

DECISION

**2026 NSRAB 18
M12539**

NOVA SCOTIA REGULATORY AND APPEALS BOARD

IN THE MATTER OF THE MUNICIPAL GOVERNMENT ACT

- and -

IN THE MATTER OF AN APPEAL by **MARK McQUEEN** from the Decision of a Development Officer of Cape Breton Regional Municipality to refuse an application for the construction of a commercial garage on property located at School Street, River Ryan (PID 15632045)

BEFORE: M. Kathleen McManus, K.C., Ph.D., Member

APPELLANT: **MARK McQUEEN**

RESPONDENT: **CAPE BRETON REGIONAL MUNICIPALITY**
Colin Fraser, Counsel

HEARING DATE: December 10, 2025

DECISION DATE: **February 3, 2026**

DECISION: **Appeal is dismissed. The Notice of Appeal is filed outside of 14-day period.**

I INTRODUCTION

[1] Mark McQueen, the Appellant, wants to build a commercial garage on his property at School Drive, River Ryan, Cape Breton Regional Municipality (CBRM), Nova Scotia (PID 15632045). He applied for a development permit to do so.

[2] The *Municipal Government Act*, SNS 1996, c 18 (*MGA*) requires a development officer to approve a development permit. In her written decision, dated October 15, 2025, the development officer refused to approve Mr. McQueen's development permit. The development officer determined that Mr. McQueen's property is currently zoned Low Density Urban Residential (UR2) under the CBRM Land Use By-law and a commercial garage is not a permitted use within the UR2 zone.

[3] Mr. McQueen appealed the development officer's decision to the Nova Scotia Regulatory and Appeals Board (Board).

[4] Under s. 249(1)(e) of the *MGA*, an appeal of a development officer's refusal to issue a development permit must be filed with the Board within 14 days of written notice of the development officer's decision. Therefore, in this matter, the deadline to file the appeal was no later than October 29, 2025. The Clerk of the Board received Mr. McQueen's Notice of Appeal by email, at 12:03 am on October 31, 2025.

[5] CBRM asked the Board to conduct a preliminary hearing to determine whether the appeal should be dismissed on the basis that the Notice of Appeal was filed late and that the Board does not have the jurisdiction under the *MGA* to extend the filing deadline. In the alternative, CBRM stated that the appeal should be dismissed because the Notice of Appeal did not allege a valid ground of appeal.

[6] As requested by CBRM, the Board conducted a preliminary hearing by teleconference on December 10, 2025. Mr. McQueen appeared on his own behalf and CBRM was represented by its counsel, Colin Fraser.

[7] The Board finds that the Appellant did not file the Notice of Appeal within the time prescribed by the *MGA* and the Board has no jurisdiction to hear the appeal. As a result, the appeal is dismissed. The Board finds it unnecessary to determine if the Notice of Appeal alleges a valid ground of appeal.

II ISSUE

[8] The preliminary hearing considered whether the Notice of Appeal was filed with the Board within the time prescribed by s. 249(1) of the *MGA* or, in the alternative, if the Notice of Appeal did not allege a valid ground of appeal as required by s. 250(2) of the *MGA*.

III LAW

[9] Section 247(3) of the *MGA* allows an appeal from the decision of the development officer to the Board. Section 249(1)(e) of the *MGA* prescribes the time for starting this appeal as being within 14 days after the date of written notice of the development officer's decision:

Service of appeal

249 (1) An appeal shall be served on the Board within fourteen days after the date

...
(e) of written notice of the development officer's decision refusing to issue a development permit or refusing to approve a tentative or final plan of subdivision or a concept plan; [Emphasis added]

[10] Section 5(4) of the Board's *Municipal Government Act Rules*, NS Reg 89/2021, states that the date of the filing of a Notice of Appeal has been interpreted as the date, up to midnight, that the document is actually received by the Board and that the Board has no authority to extend the deadline. Section 5(1) states:

