, known to the Commission (rule 11.1(a)).

When I sent in my Notice of Appeal originally, I didn't realize it wasn't signed. IRAC's General Counsel, Jessica M. Gillis, emailed me on January 4 to advise the signed copy needed to be received by 4:00 pm Atlantic time on January 4, 2023.

From: Jessica Gillis <jgillis@irac.pe.ca>
Subject: RE: Notice of Appeal
Date: January 4, 2023 at 12:51:30 PM EST
To: 'Betty Ann Bryanton' <babryanton9@gmail.com>
Cc: Philip Rafuse <PJRafuse@irac.pe.ca>

Good afternoon, Ms. Bryanton.

In reviewing your Notice of Appeal, it was noted that it is not signed. Please re-send your notice of appeal with a signature before 4:00pm Atlantic Time today.

Thank you,
Jessica



Jessica M. Gillis
General Counsel
D. 902.368.7860
irac.pe.ca/about/contact/

The Commission acknowledged receipt of my Notice of Appeal on January 3, 2023. Exercising its rules and applying tolerance and fairness, they notified me of my error and provided a timeframe to adhere. The signed Notice of Appeal was re-filed by the date and time advised by IRAC's Counsel.

Therefore, I assert that my Notice of Appeal was filed, in accordance with the statute, on January 3, 2023 and met the extended time frame, as requested by the Commission's Counsel and as per the discretion allowed in the Commission's rules.

Sincerely,

Betty Ann Bryanton