



PRINCE EDWARD ISLAND

Regulatory & Appeals Commission

Commission de réglementation et d'appels

ÎLE-DU-PRINCE-ÉDOUARD

Date Issued: December 23, 2024

Docket: LA23019

Type: Request for Review

INDEXED AS: Geraldine Johnston-Grinton and Paul Grinton v. Town of Three Rivers,
2024 PEIRAC 10 (CanLII)

Order No: LA24-09

BETWEEN:

Geraldine Johnston-Grinton and Paul Grinton

Appellants

AND:

Town of Three Rivers

Respondent

AND:

Kreative Acres Corp.

Developer

REQUEST FOR REVIEW OF ORDER LA24-04

Panel Members:

M. Douglas Clow, Acting Chair
Kerri Carpenter, Commissioner

Compared and Certified a True Copy

(Sgd.) Philip Rafuse

Appeals Administrator
Island Regulatory and Appeals Commission

1. INTRODUCTION

1. This Order relates to a written request for review received from the Appellants, Geraldine Johnston-Grinton and Paul Grinton, in respect of Order LA24-04, issued by the Commission on April 29, 2024.
2. For the reasons that follow, the Appellants' request for review is denied.

2. BACKGROUND

3. On April 29, 2024, the Commission issued Order LA24-04, which denied the Appellants' appeal of the decision of the Town of Three Rivers to issue a development permit to Kreative Acres Corp., the Developer, to construct a 22-unit apartment building with ground floor commercial space, together with a major variance for an additional 4.8ft of building height, on land located on School Street in Montague, PEI.
4. On June 7, 2024, the Commission received a formal request from the Appellants to review, vary or rescind Order LA24-04. The request was supplemented on June 14, 2024. The Appellants request for review is pursuant to section 12 of the *Island Regulatory and Appeals Commission Act*.¹
5. The Respondent, Town of Three Rivers, provided a response to the request on July 19, 2024.
6. The Appellants provided a further reply on August 8, 2024.
7. The Developer did not provide submissions.

3. ISSUES

8. The question for the Commission on this Request for Review is whether it should exercise its discretion to review, rescind or vary Order LA24-04.

4. ANALYSIS

9. The Appellants request for review is pursuant to section 12 of the *Island Regulatory and Appeals Commission Act*.² That section states:

12. Review, etc. of decisions

The Commission may, in its absolute discretion, review, rescind or vary any order or decision made by it, or rehear any application before deciding it.

¹ RSPEI 1988, I-11, s. 12.

² RSPEI 1988, I-11, s. 12.

10. The Commission has previously considered requests for a review of its decisions and commented on the “test” to be applied. In [Order LA97-11, Request by Keir & Marion Clark for a Review of Order LA97-08 \(Aug 27, 1997\)](#), the Commission stated (Chair, Linda Webber):

The Commission and its predecessor, the Prince Edward Island Public Utilities Commission, have considered in the past the minimum criteria an Applicant must meet before the Commission will exercise its absolute discretion in the matter of reviewing its decisions under s.12 of the Island Regulatory and Appeals Commission Act, and the identical predecessor to s.12, s.16 of the Public Utilities Commission Act. This test has been interpreted consistently by the Commission in its past decisions.

*As noted in previous decisions, **the onus rests upon the Applicant to show that a prima facie case exists which will entitle the Applicant to the review.** A prima facie case will be shown only where the function of review should be exercised **to correct an error of the Commission or to meet changed circumstances.***

*Changed circumstances may encompass either a **situation which has developed after the decision or where new evidence emerges which was not known or not available at the time the original evidence was adduced.** Changed circumstances will dictate a review **only if they are material.***

*Finally, the power to review is **discretionary** and will be exercised **sparingly.***
[emphasis added]