Filing of Notice of Appeal, application or other documents

- 5 (1) Any Notice of Appeal, application or other document to be filed with the Board shall be filed with the Clerk.
- (2) A Notice of Appeal or application shall be in writing and shall be signed by the Appellant, the Applicant, or the agent or solicitor acting on their behalf.
- (3) Any document to be filed with the Board, including a Notice of Appeal or application, shall be filed with the Clerk by any of the following methods:
- (a) delivering a copy to the Clerk at the Board's office;
 - (b) mailing a copy to the Clerk;
 - (c) transmitting a copy to the Clerk via fax or e-mail; or
 - (d) such other manner as the Board may determine.
- (4) A Notice of Appeal under the *Act* must be filed with the Board within 14 days after the date prescribed in s. 249 of the *Act*, except when the 14th day falls on a holiday, in which case the Notice of Appeal must be filed with the Board on the next day that is not a holiday. (The date of filing of a Notice of Appeal has been interpreted as the date, up to midnight, that the document is actually received by the Board [not the date it is sent], and that the Board has no power to grant extensions). [Emphasis added]

IV EVIDENCE AND SUBMISSIONS

[11] The development officer's decision is dated October 15, 2025 [Exhibit M-1]. The evidence shows that Mr. McQueen applied his electronic signature to the Notice of Appeal at 11:59 pm on October 30, 2025, and then emailed it to the Board. The Board received Mr. McQueen's email, with his Notice of Appeal attached, at 12:03 am on October 31, 2025 [Exhibit M-2].

[12] Mr. McQueen testified at the preliminary hearing on December 10, 2025. He did not dispute that he received written notice of the development officer's decision on October 15, 2025. He did not dispute that he affixed his electronic signature on his Notice

of Appeal at 11:59 pm on October 30, 2025, and that it was not received by the Board until 12:03 am on October 31, 2025. In response to Board questions, Mr. McQueen confirmed that the Board's Clerk contacted him during the day of October 30, 2025, to advise him that his Notice of Appeal had to be filed before midnight of that day.

[13] Both the Appellant and CBRM made oral submissions and referred to written materials previously filed with the Board. Mr. McQueen stated that he knew that he had filed his Notice of Appeal late and was not sure if the Board could permit his appeal to continue.

[14] CBRM submitted that s. 249(1) of the *Act* requires that the Notice of Appeal be filed with the Board within 14 days of the date of the development officer's decision. CBRM said the relevant date is when the Notice of Appeal is received by the Board. CBRM submitted that as the development officer's decision is dated October 15, 2025, the 14-day deadline expired on October 30, 2025. The Notice of Appeal was received by the Board on October 31, 2025, at 12:03 am, after the appeal deadline. CBRM said that regardless of what time it was received by the Board on October 31, 2025, the Notice of Appeal was filed late, and the *MGA* does not give the Board any authority to extend the deadline for the filing of a Notice of Appeal. CBRM noted that this interpretation of the *MGA* is confirmed in s. 5 of the *Municipal Government Act Rules*. CBRM also submitted that the Board cannot apply the *de minimis* principle to extend the filing time for the Notice of Appeal, because the *MGA* has not granted the Board such authority to apply this principle. The *de minimis* principle arises from a legal concept that the law does not concern itself with trifling or insignificant matters. In this case, if it applies, it could be used to excuse a filing that was only three minutes late.

[15] CBRM argued, in the alternative, that the appeal should be dismissed because the Notice of Appeal does not allege a valid ground of appeal, as required by s. 250(2) of the *MGA*.

V FINDINGS

[16] The Board is a statutory tribunal and can only exercise the authority granted to it by statute. In appeals, the Board's jurisdiction is limited to the provisions of the applicable legislation (see: *Port Hood Sunset Beach Resort and Spa Inc.*, (Re) 2018 NSUARB 167, para. 25).

