

June 18, 2024

VIA EMAIL

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

Attention: Jessica Gillis & Philip Rafuse

Dear Ms. Gillis & Mr. Rafuse:

**Re: Grinton v Town of Three Rivers – LA23-019
Request for Review**

We are writing in response to the correspondence dated June 7, 2024 and the follow up correspondence via email dated June 14, 2024, on behalf of the Appellants, Geraldine Johnston-Grinton and Paul Grinton (the “Appellants”), where they request a review of the Commission’s Order LA23-019 (the “Order”) pursuant to section 12 of the *Island Regulatory and Appeals Commission Act* (“IRAC Act”).

Section 12 of the *IRAC Act* reads as follows:

12. Review, etc. of decisions

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.

The *IRAC Act*, nor the Commission’s Rules of Practice and Procedure provide any further direction on the process to be followed under section 12. The Town of Three Rivers, as the Respondent in this matter (the “Respondent”), respectfully submits that the Commission should exercise its discretion, as provided in section 12 above, and dismiss the Appellants’ request for a review of the Order. Section 12 states that the Commission **may** review any order – the use of the word may, versus use of the word shall, suggests that the Commission has the authority to determine whether or not a review of the Order should occur. For the reasons that follow, the Respondent submits that the request for a review should be dismissed in direct response to the reasons for the request as provided by the Appellants.

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1. The Commission did not have the best available evidence before it

The Appellants suggest that verbatim minutes of the Town's meetings were incorrectly recorded and incomplete and that the audio recordings should have been requested, that the Commission should have subpoenaed Patrick Donahoe and Danielle Herring for further evidence and the Commission heavily relied on Lee Kenebel's evidence.

The Respondent requests the specifics as to which minutes were incomplete so as to determine whether or not the alleged missing information was detrimental to the decision. The Respondent further submits that at any time prior to or during the hearing, the Appellants could have requested the admission of the audio recordings as evidence and did not make such a request.

With respect to the additional witnesses, pursuant to Rule 56.2 of the Commission's Rules of Practice and Procedure, the Respondent does not dispute that the Commission has the discretion to subpoena witnesses but further submits that Ms. Herring and Mr. Donahoe were not necessary for the Commission to render a fair and equitable decision. Mr. Kenebel, as found by the Commission, had written a thorough and comprehensive report and found him to be experienced, credible and knowledgeable. Respectfully, there were no areas where the Commission found that additional evidence was required and findings in favour of the Respondent, rather than the Appellants, where the evidence between the parties contradicted does not render additional witnesses necessary.

2. There was a factual error in the Commission Order.

The Respondent submits that the email address error is not a sufficient reason requiring the Commission to review the Order. Whether or not the Appellants received the email of the plans sent by the Respondent is and remains inconsequential to the final decision of the Commission. At paragraphs 34 and 35, the Commission further concluded that Mr. Kenebel met with the Appellant, Dr. Johnston-Grinton, on two separate occasions, responded to several emails from the Appellant and found that the Respondent made good efforts to ensure the Appellants had a fair opportunity to review the application.

3. A stormwater drainage pattern plan and stormwater management and management plan appropriate for the size of the Development was not included in the Application as required by the Town of Three Rivers Development Bylaw 2023.

The Respondent submits that this is incorrect. The Developer submitted all plans required under the Development Bylaw 2023, as shown in Tab 2 of the Record and stated by Mr. Kenebel in his testimony. While the plans may not be called 'stormwater drainage pattern plan', 'stormwater management' and 'management plan', as set out in section 3.2.3.2(e), the Respondent confirmed at the hearing that all

information on the plans was available to confirm that stormwater management practices were in place. Furthermore, Mr. Kenebel's evidence at the hearing was that it is not up to the Respondent nor the Developer to ensure that the plans submitted are easily legible by a layperson. Plans accepted by the Respondent to be processed with an application are prepared according to industry standards and rules and regulations and there is no evidence to suggest that the plans in this matter were anything less than.

4. The Development currently does not meet the development plans approved pursuant to the Development Permit.

The Respondent submits that this reason for a request of the Order cannot be considered by the Commission. At the time of the hearing, the Development was proceeding as approved by the Respondent on July 24, 2023. A Stop Work Order has been issued as a result of this issue and a further application is being presented to Council. This was not the case at the time of the hearing and would therefore be considered 'fresh evidence'. The Respondent submits that the request for a review of the Order is analogous to that of an appeal where fresh evidence is not permissible¹. The Commission has not heard argument or evidence on this statement. The Respondent submits that any consideration of this statement would be in violation of the rules of procedural fairness and natural justice.

In the alternative, should the Commission determine that the Order should be reviewed, the Appellants submit that ground 4 still cannot be considered for the reasons outlined herein.

We trust the foregoing to be of assistance and look forward to a swift resolution of this matter.

Yours very truly,



Melanie McKenna
MM/

¹ The rule against admissibility of fresh evidence does have certain exceptions but none of those, in the Respondent's submission, are applicable in this case.