Court of King's Bench of Alberta

Citation: Lehodey v Calgary(City), 2025 ABKB 8

Date:
Docket: 2401 08475
Registry: Calgary

Between:

Robert Lehodey, K.C., Wesley Twiss, Scott Rusty Miller, Patricia McCunn-Miller, Lisa Poole, Guy Buchanan, Robert Iverach, Flora Gillespie, Rod McKay, Jean McKay, Jim Dinning, Robert Rooney, Vernon Yu, Brian Felesky, David Lachapelle, Peter Cohos, Kim Cohos, David Forbes, John Schmal, Darlene Bruce, Kenneth Bruce, Stephen Lougheed, Mary Lougheed, Sam Kamis, Robert Merchant, Charlene Prickett, Roy Wright, Susan Wright, Christopher Ainscough, Jackson Stephens Allan, Marjorie Jean Allan, Shelley Anderson, Ray Antony, Devin Antony, Barbara Augustin, Paul Augustin, Peter Barker, Michael C. John Beamish, Brenda Beckedorf, Thomas Beckedorf, Julie Berdin, Robert Betton, Colleen Bezaire, George Bezaire, Robert Patrick Bietz, Diane Boettcher, John Bonnycastle, Mark Bowman, Pamela Bowman, Stephen Boucher, Janet Brenneman, Carl Brown, Cheryl Bulman, Matthew Campbell, Rebecca Chalk, Kirpaul Chatta, Keith Chatwin, Mohammed Chikaoui, Doreen Child, John Child, Peter Christopher, Mary Cochlan, Scott Cochlan, Cheryl Cohen, Derk Coslyn, Nicholas James Coughlan, Larissa Coughlan, Jason Cowles, Tara Cowles, Stuart Craig, Lisa McKean Crooks, Trevor Dalfort, Stuart Davie, Greg Davison, Barbara Denoon, Pritma Dhillon-Chatta, Keith Drebit, Calvin Duane, Francis Dunlop, Solange Dunn, George Duska, Nathan Edwards, Rachel Edwards, Jennifer Eisenberg, Jane Evans, Catherine Evamy, Robert Ferguson, Jan Fichtner, Laurence Fichtner, C.J. Fietz, Kimberly Fleming, Melissa Fleming, Charlotte Flood, Wayne Flood, Ian Follett, Nancy Follett, Harry Ford, Murlyne Fong, Kathryne Foster, Kathleen Fox, Shawn Freeman, John Daniel Fry, Lori Fry, Randall John Gingera, Scarlett Gingera, Ken Goldstein, Anson Gosin, Wendy Guidolin, Myra Alexis Haliburton, Hal Hamilton, Daniel Harper, Ross Hayes, Ronald Holeck, Catherine Harradence, Ross Hayes, Ronald Holeck, Robert Hornes, Alison Joan Hughes, Terri Illingworth, Jean Ireland, Cathy Jacobs, Diane James, Thomas Keenan, Steven Kelly, Ryun Kemey, Barbara King, Kenneth Ross King, Thalia Kingsford, Barbara Knechtel, Patricia Knowles, Shane Kuelker, Laura Labelle, Paul Lalli, Vanesa Lam, Yam Lam, Carmen Lambert, Martin Lambert, Margot Langdon, Stephen Lange, Christine Lange, Angela Lau, Nickolas Lau, Wendy Leonard, Eric Leslie, Karen Locke, Douglas Long, Nancy Long, Dana Lougheed, Alyssa Ly, Davin Macintosh, Autumn Malsbury, Chantal Marceau, Craig Marceau, Rosa Marceau, Margaret Markle, Terrance Markle, Judith Mastrmonaco, Arthur Matsui, Graham Mayr, Bruce McBean, Sanda McBean, Kim McBride, Rene McBride, Carol Lynn McDermid, Penelope McDermid, Jenny McDermid, David McDermid, Glen McDonald, Valeria McFarland, James McFarland, Matthew McIntyre, Malcom McKean, Lucas McKenzie, Richard McKenzie, Ian McLeod, Barbara McNamara, Glen McNamara, Doug

