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IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 30, 2022 Session

PAULINE MADRON v. CITY OF MORRISTOWN, ET AL.

Appeal from the Circuit Court for Hamblen County
No. 19CV083 Thomas J. Wright, Judge

No. E2021-01514-COA-R3-CV

This appeal concerns an alleged violation of the Open Meetings Act, Tenn. Code Ann. § 8-44-101, *et seq*. Pauline Madron ("Plaintiff") sued the City of Morristown, Mayor Gary Chesney, as well as Councilmembers Al A'Hearn, Chris Bivens, Robert Garrett, Tommy Pedigo, Kay Senter, and Ken Smith ("Defendants," collectively) in the Circuit Court for Hamblen County ("the Trial Court").[1] Plaintiff alleged that the city's public notice of a July 12, 2019 special meeting to exceed the certified tax rate was inadequate. Plaintiff and Defendants filed crossing motions for summary judgment. The Trial Court granted Defendants' motion for summary judgment with respect to Plaintiff's Open Meetings Act claim. Plaintiff appeals, arguing that the city's notice that it intended to exceed the certified tax rate was mere jargon that did not reasonably inform the public of the purpose of the special meeting or the action to be taken. In response, Defendants argue that Plaintiff's Open Meetings Act claim is moot as it arises out of a property tax rate that was passed in fiscal year 2019-2020, which lapsed before this matter was heard. Alternatively, Defendants contend that, while most people may not understand the intricacies of city finances, most people do understand what "exceed" and "tax rate" mean. While Plaintiff's claim is moot, it warrants resolution nevertheless. We hold that the city's public notice of the July 12, 2019 special meeting was adequate. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

D. MICHAEL SWINEY, C.J., delivered the opinion of the court, in which JOHN W. MCCLARTY and KRISTI M. DAVIS, JJ., joined.

Linda Catron Noe, Knoxville, Tennessee, for the appellant, Pauline Madron.

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[1] Defendant Chris Bivens later was dismissed. Plaintiff raises no issues concerning the dismissal of Chris Bivens.

Courtney E. Read, Knoxville, Tennessee, for the appellees, the City of Morristown, Gary Chesney, Al A'hearn, Robert Garrett, Tommy Pedigo, Kay Senter, and Ken Smith.

OPINION

Background

In July 2019, Plaintiff sued Defendants in the Trial Court alleging that the City of Morristown's public notice of a July 12, 2019 special meeting of the city council was inadequate. In August 2019, Defendants filed an answer in opposition. In September 2019, Defendants filed a motion for summary judgment. In August 2020, Plaintiff filed a motion for leave to amend her complaint. The Trial Court granted Plaintiff's motion. In her amended complaint, Plaintiff reasserted her earlier allegations regarding the alleged deficiency of notice and asserted that Defendants violated their regular order of business in failing to allow citizen comment on agenda items at the July 12, 2019 special meeting in violation of city ordinance 1-206. In October 2020, Defendants filed an answer in opposition to Plaintiff's amended complaint.

In March 2021, Plaintiff filed a motion for summary judgment, in addition to her response to Defendants' motion for summary judgment. In July 2021, Plaintiff and Defendants filed their joint stipulated statement of undisputed facts for purposes of the Trial Court ruling on their crossing motions for summary judgment. The parties agreed on the following facts:

> 1. The City of Morristown passed its annual budget ordinance (Ordinance No. 3633) on second reading on June 18, 2019 in which a property tax rate of $1.50 per $100 assessed property value was set.
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> 2. The Tennessee Comptroller of the Treasury sent a letter to the Mayor of the City of Morristown in late May of 2019 for tax year 2019 notifying the City of the certified (equalized) property tax rate. In this letter, the Tennessee Comptroller of the Treasury explained that the City may choose to exceed the certified (equalized) property tax rate.
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> 3. The Defendants were not made aware of the letter from the Tennessee Comptroller of the Treasury until early July of 2019.
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> 4. Until discovering the letter from the Tennessee Comptroller of the Treasury in early July of 2019, no one at the City of Morristown was aware of the reappraisal of properties located in the City of Morristown that are part of Jefferson County and the certified or equalized tax rate as determined by the State for those properties.

5. On July 2, 2019, Connie Sands with the Tennessee Comptroller of the Treasury sent an email to Assistant City Administrator Joey Barnard stating, in part, "Attached is a sample of notice of intent to exceed the tax rate and the documentation mailed earlier to the Mayor."

6. The Notice of Intent attached to Ms. Sands July 2, 2019, email and provided to Mr. Barnard stated "NOTICE OF INTENT TO EXCEED CERTIFIED TAX RATE" and the body of the Notice stated "The Town of Kenton will conduct a public hearing on ____ at _____ p.m. on the city's intent to exceed the certified (tax neutral) property tax rate following a recent property reappraisal. This public hearing will be held at ____. [*Optional*: The certified tax rate as defined by T.C.A. § 67-5-1701 is $1.07 (Obion)/$1.17 (Gibson) per $100 of assessed valuation. The City's proposed FY 2003 budget. If adopted, will require a proposed tax levy of $_____ per $100 of assessed valuation.]

