

August 8, 2024

VIA EMAIL - PJRafuse@irac.pe.ca

Philip J. Rafuse
Appeals Administrator
Island Regulatory and Appeals Commission

Dear Mr. Rafuse:

Re: **Grinton v. Town of Three Rivers LA23-019**
Request for Review
Our File No. 35127-001dk

We are writing in response to the correspondence dated June 18, 2024 on behalf of the Respondent. In support of the correspondence dated June 7, 2024, the Appellants further submit that their request for review of the Commission's Order LA23-019 (the "Order") should be approved for the following reasons:

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

The Appellants do not have access to the audio recordings of the meeting minutes to support their claim that the verbatim minutes of the Town's meetings were incorrectly recorded and incomplete, but the Appellants attended all of the applicable meetings and they claim that the verbatim minutes of the June 22, 2023 Planning Board Meeting were embellished and incorrectly recorded. Further, the verbatim minutes of the July 20, 2023 Special Planning Board Meeting did not include questions put forth by Counselor John MacFarlane ("Mr. MacFarlane") relating to the fire safety of the development which is relevant to the appeal and did not include Dr. Johnston-Grinton's speech.

The Appellants submit that Ms. Herring and Mr. Donahoe's testimony is necessary for the Commission to render a fair and equitable decision. Ms. Herring and Mr. Donahoe would be able to provide the Commission with further witness testimony regarding the Appeal as a whole and encounters between Dr. Johnston-Grinton and Mr. Kenebel relating to the disclosure of and access to information by the Town to the Appellants which is relevant to the appeal. Ms. Herring and Mr. Donahoe were present for the meeting between Dr. Johnston-Grinton and Mr. Kenebel at the Town Hall on July 6, 2023. Further, Dr. Johnston-Grinton attended the Town Hall, and met with Mr. Donahoe on June 23, 2023, and Ms. Herring on June 30, 2023.

Given that Mr. Kenebel worked closely with the Developer and prepared the recommendation which led to the Development Permit Application being approved, other witnesses should have been called to confirm or deny the facts that he alleged, including, but not limited to, testimonies from Ms. Herring and Mr. Donahoe.

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

To support the Appellant's position that they did not receive the email dated June 26, 2023, the Appellants state that Dr. Johnston-Grinton received an email from Mr. Kenebel on June 29, 2023 stating that he was still in the process of converting the drawings to an email friendly format and he hoped to have them to her by the week's end, now that he had her email address. The query email of June 26, 2023 further stated paper copies of the drawings were available at the Town Hall for viewing. Dr. Johnston-Grinton advised that no other email from Mr. Kenebel stated this, nor had he advised her of this in person. Further, the Appellants reiterate that they were not afforded a full and fair opportunity to review the complete Application prior to the IRAC hearing, as stated in the Order.

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 erosion control plan that was submitted by the Developer to the Town as part of their Development Permit Application is not the same as a "stormwater drainage pattern plan, stormwater management and management plan" as required under section 3.2.3(2)(e) of the Development Bylaw. The Town recently received a new development permit application from the Developer for a new development permit for the same building which adds a proper "stormwater drainage pattern plan, stormwater management and management plan" in compliance with section 3.2.3(2)(e) of the Development Bylaw. This further confirms that the required and necessary stormwater management plan submitted with this new application was missing from the original development permit application.

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

The Development Permit Application included a preliminary development C 100 site plan which was not stamped or signed by the Coles architect, Scott MacNeill ("Mr. MacNeill"), who prepared the plan. However, the Development Permit issued by the Town relied on said C 100 site plan in approving the Development Permit Application and in issuing the Development Permit. This is the C 100 site plan that was provided to IRAC for the hearing. The Appellants allege that this is not the same C 100 site plan that was used in the construction of the Development in September 2023. The Appellants allege that the building's inside wall is of a different construction correcting the inside setback violation on the original C 100 site plan. In addition, the garbage storage area was made smaller than in the original C 100 site plan. The Appellants believe a different C 100 site plan was used in the building construction as early as September 2023 – a site plan that was not shown to the public and not approved by the Town Council for the Development Permit. The Appellants believe this C 100 site plan used in the actual construction of the Development belonged to a different set of plans (the "Second Plans") used by the Developer and should have been known to both Mr. Kenebel as the Town Planner, and the Town Council. Further, these Second Plans were later made available for public viewing and Dr. Johnston-Grinton viewed the Second Plans on June 7, 2024 and June 10, 2024 at the Town Hall.

