

January 26, 2024

VIA EMAIL

The Island Regulatory & Appeals Commission
134 Kent Street
National Bank Tower, Suite 501
Charlottetown, PEI C1A 7L1

Attention: Philip Rafuse

Dear Mr. Rafuse:

**Re: Johnston-Grinton/Grinton (the "Appellants") v Town of Three Rivers (the "Town")
Appeal LA 23019 (the "Appeal")**

Please find enclosed herein the Town of Three Rivers' ("Town") final submissions per the Letter of Direction from the Commission on December 20, 2023.

Yours very truly,



Melanie McKenna
MM/

Melanie McKenna | Associate

Direct (902) 629-3929 *Main* (902) 628-1033 *Fax* (902) 566-2639 *Email* mmckenna@coxandpalmer.com
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/1153998/v1

Submissions of the Town of Three Rivers

1. The Town relies on those terms as defined in their submissions of January 12, 2024.
2. The Appellants' Written Submissions expand upon the original ground of appeal that the Decision was not made in accordance with sound planning principles.

Expert Evidence

3. The Town reiterates their submissions from their original response to the Notice of Appeal (September 18, 2023), which states that in order to prove a decision of a municipality was not made in accordance with sound planning principles, an appellant is required to show more than mere anecdotal evidence of their opinion and disagreement and must provide expert evidence to overturn the decisions made by Council, which decisions were based on recommendations from experienced planners based on objective and reliable evidence¹.
4. The Appellants have not presented expert evidence related to sound planning principles and are not intending to present expert planning evidence at the hearing.

Municipal Jurisdiction vs. Provincial Jurisdiction

5. The Appellants' Further Written Submissions suggest that the Decision was not made in accordance with sound planning principles as the Zoning Bylaw 2023, the Permit and the Decision are contrary to, and therefore in violation of the *Building Codes Act*, RSPEI 1988, c B-5.1 ("*Building Codes Act*"), several codes and standards as outlined in the *Fire Prevention Act*, RSPEI 1988, c F-11 and the Montague Water Sewerage General Rules and Regulations.
6. The Town submits that the Appellants' Further Written Submissions fail to acknowledge that the administration of these various codes and standards is under the jurisdiction of the Province and not the Town. The Appellants reference the definition of "authority having jurisdiction" at subsection 1(c) of the *Buildings Codes Act*, RSPEI 1988, c B-5.1 ("*Building Codes Act*"), which references subsection 4(3), which states:

Agreement respecting enforcement

- (3) A council or a municipality and the Minister may enter into an agreement by providing for the administration and enforcement of this Act in the municipality by the Minister and, in that case, the Minister

¹ *Queens County Condo Corporation v City of Charlottetown*, Order LA18-02

shall be responsible for the administration and enforcement of this Act in the municipality.

7. The Minister and the Town currently have an agreement in place pursuant to subsection 4(3) whereby the Minister is responsible for the administration and enforcement of the *Buildings Codes Act*, which encompasses the applicable building and fire codes. This means that in order to develop in the Town, developers must present their municipal development permit to the Province, along with the required documentation outlined in the *Building Codes Act* and Regulations, and obtain a Building Permit from the Minister.
8. In response to the issues specifically related to fire, the Town has canvassed this issue before with the Provincial Fire Marshal, who advised that as part of the application phase with the Minister, they require the professional on the project complete code compliance certificates. Please see email correspondence attached hereto between David Rossiter, Provincial Fire Marshal and Patrick Donahoe, Development Technician with the Town, and attached certificates.
9. As the issues outlined in the Appellants' Further Written Submissions and the report of Randy K. MacDonald are issues under the Minister's jurisdiction pursuant to the *Building Codes Act*, the Town submits that the Commission is not the appropriate forum to determine these issues.
10. The Commission considered this issue in *Douglas MacArthur v City of Charlottetown*, Order LA22-06 and stated the following at paragraph 17:

The Commission agrees with the first and third arguments advanced by the City. It has already been decided by the Commission that it is a statutory tribunal without inherent jurisdiction and that decisions in relation to building permits are not appealable decisions under the *Planning Act*. Building permits are subject to a separate review and appeal process under the *Building Codes Act* and that process does not include the Commission. [...]

11. The Commission went further and addressed the character of building permits in comparison to development permits at paragraph 18:

[...] Distinguishing between the two permits requires the Commission to examine all of the surrounding circumstances. In his written submissions, the Appellant helpfully described the essence of these different permits. A development permit specifies the use of land and how a structure is to be situated on that land. A building permit ensures the structure is designed and

constructed in compliance with applicable construction codes. In circumstances like this one, where the City uses the same application for both permits and issues the same form for both permits, this will be a case by case determination based on the context. In other municipalities, the distinction between the two permits is clear from the distinct processes and the faces of the permits.

12. The appropriate forum for the Appellants' issues as outlined in the Appellants' Further Written Submissions as they relate to buildings and fire prevention are the review and appeal mechanisms outlined in sections 24 and 25 of the *Building Codes Act*.

