

April 10, 2025

VIA EMAIL

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

Dear Mr. Rafuse:

Re: Charlie Hicken v Town of Three Rivers – Appeal #LA25004

Introduction

This letter is in response to your letter of March 25, 2025 (corrected March 26, 2025), requesting the Town of Three Rivers' (the "Town") Record and Reply to a Notice of Appeal filed by Charlie Hicken (the "Appellant") with the Island Regulatory and Appeals Commission (the "Commission"), dated March 20, 2025 (the "Appeal"). The Town's Record has been provided on April 10, 2025. Please accept this correspondence as the Town's Reply to the Notice of Appeal.

Notice of Appeal

The Appellants have appealed a decision of Town Council, dated March 10, 2025, where Council issued a Development Permit (Number 14.25.DEF) to Great Wisdom Buddhist Institute ("GWBI") (the "Developer"). The Development Permit (the "Permit") authorized the Developer to construct dormitory 3 (3,568 sq.m) & dormitory 4 (4,645 sq.m), as well as associated services and site work at the Great Wisdom Buddhist Institute property located at 805 Brudenell Point Road, PID 1107382 (the "Property"). The further particulars of the Permit are outlined in the Permit (See Record Tab 18).

The Appellant has listed four (4) grounds of appeal and provides eight (8) other points in Schedule "A" to the Notice of Appeal. (See Record Tab 19)

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The Town respectfully submits that none of the grounds of appeal or other Appellant points constitute grounds to grant the appeal and overturn the decision of Town Council. The Town submits that the decision to approve the Permit was a decision made in accordance with sound planning principles. As the Commission is aware, in order to prove that a decision was not made in accordance with sound planning principles, an appellant is required to show more than mere anecdotal evidence of their opinion and disagreement and must provide expert evidence to overturn the decisions made by Council on recommendations from experienced planners based on objective and reliable evidence. Public opinion alone is insufficient to overturn these decisions and this has been upheld by the Commission on a number of occasions [for example: *Queens County Condominium Corporation No. 40 v City of Charlottetown*, Order LA 18-02].

The Town's response to each of the Appellant's grounds of appeal and other information follows below in the order submitted by the Appellant.

Reply to Grounds of Appeal and Appellant's other points

1) The Appellant has submitted that:

1. Dormitories not approved use in development bylaw section 6.11 Institutional Zone (see Ground of Appeal 1 and Schedule "A" 2 & 3)

Schedule "A" 2. Under s. 6.11.1 of Development Bylaw no. 2023-02 of the Town of Three Rivers (Development Bylaw"), the lands comprising the GWBI project are zoned as "Institutional Zone" and dormitory accommodations are not a permitted use in such zone. Thus, permission to construct dormitories no. 3 and no. 4 breaches the above bylaw.

Schedule "A" 3. The March Town Council Decision approving construction of dormitories no. 3 and no. 4 represents a material change from the permitted use of an Institutional Zone and required a zoning amendment application and a duly constituted public hearing, with due opportunity for the public to make representations as set out in s. 3.6 and s. 3.8 of the above Development Bylaw, none of which was provided.

In reply, the Town submits that:

- Dormitory accommodations are permitted within the Institutional Zone as set out in the Town Development Bylaw #2023-02 definition of “Institutional Use”. together with zoning provisions at 6.11.
<https://threeriverspei.com/wp-content/uploads/2023/05/C20-Bylaw-2023-02-Development-Bylaw-03-23-approved-signed-2023-05-25.pdf>
- The Appellant’s appeal seeks to incorrectly take the Permit out of its proper land use planning context. The Property is approved for the development of a Buddhist Monastery, which is a lawful conforming use within the Institutional Zone. The use of the Property is reflected specifically within the contents of the Town Official Plan at parts 2.6(2), 3.1.1 and supplemented by Institutional commentary at 5.5.
<https://threeriverspei.com/wp-content/uploads/2023/05/Three-Rivers-Official-Plan-2023.pdf>
- The development is not a material change from the permitted use of an Institutional Zone requiring a zoning amendment application and public hearing. Rather, construction of a further two new dormitory wings (numbered 3 & 4) are an extension to the existing facilities of this Monastery and will eventually form the intended dormitory structures outlined in the Master Plan. (See Master Plan at Record Tab 1).
- The development does not alter the permitted use and remains within the scope of the development plan documents as well as the approved undertaking (See Ministerial approval letter at Record Tab 5).
- A zoning amendment application and public meeting is not required. No new uses outside of the lawful use of the Property were proposed by the Applicant and all administrative procedures were followed correctly in the application process.
- The Town’s Planning and Development Officer, Lee Kenebel, (the “Planning Officer”) prepared two (2) detailed reports, dated February 27, 2025 and March 10, 2025, respectively, (See Record Tabs 16 & 17) that were presented to Planning Board and to Council. These reports outline the details of the application, assess the application

within the context of the Official Plan, and performs a technical assessment of the application against the provisions of the Bylaw. The Planning Officer confirmed that the proposed use was permissible within the Institutional Zone, complied with the Bylaw, aligned with permitted uses, site design, and environment standards. The Planning Officer recommended that Planning Board recommend to the Mayor and Council approval for the construction of dormitory 3 (3568 sq .m) & dormitory 4 (4645 sq.m), as well as associated services and site work at the Property, subject to the conditions noted therein.