[17] The language of s. 249(1) of the *MGA* is clear that an appeal must be filed with the Clerk of the Board within 14 days of the date of written notice of the development officer's decision. Section 249 does not authorize the Board to allow a late filing of an appeal of a development officer's decision.

[18] The Nova Scotia Court of Appeal in *Glow-Worm Investments Ltd. v Atlantic Shopping Centres Ltd.*, (1981) 46 NSR (2nd) 223, (NSCA), determined that the Board has no jurisdiction to extend the time for filing an appeal under the *Planning Act*, RSNS 1989, c 346, as there was no discretion given to the Board to extend the filing deadline. The *Planning Act* was replaced by the *MGA*, but the statutory language is similar in that both do not give the Board any discretion to extend the deadline for filing a Notice of Appeal (see: *Van Feggelen*, (Re), 2004 NSUARB 10). It is clear from reading these cases that the Board has no jurisdiction to extend the time to file an appeal, even when the delay was perhaps only minutes or by a day and a few minutes.

[19] The Board notes that in *APL Properties Limited (Re)*, 2007 NSUARB 99, the Board determined that it has no authority to apply the *de minimis* defence in the

absence of statutory authority. The *MGA* has given no discretion to the Board, implied or expressed, to allow a late filing even if the delay can be viewed as minor and causing no prejudice to the other party.

[20] The parties were in agreement that the Appellant received written notice of the development officer's decision on October 15, 2026. The parties were also in agreement that the Notice of Appeal had to be filed with the Board no later than up to midnight on October 30, 2025.

[21] Based on the evidence before it, the Board finds that the Appellant had written notice of the development officer's decision on October 15, 2025. The Board also finds that this decision advised Mr. McQueen of the reasons for refusing his application for a development permit for a commercial garage and that he had 14 days to appeal to the Board. The Board finds that on October 30, 2025, during business hours, the Board's Clerk contacted Mr. McQueen to advise him that he had to file his Notice of Appeal before midnight. The Board finds that Mr. McQueen applied his electronic signature on the Notice of Appeal at 11:59 pm on October 30, 2025, and then sent his Notice of Appeal by email to the Board's Clerk. The Board finds that Mr. McQueen's email, attaching his Notice of Appeal, was received by the Board's Clerk at 12:03 am on October 31, 2025.

[22] Having found that the Appellant had written notice of the development officer's decision on October 15, 2025, the Board finds that adding 14 days to October 15, 2025, as required under s. 249(1) of the *MGA* and s. 5(4) of the *Municipal Government Act Rules*, Mr. McQueen had up to midnight on October 29, 2025 to file his Notice of Appeal. Accordingly, the Notice of Appeal was filed late.

[23] The Board acknowledges that while staff had no obligation to advise Mr. McQueen of a filing deadline, staff did mistakenly tell Mr. McQueen on October 30, 2025, that the filing deadline for his Notice of Appeal was on that day before midnight. The Board notes that Board staff, like the Board, has no authority to extend a statutory deadline. As events unfolded, Mr. McQueen did not rely on the advice of Board staff as he filed his Notice of Appeal at 12:03 am on October 31, 2025. Even if the Board accepted the parties' submissions that the filing deadline was up to midnight on October 30, 2025, which for its reasons above the Board does not, Mr. McQueen's Notice of Appeal was still filed late.

[24] The Board sympathizes with Mr. McQueen's situation. Nevertheless, it is bound by the provisions of the *MGA*. Even if the Notice of Appeal is received only three minutes later or one day and three minutes later than the filing deadline, the Board has no jurisdiction to extend this time.

[25] The Board finds that the Notice of Appeal was not received by the Board within the applicable deadline. As a result, the Board has no jurisdiction to hear this appeal. As this finding is determinative, it is unnecessary for the Board to determine if the Notice of Appeal alleged a valid ground of appeal.

[26] The appeal is dismissed.

[27] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 3rd day of February 2026.



M. Kathleen McManus