7. On July 3, 2019, Assistant City Administrator Joey Barnard sent an email reply to Ms. Sands asking: "To clarify, in the advertisement the statement of the rate is optional, correct?"

8. On July 3, 2019, Ms. Sands responded, "Correct, as long as it is stated your intent to exceed the certified tax rate."

9. The Mayor and City Council decided to hold a special called meeting on July 12, 2019 for the purpose of voting on an ordinance, establishing a property tax rate exceeding the certified property tax rate.

10. Notices were submitted to the *Citizen Tribune* newspaper on July 3, 2019 to be published in the *Citizen Tribune* on July 5, 2019.

11. One such notice stated "the City Council of the City of Morristown, Tennessee will hold a 'Special Called' Meeting on Friday, July 12th at 9:00 am in the City Council chambers at the City Center, 100 West First North Street, Morristown, TN. Agenda: The City's intent to exceed the certified (tax neutral) property tax rate following recent property reappraisal."

12. The other pertinent notice appearing in the *Citizen Tribune* newspaper on July 5, 2019 stated: "NOTICE OF INTENT TO EXCEED CERTIFIED TAX RATE The City of Morristown will conduct a public hearing on Tuesday, July 16, 2019 at 5:00 pm on the city's intent to exceed the certified (tax neutral) property tax rate following a recent property reappraisal. This public hearing will be held at _in the City Council Chambers at the City Center, 100 West First North Street, Morristown, TN."

13. On July 5, 2019, the notice of the July 12, 2019 special called City Council Meeting was also posted on the City events calendar.

14. The detail of the posting on the City Events Calendar of the July 12, 2019 special called City Council Meeting provided: "A Special Called

Council meeting will be held July 12th at 9 am in the Council Chambers. Agenda item to be addressed will be the Adopted Tax Rate on 1st Reading. A second reading and public hearing will be held at the regularly scheduled council meeting on July 16th at 5 pm."

15. The notice of the July 12, 2019 special called City Council Meeting was also posted on the bulletin board in the rotunda of the City Center on July 5, 2019.

16. The notice of the July 12, 2019 special called City Council meeting on the bulletin board set forth: "The City Council of the City of Morristown, Tennessee will hold a "Special Called Meeting on Friday, July 12th at 9:00 a.m. in the City Council chambers at the City Center, 100 West First North Street, Morristown, TN. Agenda: Adopting the Tax Rate on Frist [sic] Reading."

17. A notice of the public hearing to take place on July 16, 2019 on the city's intent to exceed the certified (tax neutral) property tax rate was also posted on the bulletin board in the rotunda of the City Center on July 5, 2019.

18. The notice on the bulletin board provided: "NOTICE OF INTENT TO EXCEED CERTIFIED TAX RATE The City of Morristown will conduct a public hearing on Tuesday, July 16, 2019 at 5:00 pm on the city's intent to exceed the certified (tax neutral) property tax rate following a recent property reappraisal. This public hearing will be held at _in the City Council Chambers at the City Center, 100 West First North Street, Morristown, TN."

19. The agenda for the July 12, 2019 special called meeting set forth as follows:

1. CALL TO ORDER
Mayor Gary Chesney
2. ROLL CALL
3. NEW BUSINESS
3-a. Introduction and First Reading of Ordinances
1.Ordinance No. ___
An Ordinance Setting the Tax Rate At $1.50 for the Fiscal Year 2019-2020
{Public Hearing July 16, 2019}
4. ADJOURN

20. During the July 12, 2019 special called meeting, City Administrator and City Recorder Tony Cox explained why City Council needed to consider the tax rate for fiscal year 2019-2020 again. City Administrator and City Recorder Tony Cox explained that the proposed City tax rate of $1.50 exceeded the certified or equalized rate for the properties

located in the City that are part of Jefferson County that were recently reappraised[.]

21. The Mayor and City Council considered and voted on Ordinance No. 3639, establishing a tax rate of $1.50, exceeding the certified (equalized) tax rate on first reading during the July 12, 2019 special called meeting.

22. The minutes of the July 12, 2019, special called meeting reflect that a motion was made to approve Ordinance No. 3639 on the first reading of such Ordinance, which set the tax rate at $1.50 for the fiscal year 2019-2020, and such motion was seconded. The minutes also reflect that a public hearing was to be held as to this Ordinance on July 16, 2019.

23. The time and dates of the regularly scheduled City Council meetings are posted on the City events calendar no later than December of the previous year.

24. The times and dates of the regularly scheduled City Council meetings are also posted in the *Citizen Tribune* newspaper in December of the previous calendar year.

25. The 2019 regularly scheduled City Council meeting dates were advertised in the *Citizen Tribune* on December 9, 2018.

26. The agenda package for the July 16, 2019 regularly scheduled City Council meeting was posted on the City website on Friday, July 12th.

27. A printed copy of the agenda for the July 16, 2019 meeting was placed on a table outside of Council Chambers prior to the meeting.

28. The agenda for the July 16, 2019 City Council meeting included "Section 8-a Public Hearings & Adoption of Ordinances/Resolutions...7. Ordinance No. 3639 An Ordinance setting the Tax Rate at $1.50 for the Fiscal Year 2019-2020."

29. The proposed Ordinance No. 3639 itself was included in the agenda packet online for the July 16, 2019 City Council meeting.

30. Ordinance No. 3639 provides that the tax rate for fiscal year 2019-2020 "exceeded the equalized property tax rates as presented by the State of Tennessee, Board of Equalization."

31. At the July 16, 2019 regularly scheduled City Council meeting, Mayor Gary Chesney announced there would be a public hearing on Ordinance 3639 "that sets the tax rate at a dollar and half for fiscal year 2019-2020."

32. Mayor Chesney opened the floor to the public "for anyone who wished to be heard."

33. The public hearing on Ordinance 3639 occurred.

34. The Mayor and City Council voted on Ordinance No. 3639 on second and final reading following the public hearing on July 16, 2019.

> 35. The City's Ordinance 1-206 states that "At each meeting of the city council, the following regular order of business shall be observed, unless dispensed with by a majority vote of the members present:" [Emphasis added]. The Ordinance then lists 13 items comprising the regular order of business, including" (7) Citizen comments about agenda items only. City Council is required to hold regular meetings on the first and third Tuesdays of each month.
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> 36. City Council may hold "special meetings at the call of the mayor or two of the aldermen."
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> 37. The City adheres to ROBERT'S RULES OF ORDER.
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> 38. The City has consistently only dealt with specific items of business at special called meetings and not followed its regular order of business at specially called meetings of City Council, as seen in the minutes of these special called meetings over the last ten years on June 17, 2010, July 8, 2010, August 10, 2010, May 31, 2011, February 13, 2012, March 25, 2013, November 24, 2015, June 26, 2015, and July 12, 2019.
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> 39. The fiscal year for 2019-2020 for the City of Morristown began on July 1, 2019 and ended on June 30, 2020.

(Internal record citations omitted).

In July 2021, the Trial Court heard the parties' crossing motions for summary judgment. The Trial Court granted Defendants' motion for summary judgment as to the alleged violation of the Open Meetings Act in connection with the July 12, 2019 special meeting. However, the Trial Court denied Defendants' motion for summary judgment as to whether the city council violated Ordinance 1-206 by failing to follow its regular order of business at the July 12, 2019 special meeting. In turn, the Trial Court denied Plaintiff's motion for summary judgment related to Plaintiff's Open Meetings Act claim. The Trial Court did, however, grant Plaintiff's motion for summary judgment with respect to her claim regarding Ordinance 1-206. In its order, the Trial Court stated, in part:

> As an initial matter, plaintiffs withdrew any claim seeking to void the action of the City in setting the tax rate in question and confirmed that they are seeking only declaratory and injunctive relief at this point. Tenn. Code Ann. §8-44-106(c) requires a permanent injunction prohibiting further violations when an action is found to be in violation of the Open Meetings Act, Tenn. Code Ann. §8-44-101, *et seq*. In addition, counsel for plaintiff agreed during argument that there is no violation of the Open Meetings Act with regard to the Notice of the July 16, 2019 regular scheduled meeting of the city council. Finally, plaintiffs are not contesting the efficacy of the Notice under Tenn. Code Ann. §67-5-1702, which requires a published

notice of intent to exceed the certified tax rate prior to adopting a rate in excess of the certified rate.

The issues remaining are as follows:

1. Whether the Notice of the special meeting held July 12, 2019 was "adequate public notice" under Tenn. Code Ann. §8-44-103.
2. Whether the City Council violated its own Ordinance 1-206 by failing to follow the "regular order of business" at the Special Meeting held July 12, 2019.

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TOMA [Tennessee Open Meetings Act] Adequate Notice Requirement

The TOMA requires "adequate public notice" of any special meeting held by a covered governmental body. Tenn. Code Ann §8-44-103(b). In determining whether a governmental entity has provided "adequate public notice" the Court must consider the totality of the circumstances and decide whether the notice provided would "fairly inform the public [of the special meeting]." *Memphis Publishing Co. v. City of Memphis*, 513 S.W. 2d 511, 513 (Tenn. 1974).

The Court of Appeals provided a three prong test for evaluating the adequacy of a public notice of a special meeting in *Englewood Citizens for Alternate B v. Town of Englewood*, [No. 03A01-9803-CH-00098,] 1999 WL 419710 (Tenn. App. June 24, 1999). The three prong test is as follows:

> 1. Whether the notice was posted in a location where a member of the community could become aware of the notice.
> 2. Whether the notice reasonably describes the purpose of the meeting or the action proposed to be taken at the meeting.
> 3. Whether the notice was posted sufficiently in advance of the meeting in order to give citizens an opportunity to become aware of the meeting and to attend it.

Plaintiff in this case asserts that the City of Morristown ran afoul of the second prong of the three-prong *Englewood* test.

There is no question that the notices of the special meeting of the City of Morristown were posted sufficiently in advance (one week before the special meeting) to give members of the public an opportunity to become aware of and to attend the meeting. Nor can there be any question that the notices were published in locations where members of the community could become aware of the notices as they were placed in the local newspaper, on

the City events calendar on its website, and on the bulletin board in the rotunda of the City Center. Although the actual language used in each of those posted notices relating to the July 12 meeting differed slightly, each indicated that the special meeting related to setting the City property tax rate.