- The Town's position is that the Permit and the process associated with issuance of the Permit adhered to the Town's Development Bylaw (the "Bylaw").

2) The Appellant has submitted that:

2. **Environmental site assesstment (sic) Master Plan proposed occupancy of 1400 occupancy (sic) & 200,000sq ft. (see Ground of Appeal 2 and Schedule "A" 1, 4, 5 & 7)**

Schedule "A" 1. The 2018 Environmental Impact Assessment of May 2018 ("EIA") and all subsequent decisions based thereon, including the decision of the Town of Three Rivers of March 10, 2025, approving development application no. 14.25 DEP- 805 Brudenell Point Road ("March Town Council Decision"), are invalid because the public was not duly notified of the project and was unable to comment on it as required by s. 9 of the Environmental Impact Assessment Act.

a. the EIA was only presented by the project owner, Great Wisdom Buddhist Institute ("GWBI"), not by the Township of Brudenell as required by law;

b. the presentation was only held at a Community Open House held in ROMA in June of 2018 to which a limited group neighbors, not to the public as required by law, were invited;

c. the notice and information required by the above Act was not provided, and Brudenell officials were absent, denying the public at large the opportunity to comment; and

d. shortly thereafter, Brudenell was amalgamated into Three Rivers and no further public meetings about the project were held, denying all citizens in the new community the opportunity to learn and comment on the project.

In reply, the Town submits that:

- The existing Environmental Impact Assessment (“EIA”) remains valid and sufficient.
- PEI does not have an *Environmental Impact Assessment Act*, though does have a *Environmental Protection Act* (the “EPA”) and Section 9 addresses EIAs.
https://www.princeedwardisland.ca/sites/default/files/legislation/e-09-environmental_protection_act.pdf
- The Town does not administer the EPA. Rather, administration of the Act, including the requirements of section 9, falls under the purview of the Department of Environment, Energy and Climate Action (formerly the Department of Communities, Land and Environment in 2018).
- Dale Thompson, Environmental Assessment Officer with the Province confirmed that there was no need to revisit/modify the existing EIA approval. This confirms that the application fell within the scope of the existing approval (see email January 9, 2025 at **Record Tab 8**). Dale Thompson was also involved in the original EIA assessment. It is submitted that no further EIA was required and any grounds of appeal purporting invalidity due to EIA requirements are without merit.
- On ground 1b, it is noted that the Township of Brudenell [sic] would not be able to direct the Applicant to hold public environmental meetings as such processes would have been within the jurisdiction and direction of provincial environmental officials.

- Further, the Applicant has advised that a community meeting related to the EIA process was advertised openly and extensively, contrary to the Appellant's claim that this was a 'limited group of neighbours'. In addition, the public nature of the development would not have been affected by any municipal amalgamation process, which was an unrelated matter. The Town understands that if required by the Commission, further documentation concerning the EIA process is available on request from the Applicant.
- In addition, the document package, including Master Plan, related to the Construction of a Monastery Facility, e.g. the 'undertaking' remains available for public view at <https://www.princeedwardisland.ca/en/feature/projects-under-environmental-review-undertakings#/service/EnvironmentalImpactAssessments/EnvironmentalImpactAssessmentView?id=85f582c4-6789-4e4f-a1da-0b91c4ba9eb4>
- Also provided in that documentation is then Environment Minister Brown's conditional letter of approval for the project.(See Record Tab 5).

The Appellant has submitted that:

Schedule "A" 4. The March Town Council Decision de facto approves a fundamental departure from the Master Plan on which the EIA was based, including without limitation:

a. the construction of one additional dormitory building not disclosed in the EIA materials;

b. completely different layout of the entire complex, replacing two clusters of low rise housing with garden courtyards and a central temple, with L-shaped row-housing complex with a large central building, none of which was shown in the EIA.

In reply, the Town submits that:

- The Appellant's comments fail to reflect the envisaged site plan illustrated within the GWBI Master Plan (see **Record Tab 1**). In particular, with reference to a failure to disclose "one additional dormitory building," the Master Plan at p.64 clearly illustrates two dormitory buildings and associated courtyards are planned. Each dormitory area is intended to be made up of seven blocks each and arranged around two courtyards.
- The Town is unaware of where the Appellant's reference to "low rise housing" or the Appellant's interpretation of the Master Plan document is derived. Without changes to the 2018 Master Plan, the Town submits that provincial officials who undertook the EIA and who continue to monitor the Development would be and are aware of the long-term development plans for the Property. The EIA approval clearly reflects an understanding of the development by provincial environment officials.

The Appellant has submitted that:

Schedule "A" 5. 5. The March Town Council Decision failed to provide assurance that the capacity limits set out in the EIA, being 1,400 persons and maximum of 200,000 square feet of built-up space, will not be breached by construction of dormitories no. 3 and one additional dormitory, no. 4, not set out in the Master Plan.

