



September 26, 2024

VIA EMAIL

contact@carvogroup.com

Gezinus Vos
Appellant

cdoyle@stewartmckelvey.com

Counsel for Rural Municipality of Miltonvale Park
Respondent Municipality

davidmol@live.com

David and Eva Mol
Appellants

fr_andrew1919@hotmail.com

Andrew Frizzell
Respondent Developer

VIA MAIL

Dean MacQuarrie
PO Box 263
Winsloe, PE C1E 1Z2
Appellant

RE: Appeal #LA24011 – Gezinus Vos; David and Eva Mol; and, Dean MacQuarrie v. Rural Municipality of Miltonvale Park

We are writing with respect to correspondence received by the Commission from the Land Use Planning Division of the Department of Housing, Land and Communities in respect of this matter. The correspondence is attached to this letter.

Briefly, the Land Use Planning Division has advised the Commission that they are of the opinion that the "Municipality[s] amendments appear to conflict with s. 63(3) and s.63(4.1) of the [*Planning Act*] *Subdivision and Development Regulations*."

As a result of having received this correspondence, the Commission is inviting all parties to provide a response in writing as to your position with respect to this correspondence and opinion of the Land Use Planning Division in the context of the present appeal.

We request any response by **Wednesday, October 16, 2024**.

Trusting this is satisfactory,

Jessica M. Gillis
General Counsel
Island Regulatory and Appeals Commission

Encl.

From: [Robert Zilke](#)
To: [Philip Rafuse](#)
Cc: [Megan Williams](#); [Glenda MacKinnon-Peters](#); [Jessica Gillis](#)
Subject: RE: RM of Miltonvale Park Amendments
Date: Wednesday, August 28, 2024 2:41:25 PM
Attachments: [image001.png](#)

Good afternoon Philip,

I am following up on the email below, our department has researched the matter and had our analysis reviewed by our departmental solicitor, who provided additional clarification on legislative issues with the proposed amendments.

Planning Act Subdivision & Development Regulations Section 63(3)(b) & (4.1)(a)

The proposed industrial use (autobody shop) on the subject properties (PIDs #283325 & a portion of #658799) falls within the Charlottetown Region Special Planning Area and is subject to the legal requirements under Section 63 of the *Planning Act Subdivision and Development Regulations*. The purpose of the Charlottetown Region Special Planning Area is to minimize the extent to which un-serviced residential, commercial and industrial development may occur. Subsection (3)(b) specifically limits future non-resource commercial and industrial developments to minimize the loss of resource lands. As the proposed land use is non-resource, it conflicts with the *Planning Act Subdivision and Development Regulations*.

The municipality did confirm that a permit was issued in 1988 for a commercial garage, on the portion of PID #283325 zoned for commercial use. The approval stipulated that onsite storage and junked cars for parts was not permitted. Over time the approved use has outgrown the commercial portion of the site and has transitioned into an industrial use (storage of vehicles and parts), making it non-conforming. This application is the municipality's attempt to address the non-conformity.

Staff's concerns are as such:

- **Future expansion of a non-conforming use.** The proposed official plan amendment and rezoning capture agricultural lands not yet used for the business. The SPAs intention is to restrict non-resource industrial and commercial development. Allowing agricultural lands to prematurely be designated for industrial development conflicts with this intent. This conflicts with ss.63(3)(b) of the *Subdivision and Development Regulations*.
- **Compliance with the Charlottetown Region SPA.** The business has changed from the approved commercial use to an industrial use. This makes it difficult to capture the proposal under ss.63(4.1)(a), which allows for growth of a non-resource related industrial or commercial use that was approved prior to 2019. The business was approved as a commercial use in 1988, this proposal is requesting a change to light industrial as well as an expansion to its operations.
- Municipal bylaws and official plans cannot conflict with the *Planning Act and Subdivision and Development Regulations*. If there are any conflicts, the *Act* and *Regulations* take precedence.

Our department solicitor has confirmed our analysis and concluded that the municipality

amendments appear to conflict with s.63(3) and s.63(4.1) of the *Subdivision and Development Regulations*.