Plaintiff contends that the City should have included the language listed as "optional" in the sample notice provided to the City by the Tennessee Comptroller of the Treasury. In other words, plaintiff contends that the City should have stated in its notice regarding the special meeting that "the certified tax rate for the City of Morristown is $______. The City's proposed budget, if adopted, will require a proposed tax levy of $______," or words to that affect, along with the language indicating that the City intended to exceed the certified rate. Conceivably, plaintiff might also be satisfied with a notice regarding the special meeting agenda to the effect that "the City Council will consider setting the property tax rate at $1.50, an amount in excess of the certified (tax neutral) property tax rate following recent property reappraisal."

However, there is no legal precedent for requiring the level of specificity in a special meeting notice demanded by plaintiff in this case. It seems clear to the undersigned that each of the three notices posted by the City in connection with the July 12 special meeting indicated that the City Commission would be considering the property tax rate at the special meeting. Advising the public that the Commission would be meeting to consider the property tax rate is "adequate notice."

The most widely circulated notice would have been the one appearing in the newspaper and it specifically indicated that the City intended to "exceed the certified (tax neutral) property tax rate" at the special hearing. Plaintiff contends that the City was seeking to obscure the action to be taken at the special meeting, but the property tax rate of $1.50 was not something new. Indeed, considering the totality of the circumstances, the City had already publicly passed the $1.50 tax rate at its regular meeting in June, but they did so without knowing that the rate exceeded the certified rate. The City had already once publicly considered and passed the $1.50 tax rate and was not trying to sneak in a property tax increase. The City was simply ensuring compliance with requirements for exceeding the certified rate after a reappraisal, it was not changing course from its earlier adoption of a budget and tax rate.

By contrast, the Commission in *Englewood* was reconsidering "which alternative to endorse for Highway 411," a controversial construction project, but its public notice only indicated that it was to consider a "Letter to State concerning HWY 411." There was no indication they would be endorsing one alternative over the other or that they were going to "reconsider the issue

> of Highway 411's path." The City of Morristown was reconsidering its tax rate because it was found to be in excess of the certified rate and its notice listed the agenda of the Special Meeting as being the City's intent to exceed the certified property tax rate. The listed agenda in the notice was the exact purpose of the special meeting. It was not misleading under the totality of the circumstances.
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> **City Council Meeting Order of Business Requirements**
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> Plaintiff has also sought a declaration from the Court that the City violated its own Ordinance by failing to follow the Order of Business set forth in Ordinance 1-206….
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> ***
>
> This technical Ordinance violation declaration does not merit issuance of an injunction and ongoing monitoring of the Commission by this Court. The Commission is admonished to comply with Ordinance 1-206 at all Commission meetings or amend the Ordinance so it only applies to regular meetings.
>
> Finally, Plaintiff's argument that no public hearing was held on July 16, 2019 on the tax rate is without merit and will not be further discussed. Counsel for Plaintiff actually appeared at the Commission meeting on July 16 and spoke regarding the tax rate issue.
>
> All issues having been resolved through the competing motions, this action is DISMISSED with costs taxed to plaintiff.

(Internal record citations omitted).

In August 2021, Plaintiff filed a motion to alter or amend. In September 2021, Defendants filed a response in opposition. In November 2021, the Trial Court entered an order denying Plaintiff's motion to alter or amend. Plaintiff timely appealed to this Court.

Discussion

We restate and consolidate Plaintiff's issues on appeal into the following dispositive issue: whether the Trial Court erred in granting Defendants' motion for summary judgment and denying Plaintiff's motion for summary judgment regarding whether adequate public notice was given of the special meeting on July 12, 2019 under the Open Meetings Act.

Defendants raise the separate issue of whether Plaintiff's Open Meetings Act claim is moot.[2]

Regarding the standard of review for cases disposed of by summary judgment, the Tennessee Supreme Court has instructed:

> Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. We review a trial court's ruling on a motion for summary judgment de novo, without a presumption of correctness. *Bain v. Wells*, 936 S.W.2d 618, 622 (Tenn. 1997); *see also Abshure v. Methodist Healthcare–Memphis Hosp.*, 325 S.W.3d 98, 103 (Tenn. 2010). In doing so, we make a fresh determination of whether the requirements of Rule 56 of the Tennessee Rules of Civil Procedure have been satisfied. *Estate of Brown*, 402 S.W.3d 193, 198 (Tenn. 2013) (citing *Hughes v. New Life Dev. Corp.*, 387 S.W.3d 453, 471 (Tenn. 2012)).
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> [I]n Tennessee, as in the federal system, when the moving party does not bear the burden of proof at trial, the moving party may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the nonmoving party's claim or defense. We reiterate that a moving party seeking summary judgment by attacking the nonmoving party's evidence must do more than make a conclusory assertion that summary judgment is appropriate on this basis. Rather, Tennessee Rule 56.03 requires the moving party to support its motion with "a separate concise statement of material facts as to which the moving party contends there is no genuine issue for trial." Tenn. R. Civ. P. 56.03. "Each fact is to be set forth in a separate,

[2] Defendants also raise issues concerning whether Plaintiff waived any issues about the July 16, 2019 regularly scheduled meeting and whether notice of said meeting was adequate. Plaintiff mentioned that meeting in her arguments in her brief. However, Plaintiff did not identify any issue in her statement of issues concerning the July 16, 2019 regularly scheduled meeting. Furthermore, at oral argument, counsel for Plaintiff clarified that the only meeting at issue in this appeal is the July 12, 2019 special meeting. Defendants' issues concerning the July 16, 2019 meeting are not responsive to any issue Plaintiff actually raised in her statement of issues, nor do Defendants allege that the Trial Court erred. We therefore do not address Defendants' issues concerning the July 16, 2019 meeting as it is unnecessary to do so.

> numbered paragraph and supported by a specific citation to the record." *Id*. When such a motion is made, any party opposing summary judgment must file a response to each fact set forth by the movant in the manner provided in Tennessee Rule 56.03. "[W]hen a motion for summary judgment is made [and] . . . supported as provided in [Tennessee Rule 56]," to survive summary judgment, the nonmoving party "may not rest upon the mere allegations or denials of [its] pleading," but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, "set forth specific facts" *at the summary judgment stage* "showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co.* [*v. Zenith Radio Corp.*], 475 U.S. [574,] 586, 106 S. Ct. 1348 [89 L.Ed.2d 538 (1986)]. The nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party. If a summary judgment motion is filed before adequate time for discovery has been provided, the nonmoving party may seek a continuance to engage in additional discovery as provided in Tennessee Rule 56.07. However, after adequate time for discovery has been provided, summary judgment should be granted if the nonmoving party's evidence *at the summary judgment stage* is insufficient to establish the existence of a genuine issue of material fact for trial. Tenn. R. Civ. P. 56.04, 56.06. The focus is on the evidence the nonmoving party comes forward with at the summary judgment stage, not on hypothetical evidence that theoretically could be adduced, despite the passage of discovery deadlines, at a future trial.

Rye v. Women's Care Ctr. of Memphis, MPLLC, 477 S.W.3d 235, 250, 264-65 (Tenn. 2015).

We begin with Defendants' issue of whether Plaintiff's Open Meetings Act claim is moot. Tenn. Code Ann. § 8-44-105 (2016) provides: "Any action taken at a meeting in violation of this part shall be void and of no effect; provided, that this nullification of actions taken at such meetings shall not apply to any commitment, otherwise legal, affecting the public debt of the entity concerned." Defendants argue that Plaintiff's Open Meetings Act claim is moot because it arises out of a property tax rate that was passed in fiscal year 2019-2020, which lapsed before this matter was heard.[3] For her part, Plaintiff

[3] In support of their argument on mootness, Defendants cite among other cases *Shelby Cnty. Bd. of Educ. v. Tenn. Secondary School Athletic Ass'n*, No. W2020-00099-COA-R3-CV, 2021 WL 755121 (Tenn. Ct. App. Feb. 26, 2021), *no appl. perm. appeal filed.* However, that opinion was designated a Memorandum Opinion pursuant to Rule 10 of the Rules of the Tennessee Court of Appeals, and may not be cited or relied upon in any unrelated case. We, therefore, do not consider it.

stated at oral argument that she is not seeking to have the tax rate voided. Rather, she wants an injunction and court order subjecting Morristown to judicial supervision for a period of one year so as to prevent any more alleged violations of the Open Meetings Act.

Regarding justiciability and mootness, our Supreme Court has discussed as follows:

> This Court must first consider questions pertaining to justiciability before proceeding to the merits of any remaining claims. *See UT Med. Grp., Inc. v. Vogt*, 235 S.W.3d 110, 119 (Tenn. 2007) (noting that justiciability is a threshold inquiry). The role of our courts is limited to deciding issues that qualify as justiciable, meaning issues that place some real interest in dispute, *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 838 (Tenn. 2008), and are not merely "theoretical or abstract," *Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009). A justiciable issue is one that gives rise to "a genuine, existing controversy requiring the adjudication of presently existing rights." *Vogt*, 235 S.W.3d at 119. Justiciability encompasses several distinct doctrines, two of which are at issue in this appeal—mootness and standing.
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> **1. Mootness**
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> To be justiciable, an issue must be cognizable not only at the inception of the litigation but also throughout its pendency. *Norma Faye Pyles Lynch Family Purpose LLC*, 301 S.W.3d at 203-04. An issue becomes moot if an event occurring after the commencement of the case extinguishes the legal controversy attached to the issue, *Lufkin v. Bd. of Prof'l Responsibility*, 336 S.W.3d 223, 226 (Tenn. 2011), or otherwise prevents the prevailing party from receiving meaningful relief in the event of a favorable judgment, *see Knott v. Stewart Cnty.*, 185 Tenn. 623, 207 S.W.2d 337, 338 (1948); *Cnty. of Shelby v. McWherter*, 936 S.W.2d 923, 931 (Tenn. Ct. App. 1996). This Court has recognized a limited number of exceptional circumstances that make it appropriate to address the merits of an issue notwithstanding its ostensible mootness: (1) when the issue is of great public importance or affects the administration of justice; (2) when the challenged conduct is capable of repetition and evades judicial review; (3) when the primary dispute is moot but collateral consequences persist; and (4) when a litigant has voluntarily ceased the challenged conduct. *Lufkin*, 336 S.W.3d at 226 n. 5 (citing *Norma Faye Pyles Lynch Family Purpose LLC*, 301 S.W.3d at 204).

City of Memphis v. Hargett, 414 S.W.3d 88, 96 (Tenn. 2013). "Determining whether a case is moot is a question of law." *Alliance for Native Am. Indian Rights in Tennessee, Inc. v. Nicely*, 182 S.W.3d 333, 338-39 (Tenn. Ct. App. 2005) (citations omitted).

With regard to the public interest exception to mootness, our Supreme Court has provided further guidance, stating:

> [U]nder "exceptional circumstances where the public interest clearly appears," *Dockery v. Dockery*, 559 S.W.2d 952, 955 (Tenn. Ct. App. 1977), the appellate courts may exercise their judgment and discretion to address issues of great importance to the public and the administration of justice. *State v. Rodgers*, 235 S.W.3d [92,] 97 [(Tenn. 2007)]. To guide their discretion, the courts should first address the following threshold considerations: (1) the public interest exception should not be invoked in cases affecting only private rights and claims personal to the parties; (2) the public interest exception should be invoked only with regard to "issues of great importance to the public and the administration of justice"; (3) the public interest exception should not be invoked if the issue is unlikely to arise in the future; and (4) the public interest exception should not be invoked if the record is inadequate or if the issue has not been effectively addressed in the earlier proceedings.

Norma Faye Pyles Lynch Family Purpose LLC v. Putnam Cnty., 301 S.W.3d 196, 210-11 (Tenn. 2009) (footnotes omitted). This Court has addressed the "'capable of repetition yet evading review'" exception as follows:

> The courts invoke the "capable of repetition yet evading review" exception to the mootness doctrine only in exceptional cases. Parties requesting a court to invoke the exception must demonstrate (1) a reasonable expectation that the official acts that provoked the litigation will occur again, (2) a risk that effective judicial remedies cannot be provided in the event that the official acts reoccur, and (3) that the same complaining party will be prejudiced by the official act when it reoccurs. A mere theoretical possibility that an act might reoccur is not sufficient to invoke the "capable of repetition yet evading review" exception. Rather, "there must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will recur involving the same complaining party." *Murphy v. Hunt*, 455 U.S. 478, 482, 102 S. Ct. 1181, 1184, 71 L.Ed.2d 353 (1982); 1 RONALD D. ROTUNDA & JOHN E. NOWAK, TREATISE ON CONSTITUTIONAL LAW § 2.13, at 37 (3d ed. Supp. 2005).

Alliance for Native Am. Indian Rights in Tennessee, Inc., 182 S.W.3d at 339-40 (footnotes omitted).

Given that the 2019-2020 fiscal year lapsed before this matter was heard, Plaintiff's Open Meetings Act claim is indeed moot. The tax rate could not be voided at this stage even if the city's public notice was inadequate, as doing so would affect the public debt of the entity concerned. *See* Tenn. Code Ann. § 8-44-105 (2016). However, Plaintiff acknowledges as much and is not seeking to void the tax rate. She instead seeks injunctive relief going forward. As set out above, even a moot claim may be adjudicated under certain circumstances. Of the four exceptional circumstances set out in *City of Memphis v. Hargett*, exceptions (3) concerning whether collateral consequences persist and (4) concerning whether a litigant has voluntarily ceased the challenged conduct are not of particular moment here. On the other hand, exceptional circumstances (1) concerning whether the matter is of great public importance and (2) concerning whether the challenged conduct is capable of repetition and evades judicial review are both applicable.

To begin with, the Open Meetings Act itself reflects the General Assembly's position that adequate notice of public meetings is of great public importance. Plaintiff alleged that, contrary to the Open Meetings Act, public notice of a specially called city council meeting was inadequate. There are evident, and important, public implications stemming from citizens not being informed in advance about a meeting wherein a decision will be made concerning their tax rate, as is alleged here. In addition, the challenged conduct is capable of repetition and evading judicial review. As this case demonstrates, lawsuits take time to unfold. The challenged conduct at issue could occur again and again with the fiscal year lapsing before the matter can be resolved in court. In light of these considerations, we hold that Plaintiff's Open Meetings Act claim warrants resolution notwithstanding its mootness.

We next address whether the Trial Court erred in granting Defendants' motion for summary judgment and denying Plaintiff's motion for summary judgment regarding whether adequate public notice was given of the special meeting on July 12, 2019 under the Open Meetings Act. In her brief, Plaintiff argues, in part:

> [T]he Notice of the July 12th special called meeting described the meeting "agenda" in cryptic legalese using terms such as certified (tax neutral) tax rate and an intent to exceed the certified tax rate while neither the certified tax rate ("CTR") nor any proposed new rate were stated. As a result of what was stated in the notice coupled [with] what was omitted from the notice, the notice was largely meaningless jargon to the average member of the public.

Thus, Plaintiff contends that the city's public notice of the July 12, 2019 special meeting was inadequate. To determine whether Plaintiff is correct, we review the pertinent law. The Open Meetings Act states, in part:

> (a) **NOTICE OF REGULAR MEETINGS.** Any such governmental body which holds a meeting previously scheduled by statute, ordinance, or resolution shall give adequate public notice of such meeting.
> (b) **NOTICE OF SPECIAL MEETINGS.** Any such governmental body which holds a meeting not previously scheduled by statute, ordinance, or resolution, or for which notice is not already provided by law, shall give adequate public notice of such meeting.
> (c) The notice requirements of this part are in addition to, and not in substitution of, any other notice required by law.

Tenn. Code Ann. § 8-44-103 (2016).

The statute does not specify with precision what constitutes "adequate" public notice. Our Supreme Court has addressed the meaning of adequate public notice as follows:

> We think it is impossible to formulate a general rule in regard to what the phrase "adequate public notice" means. However, we agree with the Chancellor that adequate public notice means adequate public notice under the circumstances, or such notice based on the totality of the circumstances as would fairly inform the public. In the abstract this is a vague concept. But when applied in a real situation or a given set of facts and circumstances, we doubt that such a variation of opinion would exist as to promote confusion. If we were dealing with a penal statute the Act might require more specificity to be constitutional. But since we are required to resolve any doubts in favor of, rather than against, the constitutionality of the Act, *Black v. Wilson*, 182 Tenn. 623, 188 S.W.2d 609 (1945), and because we are dealing with a remedial statute, we find the phrase "adequate public notice" not unconstitutionally vague.

Memphis Publ'g Co. v. City of Memphis, 513 S.W.2d 511, 513 (Tenn. 1974).

In *Englewood Citizens For Alternate B v. Town of Englewood*, No. 03A01-9803-CH-00098, 1999 WL 419710 (Tenn. Ct. App. June 24, 1999), *no appl. perm. appeal filed*, we considered whether a town's public notice of a special meeting was adequate where the meeting concerned which route among competing alternatives a highway should take. We articulated a three-pronged test:

> In order to qualify as adequate public notice under T.C.A. 8-44-103(b), this Court finds that the notice given by the Town of Englewood must satisfy a three-prong test. First, the notice must be posted in a location where a member of the community could become aware of such notice. Second, the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken. And, third, the notice must be posted at a time sufficiently in advance of the actual meeting in order to give citizens both an opportunity to become aware of and to attend the meeting.

Englewood, 1999 WL 419710, at *2. In the instant case, Plaintiff argues that the Trial Court erred in its analysis specifically as to the second prong of the *Englewood* test. Plaintiff contends that the public notice of the July 12, 2019 meeting "did not reasonably describe the purpose of the meeting nor did it describe the known action proposed to be taken." In *Englewood*, we held that the public notice therein was inadequate, stating:

> In order for the notice given by the town to meet the second prong of the adequate notice inquiry, the contents of the notice must reasonably describe the purpose of the meeting or the action proposed to be taken. In this instance, the contents of the Town of Englewood's notice read:
>
> 1. Letter to State concerning HWY 411
> 2. Police Salary Supplement pay
> 3. City Recorder.
>
> We find that under the circumstances presented the content of this notice was so lacking that a person of reasonable intelligence would not adequately be informed by the cryptic statement "Letter to State concerning HWY 411." Instead, a more substantive pronouncement stating that the commission would reconsider which alternative to endorse for Highway 411 should have been given.
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> We are not the first appellate court in this state to address the issue of the content of the notice given. The Western Section of this Court was faced with a claim of inadequate notice under the Sunshine Act brought against the Paris Special School District. *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432 (Tenn. Ct. App. 1990). The facts of that case dealt with the PSSD adopting a plan of clustering an entire grade for three school districts into one school. There was intense public controversy over whether or not to accept the plan. A special meeting was held in order for the PSSD to deliberate the issue of clustering, but the public notice given for the meeting

failed to mention that clustering would be discussed extensively. In ruling on the issue, the Court wrote:

> We believe, however, that under these circumstances, the public had a right to be informed that the issue of clustering would be extensively discussed at the Ken-Lake meeting. If the major issues discussed at the meeting were actually those stated in the newspaper article quoted above, perhaps there would be no interest in traveling to Kentucky for a two-day meeting. On the other hand, if the general public was aware that the major issue was not as reported in the newspaper, but rather was the issue of clustering, there would likely be more interest in attending. Certainly "adequate public notice under the circumstances" is not met by [a] misleading notice.

Neese, 813 S.W.2d at 435-36.

We agree with the Western Section that the general public must be made aware of the issues to be deliberated at the special meeting through notice designed to inform the public about those issues. The notice given by the Town of Englewood is inadequate under the circumstances because it does not reasonably describe the purpose of the meeting or the action to be taken with respect to the letter to the state. The notice is bereft of any explanation of what that letter would consist of or the fact that the town commissioners had decided to reconsider the issue of Highway 411's path. A misleading notice is not adequate public notice under these circumstances. *See Neese*, 813 S.W.2d at 436. We hold that with respect to the content of the notice provided by the town, adequate notice was not provided to the community members of Englewood.

Englewood, 1999 WL 419710, at *3-4.