The Development's non-compliance with the allowable height variance is not fresh evidence. The Appellant, Dr. Johnston Grinton, submits that she advised the Town's CAO, Mr. John Jamieson,

Philip J. Rafuse
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August 8, 2024
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in emails dated December 18, 2023 and January 9, 2024, and the Appellant's counsel advised Mrs. McKenna, in an email dated January 12, 2024, that the height of the elevator tower was higher than that approved in the Development Permit and as a result, the development would be higher than the allowed height. The Appellants allege that the Town Council had a responsibility to look closely into the height of the building at this point in time to determine whether the Development was in compliance with the Development Permit. My clients advise that the wooden framing of the first floor of the Development was completed in February 2024 prior to the IRAC Appeal Hearing and the total height of the Development should have been ascertainable at that time. These concerns were further highlighted at the IRAC Appeal Hearing. However, it was not until April 18, 2024, that a stop work order was issued by the Town to the Developer due to the Developer building 6 feet beyond the approved major height variance of 4.9 feet. Please see attached above noted emails.

The Appellants submit that the testimony of the Developer, Mr. Linzel-Waddell, and architect, Mr. MacNeill, is also necessary for the Commission to render a fair and equitable decision. Mr. Linzel-Waddell and Mr. MacNeill would be able to provide the Commission with further witness testimony regarding the development and its compliance with the Development Permit which is relevant to the appeal.

As a result of the reasons above, the Appellants are requesting that the Commission review the Order to arrive at a judgement based on the best available evidence, and the correct facts.

We trust the foregoing to be satisfactory.

Yours truly,

KEY MURRAY LAW



SHEA L. CALLAGHAN
SC/jlg

Enclosed.

Shea Callaghan

From: geraldine grinton <geraldinegrinton@msn.com>
Sent: July 10, 2024 7:35 AM
To: Shea Callaghan
Cc: Derek Kay, Paul Grinton
Subject: Fwd: Building Construction School St

Follow Up Flag: Flag for follow up
Flag Status: Completed

~~See Mr. Jamieson's reply to my email regarding the height of the elevator shaft from December 2023.~~

~~Sent from my iPhone~~

Begin forwarded message:

From: John Jamieson <jjamieson@threeriverspei.com>
Date: December 19, 2023 at 9:04:38 AM AST
To: geraldine grinton <geraldinegrinton@msn.com>
Cc: Lee Kenebel <lkenebel@threeriverspei.com>, Danielle Herring <dherring@threeriverspei.com>
Subject: RE: Building Construction School St

Good morning Ms. Johnston-Grinton,

Thank you for your email. I am aware that the elevator shaft was installed. I will have one of our staff investigate and ensure that the building meets the conditions of the permit as granted by the Town.

John

John Jamieson, CAO
Town of Three Rivers
172 Fraser Street, Montague, PEI
902-838-2528
jjamieson@threeriverspei.com

-----Original Message-----

From: geraldine grinton <geraldinegrinton@msn.com>
Sent: Monday, December 18, 2023 4:36 PM
To: John Jamieson <jjamieson@threeriverspei.com>
Cc: Lee Kenebel <lkenebel@threeriverspei.com>
Subject: Building Construction School St

Hi Mr Jamieson.

I am sending this email to ensure that you as CAO of the Town of Three Rivers are aware that the building under construction at the corner of School Street and Fraser Street in Montague appears to already be higher than the variance of 40.9 ft granted by the Town on July 24, 2023.

I am very concerned about the height of this building as it appears that the elevator shaft looks like it is closer to 47.3 ft in height which is much higher than the granted variance and the roof still has to be erected on top of this, adding additional height. I want to bring this to your attention for the record.

I would like a response to this inquiry and whether or not you have been aware of this and what you intend to do about this.