McNeil, Peter McPherson, Laura Davie-McQuitty, Cheryl Melosky, Robert Melosky, Ray Miller, Janis Morrison, Sally Mountjoy, Neil David Munro, James Murphy, Peter McPherson, Laura McQuitty-Davie, Cheryl Melosky, Ray Mills, Kim Murray, Deborah Neale, Donna Marie Ogston, Lori Oliver, Robert Oliver, Tracye Osler, John Osler, Thomas Oystrick, Janice Pasieka, James Paulson, Marguerite Paulsen, Patricia Peabody, Nadia Pelton, Brian Peterson, Carrie Phillips, Katherine Pinder, Thomas Pinder, Terry Poole, Richard Porter, Robert Porter, Susan Porter, Louis Pushelberg, John Purdy, Sheryl Purdy, Juan Qiao, Kaushik Rakhit, Beverly Rebmann, Ehrenfried Rebmann, John Rebmann, Mary Reichenbach, Douglas Rempel, Calvin Robb, Peter Robertson, James Rodger, Susanne Rohrlach, Denise Ross, Stephen Ross, Mary Schloss, Michelle Screpnechuk, Kevin Screpnechuk, Evonne Selk, Steve Shannon, Roger Shinkaruk, Mazhar Shaikh, Oralie Shearing, Hunter Shinkaruk, Patricia Shinkaruk, Melode Sigaud, Samuel Sigaud, Judy Sigler, Murray Sigler, Alan Silver, Marco Simonelli, Robynne Simonellis, Isaac Soo, Suzanna Spanier, Christine Spenceley, Thomas Spenceley, Toma Stamenov, Peter Stephens, Jill Sutherland, Robert Sutherland, Annalysa Tangier, Sheila Telford, Roger Thomas, John Thompson, John Thomson, Lynette Thomson, Lucas Tomei, Cendrine Tremblay, Richard Truran, Samuel Vadnai, Stephen Vadnai, Maria Valencia-Godinez, Amy Van Vliet, Kevin Van Vliet, Douglas Vincelli, Hong Wang, Deann Watson, Thomas Watson, Gregory Waslan, Elizabeth Weaver, Robert Weaver, David Wharton, Cornelia Wiebe, Craig Wiebe, Gina Wiebe, Michael Wilkes, Ronaye Willington, David Winter, Grayson Witcher, Yvonne Wolfe, Jillian Wyne, Barbara Zach, Xiaoli Zhang, Mary Rozsa De Coquet and Peter Williams

Applicants

- and -

The City of Calgary

Respondent

Reasons for Decision
of the
Honourable Justice Michael J. Lema

I. Introduction

[1] Aiming at increasing density, the City of Calgary rezoned virtually all low-density-zoned properties in the city – 311,570 properties overall.

[2] The wisdom of that change – i.e. whether it *should* have so rezoned -- is not at issue here.

[3] The focus is instead on:

1. whether the *Municipal Government Act*, RSA 2000, c M-26 [*MGA*] Ac authorized the City to make that change i.e. whether it *could* rezone that way;
2. whether the City was procedurally fair in so rezoning; and
3. whether a pro-change city councillor had a closed mind (i.e. was not open to persuasion) during the hearings and vote and, if so, whether that invalidated the amending bylaw.

[4] As explained below, the answers are:

1. the *MGA* empowered the City to enact the bylaw;
2. the City was procedurally fair in enacting it; and
3. the councillor was open to persuasion during the hearing.

[5] On statutory authority, the applicants assert that, per the "text, context, and purpose of the *Municipal Government Act*", when dividing Calgary into zoning districts the City had to discern each neighborhood's core characteristics, assign neighborhoods to zoning districts based on those characteristics, and decide on the permitted and discretionary uses for each district in light of those characteristics.

[6] However, the text (i.e. wording) of the *MGA* does not require that approach, even when understood in the context of its planning provisions and the *Act* overall. And neither does the *MGA*'s overall purpose or that of its planning provisions.

[7] In short, the applicants point to statutory signals that do not exist.

[8] Given the legislative nature of the new-bylaw process, the applicants received sufficient procedural fairness via notice of the proposed changes and an opportunity to provide input at the public hearing.

[9] On the third aspect, the applicants relied on questionable evidence of one councillor's pre-hearing statements. Even if the asserted statements were made, no evidence showed that any closed-mindedness continued at the bylaw hearing.

[10] All as explained further below.

