

Island Regulatory and Appeals Commission

National Bank Tower
134 Kent Street, 5th Floor Charlottetown, PE C1A 8R8

Date: October 16, 2024

Appellants:

David and Eva Mol
Dean and Anne MacQuarrie
Gezinus Vos

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 from the Commission dated September 26, 2024. We take this opportunity to also put on the record **some** of the particulars requested by the Rural Municipality of Miltonvale Park’s ‘*letter in response to appeal*’ dated July 17, 2024.

Firstly, as the Government of PEI’s Land Use Planning Division’s assessment is used to inform the decision of the Minister, we concur that the Rural Municipality of Miltonvale Park’s amendments appear to conflict with s. 63(3) and s.63(4.1) of the [*Planning Act*] *Subdivision and Development Regulations*, the Charlottetown Region Special Planning Area (SPA). PID 283325 has changed from an approved 1988 permit for commercial use to a premature and unauthorized usage of the lands as light industrial use (See also LA24-011 -**Vol IV Tab 750** and **Tab 1216-1222**). In addition, we also contend that subsequent agreements with the Developer were not observed/enforced, resulting in ongoing issues of non-conformance. These matters of non-conformance were not sufficiently contemplated in the Municipalities decision-making process. (**Vol 1 Tab 29, Vol II Tab 475, Vol IV Tab 787**)

Secondly, we further wish to put on the record several items with cross-references to the four (IV) volumes of documents (1200+ pages), submitted by the Rural Municipality of Miltonvale Park’s response to this appeal (LA24011). We request that, should this appeal proceed to a hearing, we be afforded an extension to allow for a comprehensive list of particulars be submitted for the consideration of all parties.

Respectfully,
David and Eva Mol
Dean and Anne MacQuarrie
Gezinus Vos

Matters Related to Procedural Fairness

Residents have the right to a fair process, impartiality, the right to be heard, and reasons for decision making. Elected officials and staff undermined the principles and very purpose of public consultation. Matters related to procedural fairness include:

1. The public consultation processes were muddled, and the municipal website lacked access to pertinent files and procedural information. Some issues were grouped, then others treated separately. The rezoning process was premature, given that the municipality had recently updated its Bylaws, Future Land Use Map, and Official Plan (with community input and subsequent Ministerial approval) just one year earlier. Residents were under the false impression that proposed amendments (e.g. banning “salvage yards”) would apply to the rezoning of PID 283325. However, there was no clear communication that the application would be reviewed under the 2021 Bylaws, leading to conflicting messaging throughout the process. The ‘Owner or their authorized agent [did not] describe the proposed amendment at the meeting’ as per the Municipality’s Zoning and Development Bylaws Section 3.16 item 5. See **Vol 1 Tab 204, Vol VII Tab 409; Vol IV Tab 1006; Vol IV Tab 1023; and Vol V**).
2. During the public consultation on March 19, 2024, residents were initially denied a chance to voice concerns and then, after persistent requests, subsequently given only three minutes each and the Chair of the Planning Board prohibited follow-up questions. Despite knowing a resident with a hearing impairment was present, microphone use was denied. The meeting failed to ensure a transparent consultation process, with residents’ questions left unanswered. The public consultation video is the complete and accurate record of the meeting.
3. Failure to properly notify nearby residents with seven clear days for notification of public consultation **Vol 1 Tab 326, Vol II Tab 405, Vol 3 Tab 604** and as per Section 11.2b of Government of Prince Edward Island Planning Act.
4. Failure to have quorum at the July 19, 2023, Council meeting where *Motion 2023:63* was passed (*re: public meeting on the Rezoning of PID 283325 and a portion of 658799*) (**Vol 1 Tab 137**)

We also submit the following matters and acknowledge these may not fall under the Island Regulatory and Appeals Commission jurisdiction. However, we respectfully request they be added to the record:

5. A Municipal Councillor’s alleged failure to comply, on nine occurrences, with the Municipal Government Act Conflict of Interest (Section 94, Division 4), and the Rural Municipality of Miltonvale Park Councillor Code of Conduct and Conflict of Interest (Bylaw 2018-10). These allegations are currently under review. Note that this same Councillor has been confirmed as being in a Conflict of Interest for the January 17, 2024, Council meeting as it pertains to Bylaw amendments, Official Plan amendments, and rezoning matters. (**Vol 1 Tab 370**).
6. A Municipal Councillor’s actions for an alleged breach of the Code of Conduct and Conflict of Interest (Bylaw 2018-10)– General and Improper Use of Influence in relation to Bylaw amendments, Official Plan amendments, and rezoning matters. (**Vol 1 Tab 113**). The allegations are currently under review.
7. A Municipal staff person alleged use of intimidation, misuse of power, and defamatory use of language throughout the review and public consultation process in relation to Bylaw amendments, Official Plan amendments, and rezoning matters. The resident’s complaints are submitted to the appeal docket. The allegations are currently under review. (**Vol V**)

The details of these, and further concerns related to procedural fairness, shall be brought forward prior to, or at, an appeal hearing.

