

June 30, 2020

Island Regulatory & Appeals Commission
5th Floor Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1

Attention: Philip Rafuse

Dear Mr. Rafuse:

Re: **Andrea Battison v City of Charlottetown**
Notice of Appeal – June 2, 2020

This letter is by way of reply to your letter of June 3, 2020 requesting the City of Charlottetown's (the "City's") record and a reply to the Notice of Appeal filed by Andrea Battison (the "Appellant") with the Island Regulatory and Appeal Commission ("IRAC") on June 2, 2020. The Appellant appealed the decision of City Council approving a request by the University of Prince Edward Island (the "Applicant") for a site-specific exemption in the Institutional (I) Zone of the Zoning and Development Bylaw (the "ZD Bylaw") allowing a proposed nine (9) storey (35.4m) dormitory/residence at 550 University Avenue (the "Property") to be constructed (the "Application"). The 9 storeys approved as a site specific amendment exceeds the prescribed maximum building height under the ZD Bylaw.

For ease of reference, the City has briefly summarized and enumerated each ground of appeal as set out by the Appellant, and responded to each.

1. The City failed to adhere to the procedural requirements as outlined in the Bylaw, specifically section 3.10.4(c).

The Applicant sought a site specific exemption permitting the construction of a 9-storey (35.4m) residence on the Property which is located in the Institutional (I) Zone). The Institutional (I) Zone normally permits a maximum building height of only 12.0 m.

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The Applicant proceeded pursuant to section 3.9.1(i) of the Bylaw which permits a major variance where the request is not substantial and a rezoning application is not required. Section 3.9.1(i) further states that if there is any doubt as to those requirements, the variance should proceed as a rezoning application or a site specific exemption. The Applicant applied for a site specific exemption under section 3.11.

Site specific exemptions are subject to all of the requirements of section 3.11 of the Bylaw, which attracts the same notice requirements as set out in section 3.10.4 for a rezoning. The City contends it complied with those requirements, outlined as follows:

- A letter (**Tab 8A, page 10**) was sent to affected property owners within 100m of the boundaries of the Property on April 15, 2020. A map and list of these residents can be found at **Tabs 22 and 23**.
- The Notice of Public Meeting (**Tab 8B, page 4**) identified the subject lot as 550 University Avenue, a description of the site specific exemption and identified the date by which written objections were to be received as of April 23, 2020.
- The Notice of Public Meeting was published on April 18, 2020 and April 25, 2020 for the meeting scheduled for April 28, 2020.
- The Notice of Public Meeting was posted on the Property on April 15, 2020.

The Appellant claims that the April 23, 2020 deadline to contact the City to participate in the Public Meeting, published in the Guardian on April 18, 2020 and April 25, 2020 prevented members of the public from participating in the Public Meeting. While the City acknowledges that the April 23, 2020 deadline published on April 25, 2020 was a discrepancy, the City submits that it was not intended to prevent any persons from participating in the meeting and in fact did not prevent any interested persons from participating in the meeting. The City was contacted by four individuals to participate in the meeting and provided each of them with

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clear instructions on how to participate. A list of these parties can be found at **Tab 20, page 2.**

- 2. The documentation regarding the proposed amendments was not accessible by all members of the public prior to the Public Meeting on April 28, 2020.**

The City submits that the documentation regarding the proposed amendments was accessible by members of the public prior to the Public Meeting. The Notice of Public Meeting expressly stated that residents wishing to view the proposed amendments could visit the City's website to view the documents. The Notice of Public Meeting also included a contact phone number and email address. Any resident who did not have access to the City's website could have contacted the City to arrange access to the documentation regarding the proposed amendments. The City did not receive any inquiries on accessing these documents.

While the Planning & Heritage Department Office (the "Department") was closed to the public due to COVID-19, the City undertook all reasonable and available measures to ensure that the Public Meeting and the information related to same was accessible to all members of the public. Had the City received any inquiries pertaining to the inability to access the documents, the City could and would have made every effort to accommodate that individual.

- 3. The Public Meeting held on April 28, 2020 was not open and accessible to the public in accordance with the *Municipal Government Act*, R.S.P.E.I. 1988, c M-12.1.**

The City contends that in unprecedented circumstances it fulfilled or substantially fulfilled all of the requirements set out in the *Municipal Government Act*, R.S.P.E.I. 1988, c M-121 ("MGA") and section 13 of the City's Procedural Bylaw. On or about March 16, 2020, the Government of Prince Edward Island declared a public health emergency and later declared a state of emergency on April 16, 2020, as a result of COVID-19. The Public Health Order dated April 1, 2020, attached hereto, prohibited in-person gatherings to no more than 5 persons, excepting health care, social services, persons living under the same dwelling and businesses or workplaces permitted to be open. The City interpreted this to mean that they

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were not permitted to have in-person gatherings of more than 5 persons, which included in-person Public Meetings under the ZD Bylaw.