II. Statutory authority

[11] Per the applicants:

> … i) [the Bylaw] is **inconsistent with the statutory scheme** of Part 17 of the *MGA*; ii) [it] is **inconsistent with the purposes** of [the *MGA*]; and iii) [the *MGA*] **precludes** adopting a redesignation bylaw through a **legislative process**. [Applicant's Brief [AB] at para 98]

[12] I examine each of these arguments in turn below.

[13] I first note the applicants did not challenge the City's positions that, per s. 191 *MGA*, the City has the power to amend any bylaw and that the "same consents or conditions or advertising requirements that apply to the passing of the original bylaw" apply equally to the amendment.

A. Alleged inconsistency with statutory scheme

1. Key provisions

[14] The applicants assert inconsistency with Part 17 *MGA* ("Planning and Development"), which includes land use (zoning).

[15] Per the applicants, "the fundamental premise of [Part] 17 is that land use designation will be **fact, sensitive, and context specific**. ... implying a blanket upzoning power into the *MGA* would **run against the text, purpose, and context of the statute's land use provisions** set out in Part 17." [AB, para 99] [emphasis added]

[16] Here are ss 640 and 642 *MGA*, which the applicants (properly) see as the key land-use provisions in this case:

> **640(1)** Every municipality must pass a land use bylaw.
>
> **(1.1)** A land use bylaw may **prohibit or regulate and control the use and development of land and buildings in a municipality, including, without limitation, by**
>
> (a) imposing **design standards,**
>
> (b) determining **population density**,
>
> (c) regulating the **development of buildings,**
>
> (d) providing for the protection of agricultural land, and
>
> (e) providing for **any other matter council considers necessary to regulate land use within the municipality.**
>
> **(2)** A land use bylaw
>
> (a) must **divide the municipality into districts of the number and area the council considers appropriate;**
>
> (b) must … **prescribe with respect to each district,**
>
> (i) the **one or more uses** of land or buildings that **are permitted** in the district, with or without conditions, or
>
> (ii) the **one or more uses** of land or buildings that **may be permitted** in the district at the discretion of the development authority, with or without conditions,
>
> or both;
>
> (c) must establish a method of making decisions on **applications for development permits** and issuing development permits for any development, including provision for [subparas (i) to (vii) not reproduced here]
>
> (d) must provide for how and to whom notice of the issuance of a development permit is to be given;

> (e) must establish the **number of dwelling units permitted on a parcel of land.**
>
> **642(1)** When a person applies for a development permit in respect of a **development provided for by a land use bylaw** pursuant to section 640(2)(b)(i), the development authority **must**, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, **issue a development permit** with or without conditions as provided for in the land use bylaw.
>
> **(2)** When a person applies for a development permit in respect of a **development that may, in the discretion of a development authority, be permitted** pursuant to section 640(2)(b)(ii), the development authority **may**, if the application is complete in accordance with section 683.1, **issue a development permit** with or without conditions as provided for in the land use bylaw. [emphasis added]

2. Applicants' position

[17] Pointing to ss 640 and 642, the applicants argue that:

> ... the power to make a land use bylaw is thereby [i.e. via those sections] **carefully cabined and premised on the existence of multiple distinct neighbourhoods within the municipality.** The land use bylaw *must* ... divide the municipality ***into districts of the number and area*** the council considers appropriate; ... prescribe permitted and discretionary uses "***with respect to each district***"; ... create a development permit process; ... provide for notice in relation to development permits; [and] ... specify the number of dwellings permitted on each parcel. [references to paragraph numbers of ss 640(2) omitted].
>
> The **fundamental premise** of this key provision in Part 17 is that the municipality will be **zoned into districts, with different permitted and discretionary uses (and number of dwellings).** ***Treating the whole city as a district – as the City did with the Bylaw – is fundamentally inconsistent with this provision*****.** [AB at paras 105 and 106] [emphases added]

[18] The applicants go off-track here in multiple ways, as explained below.

3. No whole-city districting occurred

[19] First, the City did not treat the whole city as a district. The Bylaw did not affect the various non-residential (e.g. commercial and industrial) zoning districts, which continue as before. The Bylaw also left alone higher-density residential districts, which also continue as before. As for the low-density parts of the city, the new regime does not treat all of them as a single district, instead allocating them among three new districts: R-CG, R-G, and H-GO, as reflected on the maps accompanying the new bylaw.

4. No "distinct, distinctive community" evidence provided

[20] Second, the applicants provided no evidence to back up their assertion that "no two [Calgary] communities are alike" i.e. each is a "distinct, distinctive" community [AB at para 9].

[21] They provided no list of communities or groups of communities, no list of the core (or any) characteristics of each (or any) community or group, and no evidence of, or from which I

could infer, those characteristics. Or any other way to discern how any given community, or group of communities, is different from any other.

[22] Accordingly, even accepting the common-sense proposition that differences exist among at least some of Calgary's communities, I cannot tell whether the communities falling within each of the three new zones (R-CG, R-G, and H-GO) are or are not the same, or similar, or at least share enough characteristics to be logically grouped together. If that were required, as discussed below.

[23] The applicants may believe, for example, that "Community [A] and Community [B], both now rezoned as R-CG, are materially different in various respects" and thus should not have been zoned the same.

[24] But without any evidence of the characteristics, or even the core characteristics, of each community, all I have is the applicants' bare assertion that every community is unique i.e. no basis on which I could conclude (if warranted) that the two communities in this example are in fact materially different and (assuming distinct-community zoning) should not be zoned the same.

5. No *MGA* requirement that zoning or use decisions turn on community distinctiveness

[25] Third, and most fundamentally, the applicants provide no support for their theory that, per Part 17 *MGA*, the City must divide the city into districts on the basis of "community distinctiveness", whether by individual communities or groups of similar communities.

[26] They appear to infer that para 640(2)(a)'s reference to "districts" means communities and that, per that provision, same or similar communities must be districted (or zoned) together.

[27] But the *MGA* does not say or imply that. It does not require or suggest that the City set zoning districts by community or groups of communities. Or any other factor, for that matter.

[28] Per para 640(2)(a), the City is indeed required to "divide the municipality into districts."

[29] The *MGA* could have required division by community or groups of communities. Akin to how it directs or limits the City's authority over land use bylaws elsewhere in the *MGA*. For instance, via the following provisions in s 640 itself:

> **(7)** A land use bylaw **must be consistent with the applicable requirements of the regulations under the *Gaming, Liquor and Cannabis Act*** respecting the location of premises described in a cannabis licence and distances between those premises and other premises.
>
> **(8)** Despite this section or any other provision of this Act, the authority to pass a land use bylaw does **not include the authority to pass a bylaw** in respect of the use of a building or part of a building for residential purposes that has the **effect of distinguishing between any individuals on the basis of whether they are related or unrelated** to each other.
>
> **(9)** The Minister may by order direct a municipality to **amend its land use bylaw** in respect of the use of a building or part of a building for residential purposes if the land use bylaw has the **effect of distinguishing between senior citizens on**

> **the basis of whether they are related or unrelated to each other**. [emphasis added]

[30] And via ss 618.4(1) (land use bylaw must "be consistent with [provincial] land use policies") and 619 (land use bylaw subject to specified licences, permits, approvals and other authorizations granted by the Natural Resources Conservation Board and other agencies), 693 (land use bylaw generally subject to airport vicinity regulations), 693.1 (same thing re certain floodway regulations), 694(5) ("Lieutenant Governor in Council may make regulations directing a municipality … to amend its … land use bylaw"), and 708.4 (land use bylaw must square with intermunicipal development plans).

[31] In all these ways, the *MGA* (actually or potentially) directs or limits the City's authority over land use bylaws.

[32] But the *MGA* does not do so when it comes to dividing the city into zoning districts.

[33] Instead, it requires only that a land use bylaw "must divide the [city] into districts **of the number and area the council considers appropriate"**: *MGA*, para 640(2)(a).

[34] That is the opposite of directing the City to divide in a particular way (distinct-community-wise or otherwise).

6. No *MGA* direction to consider community distinctiveness in zoning and use decisions

[35] The *MGA* does not even provide a list of mandatory or recommended factors (community distinctiveness or otherwise) the City must or should consider when dividing the city into districts, leaving it to decide based on "appropriate" factors (as noted).

[36] This is in contrast to other Alberta statutory provisions, even in the *MGA* itself, which provide mandatory directions on factors to be considered by a statutory decision maker. For instance, in ss 76(1) and (1.1) *MGA*:

> The Minister may establish and publish **principles, standards and criteria that are to be taken into account in considering** whether to recommend to the Lieutenant Governor in Council the formation, change of status or dissolution of municipalities, the amalgamation of municipal authorities or the annexation of land under this Part.
>
> Before recommending the formation, change of status or dissolution of a municipality, the amalgamation of municipal authorities or the annexation of land under this Part, the Minister **must consider any applicable principles, standards and criteria established under subsection (1).** [emphasis added] [See also ss 86 and 95, which require the Minister to consider those same factors before approving a new municipality or changing a municipality's status.]

