

**IN THE MATTER OF** an appeal by Heather Neill and Arthur Neill from a decision by the Rural Municipality of Miltonvale Park to decline an application for a development permit to sell cars on October 5, 2022.

### **Reply to Notice of Appeal**

#### **The decision regarding the application for a permit to sell cars is under appeal**

1. On August 4, 2022, the appellants applied for three permits:
  - (a) The first application was for a permit to operate a septic truck and porta-potty business on the residential lot, registered to Arthur J. Neil, at 1030 Rustico Road. This application for a development permit was denied by the Rural Municipality of Miltonvale Park (the “Municipality”). The Municipality communicated this decision to the appellants in a letter dated October 5, 2022.
  - (b) The second application was to have the property at 1030 Rustico Road rezoned from Agricultural (A1) to Commercial (C1). The Municipality determined that this application for rezoning was incomplete. The Municipality sent the appellants a second letter, also dated October 5, 2022, requesting further information to complete this application for rezoning.
  - (c) The third application was for a permit “to be able to sell cars and advertise on Facebook” from 1030 Rustico Road. This application for a development permit was denied by the Municipality. The Municipality communicated this decision to the appellants in a third letter dated October 5, 2022.
2. In the present matter, the only decision under appeal is the one that the appellants have actually identified in their notice of appeal – *i.e.* the decision by the Municipality to deny the appellants a permit to sell cars from 1030 Rustico Road. This is confirmed by the fact that the appellants are seeking, as a remedy, “a permit to be allowed to sell used cars to the public”.

#### **No basis to allegations of unfairness, unequal treatment, or prejudice**

3. The Municipality complied with its *Zoning and Subdivision Control (Development) Bylaw (2021)* (the “Bylaw”) in denying the appellants’ application for a permit to sell cars. There is no basis to the appellants’ assertions that the Municipality treated the appellants unfairly or unequally, or acted with a closed mind.
4. The Municipality notes that the appellants’ first ground of appeal appears to allege that the Municipality has engaged in inconsistent decision-making. The Municipality denies this assertion. It worth noting, however, that even when inconsistency is established, inconsistency is not bias. See: Order LA19-02 at para. 44.

#### **The appellants’ proposed use is contrary to the Bylaw**

5. The Municipality properly denied the appellants’ application for a permit to sell cars. The appellants’ proposed use is contrary to the Bylaw.
6. In the Bylaw, the term “Automobile Shop” is defined to include any space on a Lot used for the sale of automobiles:

Automobile Shop means a Building or part of a Building or a clearly defined space on a Lot used for the sale, Maintenance or repair of used or new automobiles.

(Bylaw, Schedule 2, section 7; emphasis added)

7. Under the Bylaw, therefore, the application “to sell cars” is, in effect, an application for a permit to operate an “Automobile Shop”.
8. The Bylaw prohibits operating an Automobile Shop on the property at 1030 Rustico Road. There are at least two reasons for this:
  - (a) The property at 1030 Rustico Road is zoned Agricultural (A1) under the Bylaw. The Bylaw does not permit operating an “Automobile Shop” on a lot that is zoned Agricultural (A1). See: Bylaw sections 4.25.1 and 9.2.1.
  - (b) The property at 1030 Rustico Road is also a “Residential Lot” as that term is defined in the Bylaw. The Bylaw expressly prohibits operating an Automobile Shop on a Residential Lot. See: Bylaw section 4.6.5.

**Prior permit does not give right to operate an Automobile Shop**

9. On August 19, 2020, the Municipality granted a permit to Neill’s Auto Exports, located at 1030 Rustico Road, for an “outdoor storage (export car lot)”.
10. This permit does not grant permission to operate an Automobile Shop. A condition on the permit expressly states that the permit is for a “commercial storage lot only, and not including such uses as described under the definitions of Automobile Shop or Automobile service station” (emphasis added).

**Dealer’s trade license does not confer a right to operate an Automobile Shop in the Municipality**

11. A dealer’s trade license issued pursuant to the *Highway Traffic Act* and the regulations made thereunder does not render its holder immune from the application of relevant municipal bylaws. For that reason, a dealer’s trade license does not confer a right to operate an Automobile Shop in the Municipality in a manner contrary to the Bylaw.



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