Regards,

Robert

From: Philip Rafuse <PJRafuse@irac.pe.ca>
Sent: Tuesday, July 23, 2024 11:07 AM
To: Robert Zilke <rgzilke@gov.pe.ca>
Cc: Megan Williams <mrwilliams@gov.pe.ca>; Glenda MacKinnon-Peters <GCMACKINNON-PETERS@gov.pe.ca>; Jessica Gillis <jgillis@irac.pe.ca>
Subject: RE: RM of Miltonvale Park Amendments

Thank you Robert for this. Much appreciated.

I have copied our Commission legal counsel.

Philip



Philip J. Rafuse, LL.B.
Appeals Administrator

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From: Robert Zilke [<mailto:rgzilke@gov.pe.ca>]
Sent: Tuesday, July 23, 2024 11:03 AM
To: Philip Rafuse <PJRafuse@irac.pe.ca>
Cc: Megan Williams <mrwilliams@gov.pe.ca>; Glenda MacKinnon-Peters <GCMACKINNON-PETERS@gov.pe.ca>
Subject: RE: RM of Miltonvale Park Amendments
Importance: High

Hello Philip,

Our office just wanted to follow up on the file under appeal mentioned below.

The subject properties (PIDs #283325 & portion of #658799) proposing an industrial use (i.e. autobody shop) resides in the Charlottetown Region Special Planning Area and thus subject to the legal requirements under the *Planning Act Subdivision and Development Regulations*. As such all of section 63 Special Planning Areas applies to the subject properties, which as per subsection (3)(a) objectives for development within the Charlottetown Region Special Planning Area (these properties fall under) is to minimize the extent to which unserviced residential, commercial and **industrial** development may occur. The proposed use is industrial in nature and subsection (2) specifically limits future non-resource commercial and **industrial** development in order to minimize the loss of primary industry to non-resource land uses, the proposed land use specifically being non-resource would mean that the proposal is in conflict with the *Planning Act Subdivision and Development Regulations*. We are investigating to see if the industrial use is legal non-conforming and will update you accordingly.

Since there is an appeal on this file with IRAC, I wanted to provide you with our department's position and notify your office of the potential conflict with the regulations.

Should you have any questions, concerns or require clarification please feel free to reach out.

Cheers,

Robert

From: Philip Rafuse <PJRafuse@irac.pe.ca>
Sent: Thursday, June 27, 2024 8:43 AM
To: Robert Zilke <rgzilke@gov.pe.ca>
Subject: RE: RM of Miltonvale Park Amendments

Good morning Robert,

Provided number 1. In your list below is independent of number 2. below, we have no appeal of item number 1.

We do however, have an appeal filed on item number 2.:

<https://irac.pe.ca/wp-content/uploads/LA24011-Notice-of-Appeal.pdf>

Sincerely,

Philip

Philip J. Rafuse, LL.B.
Appeals Administrator

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From: Robert Zilke [<mailto:rgzilke@gov.pe.ca>]
Sent: Wednesday, June 26, 2024 1:22 PM
To: Philip Rafuse <PJRafuse@irac.pe.ca>
Subject: RM of Miltonvale Park Amendments

Good afternoon,

Just checking to see if IRAC received an appeal on either of the below amendments to the RM of Miltonvale Park's official plan and zoning by-law:

1. **OPA-2024-01 & Bylaw #2024-14-A01:** Textual amendments to both the Official Plan and Zoning & Subdivision Control By-law;
2. **OPA-2024-02 & Bylaw #2024-14-A02:** Change of the subject properties (PIDs #283325 & portion of #658799) Official Plan designations (Agricultural to Light Industrial) and Zoning (PID #283325) General Commercial (C1) and Agricultural (A1) to Light Industrial (M1), (PID #658799) Agricultural (A1) to Light Industrial (M1). Note that this file is controversial with the community and some residents were looking at the appeal process.

Thank you,

Robert Zilke, RPP, MCIP, MPlan
Municipal Planning Specialist
Department of Housing, Land and Communities
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Charlottetown PE | C1A 6B8 Canada
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