Conclusion

13. The Town repeats and relies on their position that the Decision was made in accordance with the processes and procedures as set out in the applicable bylaws, the principles outlined in the Official Plan and was made in accordance with sound planning principles.
14. The Town request that the Commission dismiss the appeal.

Archived: January 30, 2024 9:50:48 AM
From: [McKenna, Melanie \(Charlottetown\)](#)
Sent: January 30, 2024 9:50:02 AM
To: [Dempsey, Julia \(Charlottetown\)](#)
Subject: FW: Subdividing 5 Duplexes
Importance: Normal
Sensitivity: None
Attachments:

[Building Code Design Certificate 2020.pdf](#); [Building Code Final Certificate 2020.pdf](#)

From: Patrick Donahoe <pdonahoe@threeriverspei.com>
Sent: Monday, January 29, 2024 1:09 PM
To: Lee Kenebel <lkenebel@threeriverspei.com>
Subject: FW: Subdividing 5 Duplexes

From: David Rossiter <DEROSSITER@gov.pe.ca>
Sent: Friday, October 15, 2021 11:52 AM
To: Patrick Donahoe <pdonahoe@threeriverspei.com>
Cc: Joshua Collins <jscollins@gov.pe.ca>; Jon MacDonald <jdmacdonald@gov.pe.ca>; Matt Langille <mdplangille@gov.pe.ca>
Subject: RE: Subdividing 5 Duplexes

Pat,

In the development application phase we require the professional on the project to fill out and return to our Office the attached Code Compliance Certificates. Inspections for NBC compliance either fall with the permit issuing body of the Building Code section with Land Division (Province) who are cc in this e-mail.



Dave Rossiter GFireE, ECFO, CFEI
Provincial Fire Marshal
Province of Prince Edward Island
(902)368-4870
derossiter@gov.pe.ca

From: Patrick Donahoe <pdonahoe@threeriverspei.com>
Sent: Friday, October 15, 2021 11:40 AM

To: David Rossiter <DEROSSITER@gov.pe.ca>

Subject: Subdividing 5 Duplexes

Hi David,

I have a permit application to subdivide 5 duplex dwellings, our bylaw for Montague requires ii) The units must be separated from the basement floor to the underside of the roof by a vertical fire wall built in accordance with National Building and Fire Code regulations;

How do we determine they are built to code, would someone from your department go out to each duplex and inspect them?

Thanks,
Pat

Patrick Donahoe
Development Technician
Town of Three Rivers
25 Queens Road, Montague PE
902-838-2528
pdonahoe@threeriverspei.com

Caution External Email - Do not click links or open attachments unless you recognize the sender.



BUILDING CODE DESIGN CERTIFICATE

Project Address: _____

Project Description: _____

This Document verifies that the Owner or Owner's Representative of the above mentioned Property has retained _____ to carry out the Design
(Name of Professional Engineer/Architect, Please Print)

and inspection of the work at said project in Accordance with:

NBC of C (Latest Edition as amended) and /or

NFPA 101 Life Safety Code (2018 Edition) (Check box applicable to the work being done)

Signature of Owner / Representative

Date

Please Print

Telephone Number

This document verifies that I have been retained by the Owner or Owners representative. I also do hereby verify that the plans attached hereto, dated _____ and signed by

(Name of Professional Engineer/Architect) (Please Print)

comply with :

the **NBC of C** (Latest Edition) for a building with the use or occupancy that is considered to be _____ and _____

Group Division

the **NFPA 101 Life Safety Code** (2003 Edition) for a building with the use and occupancy considered to be _____ and _____ (Check box applicable to the work being done)

Group Division

I, or my designate will carry out a review of the work at intervals appropriate to ensure that the work is carried out in compliance with the objectives of either NBC of C or NFPA 101, and upon request, make reports to the Provincial Fire Marshal's Office.

If for any reason my services are terminated prior to the completion of the above mentioned project, I will immediately notify the Office of the Provincial Fire Marshal in writing.

Signature

Date

Firm

Telephone Number

Please Return to the Provincial Fire Marshal's Office



BUILDING CODE FINAL INSPECTION AND COMPLIANCE CERTIFICATE

Project Address: _____

Project Description: _____

Permit #: _____

NBC of C (Latest Edition as amended) and /or
NFPA 101 Life Safety Code (2018 Edition) (Check box applicable to the work being done)

I hereby certify that I have fulfilled my obligations pursuant to the attached Building Code Design Certificate, dated _____. I have inspected the work at intervals appropriate to the stage of work and hereby certify that the work is in compliance with the objective requirements identified in the National Building Code of Canada (2010, as amended) or NFPA 101 (2018 as amended) (check applicable box) for building occupancy classification agreed upon by my office and the Office of the Provincial Fire Marshal.

Signature

Date

Firm

Telephone Number

Engineer / Architect Seal: