

Luke Weiler

[address redacted]
Guelph, ON

October 21, 2021

Mayor Cam Guthrie;
Members of Guelph City Council
City of Guelph
1 Carden Street
Guelph, ON N1H 3A1

RE: Draft Council Meeting Minutes - September 30, 2021

Dear Mayor Guthrie and members of council:

I am writing to advise that there is an error in the draft minutes of the open council meeting held September 30, 2021.

The draft minutes available on the city's website as of October 21 at 5:00 p.m record the suspension of the procedural by-law as follows:

*That Section 5.8 (a) to (f), inclusive, and (i) of the City of Guelph
Procedural By-law be suspended.*

This is in error. It does not record the decision made by council on September 30. Council should amend the minutes to record the motion which was duly approved by council. That motion read as follows:

*That Section 5.8 (a) to (g), inclusive, and (i) of the City of Guelph
Procedural By-law be suspended.*

You can confirm this by reviewing the recording of the meeting. The motion in writing was provided at the 5:22 mark on the video. A screen shot is included for reference.

The inclusion of 5.8(g) is important, as it is the subsection of the procedural by-law that requires a 2/3rds majority vote of the whole of council on a Motion to Reconsider. Subsection 5.8(g) was suspended by council on September 30 shortly before council voted on just such a Motion to Reconsider. This makes it material to the record.

I hope that this is an oversight and that this change will be made without controversy. If you agree, you can probably stop reading this letter now. I am concerned, however, that the omission may be intentional, based on remarks made in the meeting of October 6, 2021. Those remarks, recorded in the draft minutes of *that* meeting, read:

Stephen O'Brien, City Clerk, provided a summary of the procedure for Council's reconsideration of motions, the super majority vote requirements of nine affirmative votes for suspension of Procedure By-Law rules and reconsiderations, and recognized there was an **incorrect reference** in the displayed motion to suspend the rules at the September 30th Special City Council Meeting and **he provided verbal clarification** to Council at the September 30th meeting that nine affirmative votes were required to reconsider a motion. Mr. O'Brien stated that displayed motions are not the formal record of the actions of Council, but rather a tool to support Council's considerations and that, **minutes are prepared based on the totality of the meeting and the rulings of the Chair**. Mr. O'Brien stated that on September 30, the Chair declared that the vote count was seven-four, the **motion to reconsider was defeated, as it did not meet the super majority requirements of nine votes and the minutes have been prepared based on the Chair's ruling** at that meeting. [All emphasis mine]

I am concerned that this reasoning may also be why 5.8(g) has been removed from the draft minutes of September 30. If so, I believe this omission is incorrect.

I see four principal problems with the reasoning in the above remarks.

Firstly, the plain text of the motion was before council. It was duly moved, seconded, and carried by the appropriate vote. For you to approve minutes which do not reflect what actually transpired at a meeting would be ahistorical and problematic. It would invite argument in the future on what motions "really mean" notwithstanding their clear wording.

Secondly, I read the phrase "incorrect reference" as a euphemism for "someone made an error when writing the language council then voted to adopt". If this is the case, such an error was not acknowledged or drawn to council's attention at the September 30 meeting (either before or after the vote). This statement also ignores the rule of democratic decision-making that a motion, once made, belongs to the assembly - not the proponent. 4.10(a) of Guelph's Procedural By-Law restates this rule.

Thirdly, I do not agree "verbal clarification" was provided to council. I have reviewed the video of the meeting in question. As far as I can tell, staff only addressed the question of vote requirements once. This can be found between 4:00 and 4:35 and reads:

"That's correct mayor, best to do that now. Waive rules of procedure, especially as it relates to reconsideration of council's decisions. That can be done now. It does require a 2/3rds majority of the whole of council, so that is 9 members of council, in any situation, that's also with respect to waiving rules and reconsiderations, and then the only other thing I would mention is that following that, votes can be made as just a traditional majority of members."

I do not find this statement clear. I think a listener hearing this advice would understand: "A motion to waive rules of procedure requires a two-thirds majority of the whole of council, but following that, votes are made as usual with a majority." There could be other readings but to say this is simply to highlight the equivocal structure of the statement. I am

quite troubled by the claim that a confusing and equivocal statement like this may undo the stated will of council.

Finally, there was no “ruling of the chair”. As far as I can tell, the chair addresses the vote requirement only once, just before calling the vote. The chair incorrectly stated the vote requirement as being 2/3rds of the whole of council then proceeded directly to count votes. It seems clear that at least one councillor realized an error had been made and attempted to obtain the floor to address this afterwards, but they were not given the chance to speak before the meeting was ended.

The chair was not asked to make a ruling. He did not make a ruling. With respect to the chair, he made a mistake (it happens). There is no need to elevate an error by mislabelling it as a “ruling”. It would be offensive to the principles of democracy if a simple technical error made by the presiding officer could undo the stated will of council.

This is a great deal of time to spend on a single error in the minutes, but it is important to have a proper record. If this request is controversial, you should take that as a sign that this is a bigger issue and that council must act appropriately on this.

4.10(c) of the Procedural Bylaw requires that motions be in writing. This is to avoid after-the-fact disagreements on what decisions have been taken. The motion to suspend the procedural bylaw, including 5.8(g), was supplied to council in writing. It was read by the chair, who although he misspoke as he read the motion, still included the (g). It was moved and seconded, and after deliberation, was adopted by unanimous vote. As this was a motion by council to suspend its regular rules and control its own processes, it was a very important motion indeed.

While it may be true that minutes can be amended to correct obvious errors, this is not the case. Council should only approve a record which correctly records the decisions it made, not one that substitutes decisions that people would now prefer had been made.

You may now be saying to yourself, “Well, this all sounds fine, but what is the point?” To this I would say, several mistakes appear to have been made on September 30. Those mistakes, while initially minor, resulted in significant consequences. It appears to me that they were so serious that they resulted in the need to hold yet another emergency meeting on October 6 to straighten them out. The effect of the minutes, as drafted, is to change the public record and to assign the responsibility for these errors to council itself - to say in effect, “Council did not know what it was doing on September 30, and council is to blame for the confusion and disorder that followed”. Having watched both meetings, I do not believe this correctly reflects what happened.

Considering the controversial results of these meetings, the public dissatisfaction and allegations of broken process, and the seemingly unresolved questions about whether or not there was a breach of the *Heritage Act*, I think councillors would be wise to hesitate before agreeing to have such responsibility assigned to themselves.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Luke Weiler', with a long horizontal flourish extending to the right.

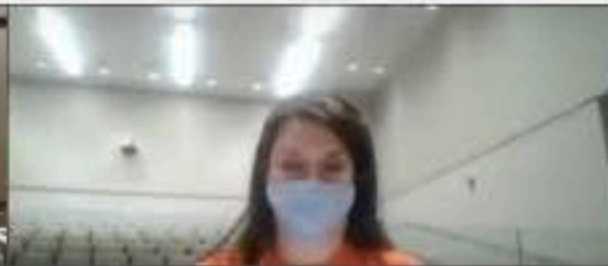
Luke Weiler
Encl.



Stephen O'Brien



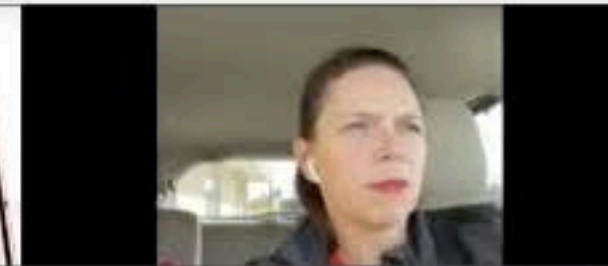
Mayor Cam Guthrie



DCAO Clack-Bush



Cllr. Goller



Cllr O'Rourke

Suspension of Procedural By-law Section 5.8 – Reconsideration of a Council Decision



That Section 5.8 (a) to (g), inclusive, and (i) of the City of Guelph Procedural By-law be suspended.