[37] Examples of similar "must consider" provisions abound in other Alberta statutes. Here is one example, from the *Class Proceedings Act*, SA 2003, c C-16.5:

> **5(2)** In determining whether a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues, the Court may consider any matter that the Court considers relevant to making that determination, but **in making that determination the Court must consider at least the following**:

> (a) whether questions of fact or law common to the prospective class members predominate over any questions affecting only individual prospective class members;
>
> (b) whether a significant number of the prospective class members have a valid interest in individually controlling the prosecution of separate actions;
>
> (c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;
>
> (d) whether other means of resolving the claims are less practical or less efficient;
>
> (e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

[38] In like fashion, the Province could have required that the City consider community distinctiveness as a factor when dividing the city into districts.

[39] But it left the City to divide the city into zoning districts "as appropriate."

7. No definition of "districts"

[40] Neither does the *MGA* define "districts." And nothing in the *MGA* requires or signals that districts be patterned on communities, similar communities, or any other particular subset(s) of the city. As a result, in ss 640(2) the *MGA* could equally have used "units" or "parts" or other neutral terms not synonymous with communities or similar communities e.g. "divide the municipality into units (or parts)."

8. Same analysis applies to City's district-by-district use decisions

[41] The above analyses apply equally to the City's decisions on the permitted and discretionary uses in each district. For convenience, I reproduce para 640(2)(b) again:

> A land use bylaw
>
> (b) must … prescribe with respect to each district,
>
> (i) the one or more uses or land or buildings that **are permitted** in the district, with or without conditions, or
>
> (ii) the one or more uses of land or buildings that **may be permitted** in the district at the discretion of the development authority, with or without conditions,
>
> or both.

[42] The *MGA* could have directed the City's permitted- and discretionary-use decisions and done so on the basis of (for example) community distinctiveness. Or at least required that the City consider that factor.

[43] But here too, the *MGA* provides neither direction nor required consideration of that or any other factor.

9. Applicants' limited argument here

[44] The applicants did not argue that the City actually failed to consider community distinctiveness when deciding on zoning districts and the associated permitted and discretionary uses.

[45] In any case, it would be hard to argue that it did, given that many of the property owners' hearing submissions focused on that theme (e.g. "Denser zoning where I live would be inappropriate, given that our community is [description of community's character]").

[46] Instead, the applicants argued that the City had to both consider this factor *and* zone and set the uses *on the exclusive basis of* that factor i.e. community distinctiveness was the paramount and in fact only factor to be considered.

[47] As explained above and below, the *MGA* does not explicitly or implicitly so require.

10. Effect of use decisions flows from *MGA*

[48] The applicants also argued (AB at paras 107-110) that:

> The blanket upzoning effected by the Bylaw short-circuits the development permit process envisaged by section 640. By expanding the scope of permitted uses of residential land, the [City] rendered the development permitting process unavailable to neighbouring landowners and communities and unnecessary for developers, who can proceed to development for the permitted use of their parcel. [excerpt from para 107]

[49] But that is the necessary effect of the City's district-by-district permitted-use decisions, not an independent ground for challenging them.

[50] The applicants did not challenge the City's overall authority to set the permitted and discretionary uses per district or the *MGA* framework that, where a use is permitted, it cannot be challenged in the development-permit process. Instead, the applicants challenged only whether the City had to make those decisions on a community-distinctiveness factor (answer no, as explained above).

[51] With that question answered, and with the applicants offering no other statutory-scheme arguments here, the applicants' complaint here is about the *MGA*'s statutory framework, not the City's decisions under it.

[52] The applicants did not explain how, in this judicial review proceeding, necessarily focused on the City's rezoning and use decisions, this Court has any ability to relieve against the effects of the *MGA*'s framework incorporating those decisions.

11. Notice provisions not requiring a different approach

[53] The applicants point to the zoning-change notice provision (s 692) as supporting their community-distinctiveness theory. They argue:

> The *MGA*'s notice requirements underscore the legislative intent for context-specific land use decisions. The notice requirements for public hearings show that land use decisions will be made on a targeted (e.g., district by district), not

blanket, basis. Under [ss] 692(1) of the *MGA*, before giving second reading to a proposed land use bylaw, a municipal council must hold a **public hearing** with respect to the proposed bylaw after giving notice.