In a more recent opinion, *Fisher v. Rutherford Cnty. Reg'l Planning Comm'n*, No. M2012-01397-COA-R3-CV, 2013 WL 2382300 (Tenn. Ct. App. May 29, 2013), *cert. denied*, 134 S. Ct. 2707 (2014), we further explained adequate public notice, this time discussing the difference in the level of detail required for notice of special meetings as opposed to that required for notice of regular meetings:

> In *Memphis Publishing Company v. City of Memphis*, 513 S.W.2d 511 (Tenn. 1974), our Supreme Court adopted the following test for determining what constitutes adequate public notice: "[A]dequate public notice means adequate public notice under the circumstances, or such notice based on the

> totality of the circumstances as would fairly inform the public." *Memphis Pub'g*, at 513. Most of the subsequent cases have involved specially called meetings. *See Englewood Citizens For Alternate B v. Town of Englewood*, No. 03A01-9803-CH-00098, 1999 WL 419710, at *2 n.1 (Tenn. Ct. App. June 24, 1999) (announcing three-prong test for assessing sufficiency of notice, but applicable only to special meetings); *Kinser v. Town of Oliver Springs*, 880 S.W.2d 681 (Tenn. Ct. App. 1994); *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d 432, 435 (Tenn. Ct. App. 1990).
>
> ***
>
> Under the "totality of the circumstances" in the present case, was the notice provided by the county sufficient to "fairly inform the public"? *Memphis Pub'g*, at 513. In light of the available precedents and the language of the OMA itself, we conclude that the notice in this case was adequate. Tennessee Code Annotated section 8-44-103 requires notice of the meeting itself and does not speak to notice of the content of the meeting.[4] Cases requiring notice of items to be discussed at a meeting have all involved special meetings. We decline to adopt the trial court's reasoning that issues of public importance require notice of meeting content, even for regular meetings. Such requirements have been imposed only with regard to special meetings.[5] *See Englewood*, 1999 WL 419710, at *3; *Neese*, 813 S.W.2d at 435. In this case, the county provided notice of its regular meeting in the same manner used with respect to all other site plans. At that meeting, the planning commission considered a number of agenda items and voted on multiple issues.

Fisher, 2013 WL 2382300, at *5-6 (footnotes in original but renumbered).

The aforementioned court decisions show that adequate public notice means, at bottom, that the notice at issue fairly informs the public under the totality of the circumstances. We emphasize that the Open Meetings Act requires "adequate" public notice. It does not require perfect or utterly exhaustive notice, even for special meetings. Here, Plaintiff asserts that the public notice of the July 12, 2019 special meeting should

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[4] We note that the legislature could have defined "adequate public notice," but did not and has not since the statute was enacted in 1974. Had the legislature intended to require notice of the agenda for every meeting, whether regular or special, it could easily have said so at any time during the last 39 years. Other states have. *See, e.g.*, Ariz.Rev.Stat. Ann. § 38.431.02(G); Colo.Rev.Stat. Ann. § 24-6-402(c).

[5] A requirement of notice of the agenda of special meetings makes sense because one can assume items requiring a special meeting are of particular importance and, therefore, deserving of more extensive notice.

have included the optional language furnished by the Tennessee Comptroller to the Defendants. However, Plaintiff does not cite to any provision of the Open Meetings Act or any Tennessee caselaw demanding that level of specificity. As counsel for Defendants stated at oral arguments, while many people do not understand the intricacies of city finances, they do know what "exceed" and "tax rate" mean. That was the purpose of the special meeting. Any member of the public concerned about, or interested in, a question concerning their tax rate was placed on alert. Adequate notice is just that—adequate, as opposed to perfect or even just better notice. That the city opted to not use optional additional language furnished by the Tennessee Comptroller does not make the notice any less adequate. Optional connotes available, but not vital. Indeed, the public was fairly informed as to the purpose of or action to be taken at the July 12, 2019 special meeting without this optional language.

While Plaintiff asks for an injunction to monitor the city, it is unclear what there would be for a court to monitor. The city relied upon adequate language furnished by the Tennessee Comptroller. Although Plaintiff calls the language furnished by the Tennessee Comptroller mere jargon, that characterization does not render the language inaccurate or incomprehensible. What was outlined in the Tennessee Comptroller's notice language was, in fact, what the city intended to do which was to take action to exceed the certified (tax neutral) property tax rate. That it was couched in so-called jargon does not *ipso facto* render it inadequate or misleading. The essential elements of what was to take place at the special meeting were stated. What is more, the city already had passed a $1.50 tax rate in June 2019. The issue in July 2019 concerned exceeding the certified tax rate following a reappraisal. Thus, new figures were not sprung on the public. We hold that the city's public notice of the July 12, 2019 special meeting was adequate under the totality of the circumstances. There is no genuine dispute of material fact necessitating trial. Upon our *de novo* review, the Trial Court did not err in granting summary judgment to Defendants with respect to Plaintiff's Open Meetings Act claim. We affirm the judgment of the Trial Court.

Conclusion

The judgment of the Trial Court is affirmed, and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Pauline Madron, and her surety, if any.

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D. MICHAEL SWINEY, CHIEF JUDGE