In reply, the Town submits that:

- The Town repeats its submission that the Development is in accordance with the Master Plan.
- Further, the Appellant's assertion appears to be incorrect. Town Planning staff made enquiries regarding the amount of accommodation being provided, which information was presented openly at the meeting of Town Council on March 10, 2025. Further, and in all events, capacity limits are not prescribed in the Ministerial approval letter (See **Record Tab 5**).

- The Master Plan does reference a design capacity of 1400 persons (also reaffirmed in later exchanges between the Applicant and Environment Division (See June 29, 2018 correspondence at **Record Tab 4**). The Master Plan (**Record Tab 1, at p. 62**) also notes the “The actual number of people on site will be highly influenced by the yearly enrolment of nuns to the Buddhist learning centre.”
- The amount of building footprint is not set out in the Master Plan. Where references to built areas are made, they are clearly referred to in the context of approximations and not absolutes and, insofar as the Town is aware, have not been treated as such by provincial officials or been conditionally approved as a result of the EIA.
- The Minister’s approval letter (See **Record Tab 5**) conditionally requires that all necessary approvals should be obtained before proceeding with construction at the site, which is what the Applicant sought for the within Development Permit from the Town.

The Appellant has submitted that:

Schedule “A” 7. In issuing the March Town Council Decision, the Town Council failed to address breaches of commitments made in the EIA supporting materials and important changes occurring in Three Rivers due to rapid development, including:

- a. public spaces and walking trails were not established as promised;**
- b. despite commitments to procure building materials and supplies locally, much of the material and supplies came from Asia in containers, depriving local businesses of sales and raising questions of compliance with Canadian Safety Certification standards;**
- c. transportation studies are outdated and electrical demand was not addressed in the EIA and needs to be revisited due to current shortages;**
- d. the promise of “religious tourism” has not materialized.**

In reply, the Town submits:

- The Appellant's assertions with respect to 'breaches of commitments' have no basis in fact and are not material or relevant to this appeal.
- Ground 7a. The GWBI Master Plan does indicate that in time there will be a network of controlled trails providing partial access to the site. This is not under the guise of a public right-of-way, but an allowed and controlled access over private land. The trail network will be delivered through the Master Plan in time; however, this is not subject to a specific time scale.
- Ground 7b. The origin of building materials is not relevant to this appeal. Further, compliance with 'certification standards' and sustainability of building materials is a matter for consideration by provincial authorities under the *Building Code*.
- Ground 7c. Matters of transportation and electrical demand are not relevant to this appeal and appear to be personal views of the Appellant regarding the scope of the EIA and without basis in fact and are not relevant to the appeal.
- Ground 7d'. Reference to a promise of "religious tourism" also appears to be a personal view of the Appellant and is not a relevant planning consideration having merit in the within appeal.

3) The Appellant has submitted that:

- 3. Total sq ft or occupancy addressed in development application. (see Ground of Appeal 3 and Schedule "A" 6)**

Schedule "A" 6. The Town Council further failed to consider in its March Town Council decision that GWBI constructed on site at least two very large outbuildings, which should be counted as a part of the 200,000 square feet limit on which the EIA was based.

In reply, the Town submits:

- As noted previously, there is no 'square feet limit' for development on the Property. Neither does such a statement reflect the commentary of the Master Plan or the communications between the Applicant and the Province as setout in the Record.
- The Town would note that the Master Plan recognizes a need for ancillary structures within the section entitled Land Use (See Record Tab 1 at p.65). The permitted structures referenced are associated with utilities and storage and hold permit approvals.

4) The Appellant has submitted that:

- 4. Original approval required public meeting to discuss plan as Three Rivers was under amalgamation non (sic) was held except private meeting by GWBI at Roma. This requested by a number of councilors (sic) on March 10. (see Ground of Appeal 4 and Schedule "A" 8)**

Schedule "A" 8. The physical size of the GWBI facilities and its eventual population of 1,400 persons, which makes it almost as large as Montague, with three times the revenue of Three Rivers and five times the assets, is having a material socio-economic impact on the community. It is not acceptable for this project to have been launched in 2018 with only a limited number of citizens of Brudenell being informed and none of the wider Three Rivers community having been informed of the plan in an open and transparent manner, with an opportunity for a dialogue, most importantly for yet more major changes being made to the plans without public meetings and for GWBI not being held to the promises made in the EIA materials.

In reply, the Town submits:

- In response to this ground of appeal, the Town would repeat and rely upon its response to ground 2 above.

- Further, these grounds of appeal appear to reflect the Appellant's speculative opinion and are not planning considerations relevant to the appeal.
- Insofar as the Town is aware, considerable public consultation, information sharing, and meetings did in fact occur prior to the approval of the Master Plan and through each step of the approval process, including the within decision of Council, and that all development approvals have adhered to and gone through the requisite approval processes.

Conclusion

Given all of the above it is respectfully submitted that the appeal be dismissed.

The Town respectfully reserves their right to provide further reply in response to any further submissions from the Appellant and other issues of jurisdiction as may become apparent.

Yours very truly,



Ewan W. Clark

EWC/NG