Section 3(e) of the *MGA* states that one of the purposes of Council is to encourage and enable public participation in matters affecting the municipality. The City submits that regardless of the declaration of the state of emergency, the City was able to enable public participation in this matter. Section 122(3) of the *MGA* outlines the following requirements for an electronic public meeting:

Public meeting by electronic means

- (3) A meeting shall only be conducted by electronic means if
 - (a) the electronic means by which the meeting is conducted enable, at a minimum, the council and council committee members participating in the meeting to hear and speak to each other;
 - (b) notice is given to the public of the meeting, including that it will be conducted by electronic means; and
 - (c) where the meeting is a public meeting:
 - (i) facilities are provided to enable the public to see and hear the meeting's participants at a place specified in the notice; and
 - (ii) a municipal employee is in attendance at the place specified in the notice.

The Public Meeting held on April 28, 2020 enabled participation by all Council members. Mayor Philip Brown confirmed that each Councillor could hear and could be heard prior to commencing the meeting (Tab 11). Notice that the Public Meeting would take place by

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electronic means was given in accordance with the requirements set out in the MGA and the ZD Bylaw. The City provided residents with three (3) options:

1. view the live stream available on the City's website;
2. participate in the Public Meeting via phone if interested in participating; or
3. attend in-person to view the Public Meeting while adhering to social distancing requirements.

Section 122(3)(c)(i) required the City to provide facilities to enable the public to view the Public Meeting virtually. The City complied with this by providing an 'attend in-person' option at City Hall in the Parkdale Room and were prepared to expand this to the foyer and first floor if the number of residents who showed up warranted in order to maintain social distancing. The City had no advance inquiries regarding the 'attend in-person' option; and, as it turned out no residents showed up at the Public Meeting.

These options were set out clearly in the Notice of Public Meeting. Interested parties who contacted the City were contacted in advance of the Public Meeting with clear instructions on how to access the various virtual options – an example of these instructions can be found at **Tab 112, page 2**. Following the Public Meeting, the City followed up with individuals that had expressed interest in participating to confirm that there were no issues with participation. An example of this correspondence can be found at **page 2 of Tab 20**. The City worked extensively with their IT staff to ensure that public participation could be achieved electronically.

The Appellant claims that portions of the meeting were inaccessible due to the poor audio quality of the YouTube channel. The City submits that there were other options available to members of the public if the YouTube channel was not satisfactory. Further, the City's practice is only to prepare *verbatim* minutes if an appeal has been filed given the significant administrative burden this would place on the City. This accords with the requirements outlined in section 116 of the *MGA* regarding minutes of open meetings.

The Appellant claims that the letters received by the City in favour and in opposition of the Application were not read out during the Public Meeting. The City first submits that it is not a

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requirement that any letters received regarding an application be read out during a Public Meeting. Rather, the letters are provided to all Councillors, whom the decision rests with. The Public Meeting Agenda (Tab 9) was prepared on April 22, 2020, 6 days before the Public Meeting and at that time, no letters had been received. When letters are received following circulation of the Agenda, the letters are circulated to Council as quickly as possible and if time permits, prior to the Public Meeting. Tabs 102 and 108 are the letters received which were circulated to Council prior to the Public Meeting.

A summary of all the measures taken by the City to ensure compliance with the Bylaw and the MGA can be seen in the submission to the Minister's office when the proposed site specific amendment package was transmitted to his office for his approval, which are attached hereto (attachments to these letters can be found at Tabs 18 and 20).

4. The documentation regarding the first reading, second reading and Ministerial approval were not transparent and/or readily accessible to the public.

The Application was approved by Council on May 11, 2020, where the first reading took place. The reading papers (Tab 15) indicated that the second reading would occur on June 8, 2020. It is the City's practice to include the next scheduled monthly Council meeting as the date a second reading will take place, subject to a decision of Council to hold or add to a Special Meeting of Council sooner. Once the Application was approved by Council, it was important that the development commence as soon as possible given the tight timeline to complete the development in time for the 2023 Canada Games. The City accommodated this request and held a Special Meeting of Council in accordance with section 121 of the MGA and section 11 of the City's Procedural Bylaw.

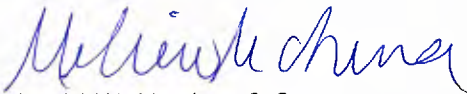
The City processes hundreds of applications every year and performs a number of other important duties, including amendments to the ZD Bylaw and enacting new bylaws. The City works diligently to update their website as quickly as possible. The City's website is updated with meeting agendas, meeting packages, meeting minutes and resolutions and is fully transparent to the public in this sense. The Appellant suggests that these records from the City were not accessible or transparent. However, in addition to availability on the City's

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website, these records are available at the Department whether it be by in-person attendance or via phone or via email. The City's job is to ensure that these records are available to the public and in this case, the records were available to the public in a timely manner.

In closing, the City submits that it was forced to quickly adapt to the requirements set out by the Chief Public Health Office in response to COVID-19. In doing so, the City adhered - or alternately substantially adhered in all material respects - to all statutory requirements, in particular those set out in the *MGA*, the *ZD Bylaw* and the *Procedural Bylaw*, and at all times acted in accordance with good planning principles.

Yours very truly,



for

David W. Hooley, Q.C.

DWH/mm

Enclosures.

Cc. Andrea Battison, Appellant
Jonathan Coady, Counsel for UPEI
Alex Forbes, Manager of Planning