

October 16, 2024

Via Electronic Mail (jgillis@irac.pe.ca)

Jessica Gillis
Island Regulatory and Appeals Commission
134 Kent Street #501
Charlottetown, PE C1A 7L1

Dear Ms. Gillis:

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

We are in receipt of your letter dated 26 September 2024. Your letter enclosed correspondence between Robert Zilke and Philip Rafuse. Your letter also invited our response to the correspondence from Mr. Zilke and to the “opinion of the Land Use Planning Division in the context of the present appeal.” We thank the Commission for the opportunity to provide three brief points in response to this unusual correspondence from Mr. Zilke.

First, the correspondence from Robert Zilke reveals the opinion of Mr. Zilke. It is unclear whether the Minister shares Mr. Zilke’s opinion or whether Mr. Zilke was authorized to write on the Minister’s behalf. The Rural Municipality advises that, as of today’s date, it has not received any decision from the Minister in relation to the matters to which Mr. Zilke refers.

Second, and in any event, neither Mr. Zilke nor the Minister has standing to make submissions in this appeal. They are not parties in this appeal. They have not applied to intervene. The Commission’s rules do not provide for non-parties to make substantive submissions in *Planning Act* appeals.

Third, and without conceding that Mr. Zilke has any standing to make submissions in this appeal, we note that his brief opinion is undermined by a number of errors and inaccuracies. For example, Mr. Zilke asserts that, “[m]unicipal 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.” This assertion is wrong or incomplete for at least three reasons. First, it presumes without explanation that a conflict exists in this case. Second, it does not accurately reflect the language of the *Planning Act*. Third, it disregards subsection 63(10) of the *Subdivision and Development Regulations*. Other errors and omissions are evident on the face of Mr. Zilke’s analysis. But we will not respond to every error because – as noted – Mr. Zilke is not actually a party to these proceedings.

As the Commission knows, the Ministerial approval process is distinct from the Commission appeal process. The Minister plays no role in an appeal to the Commission against a decision of a municipality. To the contrary, the Legislature established the Commission as a tribunal that is independent from Government: *Charlottetown (City) v. Island Reg. & Appeals Com.*, 2013 PECA 10 at para 23. In this case, Mr. Zilke’s communications to the Commission tend to encroach on

the Commission's independence. This would be unacceptable in any *Planning Act* appeal. And it is especially unfortunate here, where the appeal record reveals that at least one named appellant authorized a number of communications to various Provincial officials in relation to the decision and process now under appeal.

The Commission has historically been adamant in asserting its independence from Government. We are confident that the Commission will continue to do so in the present case. The Commission took the appropriate first step by disclosing to the parties the submissions that it had received from Mr. Zilke. We trust that the Commission will inform Mr. Zilke that his submissions – past and future – will be disregarded unless he abides by the rules and successfully obtains party or intervener status. We also note, to remove any doubt, that it is not evident that Mr. Zilke was authorized to speak on behalf of the Land Use Division in general or on behalf of the Minister in particular.

We would appreciate being copied on any future correspondence between the Commission and Government or Mr. Zilke in respect of this matter. Once again, we thank the Commission for the opportunity to provide these brief submissions.

Yours truly,

Stewart McKelvey



Curtis Doyle

- c. Gezinus Vos (contact@carvogroup.com)
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