11. This test has continued to be interpreted by the Commission in subsequent orders³ and this Commission is satisfied that the test remains good authority on this question and the principles contained therein continue to apply.
12. In this case, the Appellants’ request for review raised four grounds. For the reasons that follow, the Commission finds that the Appellants have not met the required test for a request for review in respect of any of the four grounds raised.
13. The first ground argues that the Commission did not have the best available evidence before it, claiming that the Respondent’s verbatim minutes were incorrectly recorded, there were other witnesses the Commission should have subpoenaed, and that the Commission relied too heavily on the testimony of the Respondent’s Planning and Development Officer.
14. In respect of this ground, these are all evidentiary matters that that could have been raised before or at the appeal hearing. Further, the Commission’s reliance on any particular testimony is a matter within the discretion of the Commission as the adjudicator. This ground appears to be an attempt to relitigate the matter, and the Commission finds it does not meet the test.
15. The second ground raised by the Appellants involved a factual error in Order LA24-04 at paragraph 34, and highlights a discrepancy in the Record in respect of the Appellant’s email address. Upon review, the Commission acknowledges this error. It is unfortunate

³ See, for example: [Order LA00-14](#); [Order LA07-04](#); [Order LA09-04](#); [Order LA10-03](#); [Order LA11-04](#); [Order LA11-06](#).

the discrepancy was not pointed out to the Commission at the hearing; however, the Commission concludes the error is not material to the outcome of Order LA2-04 and, therefore, does not warrant a review of the Order.

16. The Appellants' third ground claims that the Developer's application was not supported by the required plans (in particular, a stormwater management plan). In response, the Town of Three Rivers has submitted this is incorrect and that all required plans were shown in the Record, as testified to by the Planning and Development Officer at the hearing.
17. In respect of this ground, the Commission notes that the Appellants raised, as a ground of appeal, that the application was incomplete and did not include the required documentation. Accordingly, the Commission heard detailed testimony at the hearing from the Town's Planning and Development Officer about the plans that were submitted with the Developer's application, and his assessment that the application complied with section 3.2.2.2 of the Town's Development Bylaw. Further, the Record included the application and the plans that were submitted to support it. Based on this evidence, the Commission was satisfied that the necessary documentation was submitted in accordance with the Bylaw. Therefore, the Appellants have not satisfied us that this ground meets the test. .
18. Finally, the Appellants have claimed that the Developer submitted an unapproved set of development plans that were not included in the Record, and that the Developer used the unapproved plans for construction. First, the Appellants have not provided any evidence to support this assertion. However, in any event, the matter of the development proceeding in violation of the approved plans is a matter of enforcement over which the Commission has no jurisdiction. This ground does not meet the test.
19. In conclusion, the Appellants have not satisfied the Commission that there is an error in Order LA24-04, nor are there changed circumstances material to the outcome, that warrant a review of Order LA24-04. Instead, the Commission is of the opinion that the arguments raised by the Appellants in their Request for Review are matters that could have been raised at the hearing of this appeal.
20. The Commission finds that the Appellants have not met the required test for a request for review. Accordingly, the Commission denies the request.

5. CONCLUSION

21. The request for review of Order LA24-04 is denied.
22. The Commission thanks the parties for their submissions in this matter.

IT IS ORDERED THAT

1. The request for review of Order LA24-04 is denied.

DATED at Charlottetown, Prince Edward Island, December 23, 2024.

BY THE COMMISSION:

(sgd. M. Douglas Clow)

M. Douglas Clow, Acting Chair

(sgd. Kerri Carpenter)

Kerri Carpenter, Commissioner

NOTICE

Sections 13(1) and 13(2) of the ***Island Regulatory and Appeals Commission Act*** provide as follows:

13(1) An appeal lies from a decision or order of the Commission to the Court of Appeal upon a question of law or jurisdiction.

(2) The appeal shall be made by filing a notice of appeal in the Court of Appeal within twenty days after the decision or order appealed from and the rules of court respecting appeals apply with the necessary changes.

NOTE: In accordance with IRAC's *Records Retention and Disposition Schedule*, the material contained in the official file regarding this matter will be retained by the Commission for a period of 2 years.