

File Reference: SM4773-310

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5th Floor, Suite 501
134 Kent Street
Charlottetown, PE C1A 7L1**Attention: Philip Rafuse**

Dear Mr. Rafuse:

Re: Andrea Battison v. City of Charlottetown

We thank both the appellant, Andrea Battison ("Andrea"), and the respondent, City of Charlottetown ("City"), for sharing their written submissions in this matter. In an effort to further facilitate the process, we share these brief and additional thoughts on behalf of the developer, the University of Prince Edward Island. We ask that these submissions be considered by the Island Regulatory and Appeals Commission ("Commission") as part of its review process.

I. The statutory requirements were satisfied by the City.

Section 122 of the *Municipal Government Act* prescribes the requirements for an electronic meeting of council. Subsection 122(3)(b) states that notice of the meeting must be given to the public, including the fact that the meeting will be conducted by electronic means. Subsection 122(3)(c) also states that, where the meeting is a public meeting, the public must be able to "see and hear" the participants in the meeting at a place specified in the notice. These are the statutory minimum requirements that have been fixed by the Legislature for the City when it holds a public meeting by electronic means.

At the outset, it is significant to note that, for the purpose of statutory interpretation, the Legislature chose to require that members of council be able to "hear and speak to each other" while the Legislature chose to require that members of the public be able to "see and hear the meeting's participants." According to the rules of statutory interpretation, this difference in language must be respected and given effect. See *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 81.

Subsection 13.3 of the Procedural Bylaw #2018-19 echoes these statutory minimum requirements for a meeting by electronic means.

A review of the record demonstrates that these minimum requirements were met by the City. To the extent that there is a suggestion by Andrea that these requirements were not enough or not sufficient, the proper remedy is to lobby for changes to the legislation or the bylaw. That is not the function of the Commission. It has no such jurisdiction.

II. The record demonstrates that the public had several methods of participation.

The public was notified of the electronic meeting by the City and had a number of means to participate in the process. Those means exceeded the requirements prescribed by statute and included: (i) Webex; (ii) telephone; (iii) livestream video and audio via the internet; (iv) video and audio via screens at City Hall; (v) attendance in person at City Hall; (vi) viewing the meeting package on the City website; (vii) written submissions by mail; and (viii) written submissions by email. Written submissions from the public were accepted by the City until noon on April 30, 2020.

III. No error material to the outcome has been identified.

The Commission has previously held that an error that is technical in nature does not result in a municipal decision being overturned. In LA18-02, the Commission found that the City made a "technical error" when it issued a notice before receipt of design review approval. See LA18-02 at para. 20. The error did not result in unfairness. See LA18-02 at para. 20. It was also "not of sufficient weight to affect the ultimate outcome." See LA18-02 at para. 20. In short, the error was "a technical one." See LA18-02 at para. 29. The appeal was denied by the Commission, and the decision made by the City was confirmed.

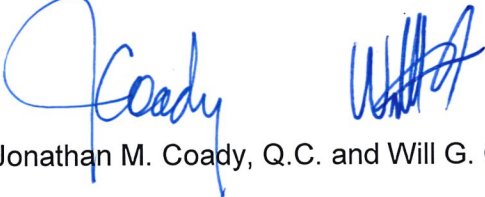
No material error has been identified in this case. The City has acknowledged that it made a clerical or typographical mistake in one notice that was published in the newspaper. However, the City has also confirmed that no member of the public was turned away because the City insisted on compliance with that mistaken date. Rather, the record confirms that the deadline for submissions from the public extended beyond the date of the public meeting held by the City.

IV. Summary

In summary, the notice of appeal and the submissions from Andrea sound in disagreement with the processes used for electronic meetings during the COVID-19 pandemic. Changes to the prescribed minimum requirements for such meetings are matters for prospective consideration by legislators and councillors. Those changes are beyond the statutory reach of the Commission and, in this particular case, there has been no material error that could result in the decision by the City being quashed.

Yours truly,

STEWART McKELVEY



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