Sincerely,

Geraldine Johnston- Grinton

Sent from my iPhone

Shea Callaghan

From: ~~geraldine grinton <geraldinegrinton@msn.com>~~
Sent: ~~July 10, 2024 7:36 AM~~
To: ~~Shea Callaghan; Derek Key; Paul Grinton~~
Subject: ~~Fwd: Elevator Shaft~~

Follow Up Flag: ~~Flag for follow up~~
Flag Status: ~~Completed~~

~~Also see the second reply.~~

~~Sent from my iPhone~~

Begin forwarded message:

From: John Jamieson <jjamieson@threeriverspei.com>
Date: January 9, 2024 at 12:53:12 PM AST
To: geraldine grinton <geraldinegrinton@msn.com>
Subject: RE: Elevator Shaft

Good afternoon,

Given the project is before an appeal to IRAC, I have been advised not to respond to your query and to direct you to contact our lawyer Melanie McKenna for this or any additional inquiries.

John

John Jamieson, CAO
Town of Three Rivers
172 Fraser Street, Montague, PEI
902-838-2528
jjamieson@threeriverspei.com

-----Original Message-----

From: geraldine grinton <geraldinegrinton@msn.com>
Sent: Tuesday, January 9, 2024 12:01 PM
To: John Jamieson <jjamieson@threeriverspei.com>
Subject: Elevator Shaft

Hi again.

I am wondering what you have determined the height of the elevator shaft is at the new construction on the corner of Fraser Street and School Street? And how much higher will the building be when you put a roof on top of this elevator shaft?

I am still awaiting a reply about this -from my earlier emails going back to December 19/23.

Sent from my iPhone

Shea Callaghan

From: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>
Sent: January 15, 2024 8:46 AM
To: Shea Callaghan
Cc: Jennifer Gurszki
Subject: RE: Concern Regarding Height of Elevator Shaft - 8 School Street, Montague (35127-001dk)

Good morning, Shea:

Thanks for your email. I'd refer your clients to section 5.2.9 of the Town's Development Bylaw, which exempts elevator enclosures from maximum height restrictions.

Thank you,
Melanie

Melanie McKenna
she/her
Associate | Cox & Palmer
P 902 629 3929
E mmckenna@coxandpalmer.com
F 902 566 2639
Dominion Building, 97 Queen Street Suite 600, Charlottetown, PE C1A 4A9

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From: Shea Callaghan <shea.callaghan@keymurraylaw.com>
Sent: Friday, January 12, 2024 3:19 PM
To: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>
Cc: Herrell, Tasha (Charlottetown) <therrell@coxandpalmer.com>; Jennifer Gurszki <jennifer.gurszki@keymurraylaw.com>
Subject: Concern Regarding Height of Elevator Shaft - 8 School Street, Montague (35127-001dk)

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Hi Melanie,

On a separate but still related matter, I just wanted to advise you that my client, Geraldine Johnston-Grinton, reached out to the CAO of the Town of Three Rivers ("Town's"), John Jamieson, regarding concerns about the current height of the elevator shaft at the 8 School Street, Montague development, and was directed to contact you regarding same. My client is concerned that the current height of the elevator shaft is higher than, and is not in compliance with, the height permitted under the Development Permit and/or the Town's Bylaw's. Given that this is a matter of enforcement for the Town under their Bylaw's, we ask that you please bring the above concern to their attention to ensure that the development is in compliance.

Thanks,
Shea

Shea Callaghan

Associate

tel +1 (902) 368-7911 (direct) | fax +1 (902) 368-3762

80 Grafton Street, Suite 200

PO Box 875

Charlottetown PE, C1A 1K7



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Shea Callaghan

From: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>
Sent: April 19, 2024 9:06 PM
To: Shea Callaghan; Jessica Gillis; 'kreativeacres@gmail.com'; Chris LW
Cc: Philip Rafuse; Dempsey, Julia (Charlottetown); Jennifer Gurszki; geraldine grinton; Derek Key; Clark, Ewan (Montague)
Subject: Re: LA23019 Grinton v. Town of Three Rivers - Hearing date February 6, 2023 and specific deadlines in December 2023 and January 2024

Good evening, all:

Thank you for your email. In response to Ms. Callaghan's email to all involved with the IRAC appeal, we are of the view that the current matter falls outside the scope of the matter under consideration by IRAC. The information provided should not be provided to the Commission as part of their decision making, as all of that information was provided at the hearing, while witnesses were under oath and cross-examination was available.

