

December 11, 2024

Via Electronic Mail (mwalshdoucette@irac.pe.ca)

Michelle Walsh-Doucette
Island Regulatory and Appeals Commission
National Bank Tower
134 Kent Street, 5th Floor
Charlottetown, PE C1A 8R8

Dear Ms. Walsh-Doucette:

**Re: Appeal HP24001
Sabharwal Atlantic Holdings Ltd. v. City of Charlottetown and Minister of
Fisheries, Tourism, Sport and Culture**

We write on behalf of the appellant and in response to the Commission's correspondence dated 17 October. The purpose of our writing is to comment on the appeal record and to identify preliminary issues. We thank the Commission in advance for its consideration of this correspondence.

Appeal Record

We have reviewed the record filed by the City. It is large but, in our respectful view, deficient. A number of specific deficiencies in the record are outlined below. We ask that these deficiencies be addressed before the appellant finalizes its grounds of appeal. We trust that, given the nature of the designation under appeal, this request will not be thought unreasonable.

Minutes. The record contains certain documents that are described as heritage board minutes and other documents that are described as council minutes. But these documents are all unsigned, and some are expressly marked "draft until approved by committee". Under the *Municipal Government Act*, committee minutes must be signed by the chair, and council minutes must be signed by the mayor and the chief administrative officer.¹ Signed minutes should be included in the record.

Verbatim transcripts. The record contains documents that are described as verbatim transcripts. These documents are not certified. Experience has shown that documents described by the City as verbatim transcripts may contain inadvertent, and yet significant, errors and omissions. If the City wishes to rely on these documents as verbatim transcripts, the City ought to identify someone who is willing to certify them as such.

¹ RSPEI 1988, c M-12.1, s 116(4) ["MGA"].

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Bylaw. The record should contain a certified copy of the Heritage Preservation Bylaw under which the City purported to issue the designation at issue in this appeal. The certified copy should be sealed with the corporate seal and signed by the mayor and the chief administrative officer.²

Ministerial approval. The record should contain a copy of any ministerial approval necessary to make effective the Heritage Preservation Bylaw under which the City purported to issue the designation at issue in this appeal.

Closed meetings and legal advice. The record contains references to closed meetings and to legal advice. But the City has not indicated whether it has withheld from the record any information on the basis either that it was discussed at a closed meeting or that it is privileged. If the City has withheld information on one or either of these bases, the City should disclose its decision to withhold so that we can determine whether to challenge that decision.


Preliminary Issues

A review of the record reveals at least two potential preliminary issues. The first is whether there was a valid delegation of ministerial authority under the *Heritage Places Protection Act*. The second is whether, if there was such a delegation, that delegation is broad enough to encompass the designation under appeal. It may be appropriate to address these issues in a preliminary hearing. The City, as the purported delegate, must bear the burden of proving the delegation.

We will look forward to hearing from the Commission and the parties regarding next steps.

Yours truly,

Stewart McKelvey



Curtis Doyle

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² MGA, s 124.