Matters Related to Sound Planning Practices

Rezoning land to bring a property “*into compliance*” (**Vol 1 Tab 67/Tab111**) with existing bylaws is problematic as it undermines the very principles of sound planning. Bylaws exist to regulate land use, protect public interests, and ensure orderly development. Changing zoning rules retroactively to accommodate one individual’s or business’s non-compliance defeats the purpose of these regulations and creates a precedent that rules are negotiable, subsequently eroding the integrity of the entire regulatory framework. Rezoning to bring a property “*into compliance*” rewards non-compliance, which is inequitable to those who invest time and resources to ensure their properties meet the regulations from the start. Sample issues related to the matter of sound planning include the following, with additional items to be brought forward at an appeal hearing.

1. Failing to disclose to existing land use inventory and zoning nearby as follows:
 - (a) the wellfield belonging to City of Charlottetown Water and Sewer Corporation (PID 283382).
The associated infrastructure to the North-East of PID 658799 is zoned Public Service and Institutional or Environmental Reserve. (**Vol 1 Tab 98**)
 - (b) PID 283267 in the adjacent area used/zoned as Commercial. (**Vol 1 Tab 98**)
2. Failing to properly assess the Developer’s application for rezoning. The Developer stated, “*Parcel PID 458190 would be regraded and returned to green space.*” Contrarily, the Developer’s site plan illustration shows the area being demarcated for vehicle parking / pick up. (**Vol 1 Tab 3 / Tab 8**). The site plan includes an extension to the western side of the building. This is a temporary structure with no permit (tractor trailer). It is not a permanent structural part of the main building (**Vol. 1 Tab 3**). The entrance, from PID 283325 onto the proposed extension to PID 658799, is directly over the Developer’s alleged septic system (**Vol IV Tab 758**). The depiction of a proposed sandblasting building which suggests intensification of the business (**Vol 1 Tab 3**).
3. The Chair of Municipal Planning Board stated on March 15, 2024, that no concerns/complaints were on file when rezoning was given preliminary approval (**Vol IV Tab 846**). The Developer has accumulated hundreds of vehicles across PIDs 283325, 658799, 458190, 283317, and 293309 (**Vol 1 Tab 31/Tab 34**). Residents raised concerns on May 31, 2023, which remained unaddressed while the Planning Board reviewed a rezoning application (**Vol IV Tab 780**). On February 26, 2024, a resident emailed similar concerns, receiving only a notice that it would be “passed on to Council” (**Vol IV Tab 792**). Formal complaints, pertaining to the properties, were submitted by seven nearby residents in March 2024. (**Vol IV Tab 1053-1171**). See also the response from the Municipality (**Vol V**).
4. Failing to properly assess the loss of primary resource lands.
 - (a) Council stated that the land on PID 658799 was unsuitable for primary agricultural use, yet they failed to provide any supporting evidence. Residents questioned their deliberation on the matter as the 2023 PEI Soil Survey clearly states suitability for primary agricultural use. (**Vol IV Tab 892, Vol IV 1170**)
 - (b) MVP-2023-01: “*The applicant has submitted that the potential loss of resource land from this change in zoning would be mitigated by moving parking from other areas of PID 658799 to the area to be consolidated with PID 283325 and moving the horse paddock that would be displaced to other areas in the remaining agricultural area.*” We contend that the loss of agricultural land is not mitigated by “*moving the horse paddock*” (**Vol.1 Tab 4 / Tab 32**)
5. Failing to consider/debate non-conformance of conditions stated in past Development Agreements. “... *Development Agreements need to be retained for 12 years. It may not be realistic to require an agreement to be enforced 13 years after it can be destroyed by the municipality.*” (**Vol V**)

Further concerns to be presented at an appeal hearing, should it proceed.

Items to Include in Appeal Docket

We respectfully request the following items be submitted by the Rural Municipality of Miltonvale Park to the Island Regulatory and Appeals File # LA24011:

1. The Developer's *Application for Development Approval* form.
2. Complete, unaltered videos of all public consultation meetings (May 31, 2023, and March 19, 2024)
3. On April 10, 2024, the Development Officer stated photos were taken as part of the site assessment. We request the release of these photos and the associated site plan assessment report.
4. The letter submitted at the public consultation on March 19, 2024, authorizing a family member to speak on behalf of a senior resident.
5. The remainder of the file associated with the 1988 Development Agreement (**Vol IV, Tab 750**)
6. Minutes of the Planning Board meeting held on March 14, 2024.

As the Municipality has submitted items related to a criminal proceeding (withdrawn by the Crown), we also submit the complaint filed against the Municipal staff person as a matter of public record for misuse of power, defamatory language, etc. (**Vol V**).

The allegations against the Councillors are under review. This information will be released should the appeal proceed to a hearing and/or will be disclosed, in time, in the Rural Municipality of Miltonvale Park Council minutes.

We also submit the enclosed response from the Rural Municipality of Miltonvale Park as it pertains to interpretation of rezoning amendments and non-conforming use of property.