That said, and as you note, given that the Town has become aware that the building under construction does not comply with the approved height variance, a Stop Work Order has been issued to the Developer, with which the Developer is complying.

Thank you for bringing this to our attention and please be ensured that the Town is and will be adhering to its Development Bylaw requirements.

Thank you,

Melanie

Melanie McKenna
she/her
Associate | Cox & Palmer
P 902 629 3929
E mmckenna@coxandpalmer.com
F 902 566 2639
Dominion Building, 97 Queen Street Suite 600, Charlottetown, PE C1A 4A9

From: Shea Callaghan <shea.callaghan@keymurraylaw.com>
Sent: Friday, April 19, 2024 9:25:17 AM
To: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Jessica Gillis <jgillis@irac.pe.ca>; 'kreativeacres@gmail.com' <kreativeacres@gmail.com>; Chris LW <chris@kreativeacres.ca>
Cc: Philip Rafuse <PJRafuse@irac.pe.ca>; Dempsey, Julia (Charlottetown) <jdempsey@coxandpalmer.com>; Jennifer Gurszki <jennifer.gurszki@keymurraylaw.com>; geraldine grinton <geraldinegrinton@msn.com>; Derek Key <derek.key@keymurraylaw.com>
Subject: RE: LA23019 Grinton v. Town of Three Rivers - Hearing date February 6, 2023 and specific deadlines in December 2023 and January 2024

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Hi All:

My apologies, contrary to my previous email stating that my clients did not receive a response from the Town of Three Rivers, I just received an update from my clients that John Jamieson did respond to them on April 5, 2024. Please see attached email for your reference.

Best,
Shea

From: Shea Callaghan

Sent: Friday, April 19, 2024 8:50 AM

To: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>; Jessica Gillis <jgillis@irac.pe.ca>; 'kreativeacres@gmail.com' <kreativeacres@gmail.com>; Chris LW <chris@kreativeacres.ca>

Cc: Philip Rafuse <PJRafuse@irac.pe.ca>; Dempsey, Julia (Charlottetown) <jdempsey@coxandpalmer.com>; Jennifer Gurszki <jennifer.gurszki@keymurraylaw.com>; geraldine grinton <geraldinegrinton@msn.com>; Derek Key <derek.key@keymurraylaw.com>

Subject: RE: LA23019 Grinton v. Town of Three Rivers - Hearing date February 6, 2023 and specific deadlines in December 2023 and January 2024

Good morning, all:

I received instructions from my clients to advise all parties that based on their calculation, the development in question is currently being built higher than the height allowed in the development permit in question, being 40.9 feet. My clients calculated the height of the development by counting the rows of sheathing on the building face - they advised that there are 11 and 5/8 sheets of sheathing with each being 4 feet in height on the building face which totals a building height of 46.5 feet. Please see attached photographs provided by my client for reference. My clients have contacted the Town of Three Rivers via email, specifically John Jamieson, on March 28, 2024, to advise of same but they have not received a response. Please see attached email to John Jamieson.

Melanie – can you please confirm with your client whether the height of the development in question is in compliance with the allowable height under the development permit in question? Ultimately, my clients want to ensure that the Town of Three Rivers is enforcing their bylaws to ensure compliance with their bylaws and the development permit in question.

Thanks,
Shea

From: McKenna, Melanie (Charlottetown) <mmckenna@coxandpalmer.com>

Sent: Monday, January 15, 2024 1:12 PM

To: Shea Callaghan <shea.callaghan@keymurraylaw.com>; Jessica Gillis <jgillis@irac.pe.ca>; Derek Key <derek.key@keymurraylaw.com>; 'kreativeacres@gmail.com' <kreativeacres@gmail.com>; Chris LW <chris@kreativeacres.ca>

Cc: Philip Rafuse <PJRafuse@irac.pe.ca>; Dempsey, Julia (Charlottetown) <jdempsey@coxandpalmer.com>; Jennifer Gurszki <jennifer.gurszki@keymurraylaw.com>

Subject: RE: LA23019 Grinton v. Town of Three Rivers - Hearing date February 6, 2023 and specific deadlines in December 2023 and January 2024

Good afternoon:

Please find enclosed the CV of Lee Kenebel and an executed Acknowledgement of Experts Duty.

Shea, I'm seeking instructions on your below request and will advise.

Thanks,