In addition, the *MGA* sets out stricter notice requirements in the case of a land use bylaw to change the district designation on a parcel of land. The municipality is required under [ss] 692(4) of the *MGA* to **include the municipal address of the affected parcel of land and a map** showing the location of the parcel of land. The municipality must also give **written notice to the assessed owner of the parcel of land in question and each owner of adjacent land**. [footnote 95 – definition of "adjacent land" – omitted]

These provisions cannot be reconciled with blanket rezoning.

On a straightforward, common sense reading of the statutory scheme, therefore, land use decisions under the *MGA* must be context-specific.

[54] Here is s 692 (key parts):

(1) Before giving second reading to

> (f) a proposed bylaw amending a … land use bylaw …,

a council must hold a **public hearing** with respect to the proposed bylaw in accordance with section 216.4 after giving **notice** of it in accordance with section 606.

(4) In the case of an amendment to a land use bylaw to change the district designation of a parcel of land, the municipality must, in addition to the requirements of subsection (1),

> (a) **include in the notice** described in section 606(2)
>
> > (i) the **municipal address**, if any, and the **legal address** of the parcel of land, and
> >
> > (ii) a **map** showing the location of the parcel of land,
>
> (b) give **written notice** containing the information described in clause (a) and in section 606(6) to the **assessed owner** of that parcel of land at the name and address shown on the assessment roll of the municipality, and
>
> (c) give a **written notice** containing the information described in clause (a) and in section 606(6) to **each owner of adjacent land** at the name and address shown for each owner on the assessment roll of the municipality.

(7) In this section,

> (a) **"adjacent land" means land that is contiguous to the parcel of land that is being redesignated** and includes
>
> > (i) land that would be contiguous if not for a highway, road, river or stream, and

> (ii) any other land identified in the land use bylaw as adjacent land for the purpose of notifications under this section;
>
> (b) "owner" means the person shown as the owner of land on the assessment roll prepared under Part 9.

[55] Here the applicants overlook (in their brief) that, via the *City of Calgary Charter, 2018 Regulation*, Alta Reg 40/2018 [*Charter*], the Province established different notice rules where the City proposes to change the zoning of more than 500 properties, as is the case here. (Per s 4 of the *Charter*, various *MGA* provisions, including s 692, are "modified … for the purposes of being applied to the City [of Calgary].")

[56] Here is the applicable notice rule:

> **692(5.1)** Where an amendment to a land use bylaw to change the district designation of a parcel of land would affect more than 500 parcels of land, **subsection (4) does not apply** but
>
> (a) the City must give **written notice to the assessed owner** of every parcel of land for which the district designation would be changed [and]
>
> (b) the **notice must contain the information** described in section 606(6) …. [*Charter*, ss 4(38)]

[57] The City's evidence was that every affected property owner in the city received written notice of the proposed bylaw containing the required information, in line with these provisions. The applicants did not dispute this.

[58] In oral argument, Ms. Warren for the applicants stated that the Province may have lacked authority to amend the *MGA* by way of regulation (that is, by way of the *Charter*) i.e. versus an amending statute, possibly rendering ss 692(5.1) (among other provisions) invalid. She offered to provide further written submissions on that point.

[59] The applicants' Originating Notice outlined its targets here, namely, the bylaw in question and a plebiscite-related resolution (discussed later in this judgment).

[60] It did not include a challenge to the *Charter* or the *MGA* notice provisions modified by it for the purposes of being applied to the City.

[61] The applicants did not amend, or apply to amend, their application by adding such challenges.

[62] Neither did they point to any separate proceeding advancing such challenges.

[63] Accordingly, it was not open to them to challenge the *Charter* or the noted *MGA* provisions in this proceeding, even in a tentative fashion ("We will research this point if the Court sees an issue.")

[64] The applicants had to put their "best foot forward" i.e. raise all perceived issues in their originating application and address them in their brief, at minimum so the City would know what issues and arguments to meet.

[65] In any case, the Supreme Court of Canada has confirmed the propriety of enabling-act-amending regulations: *Reference re Greenhouse Gas Pollution Pricing Act*, 2021 SCC 11 at paras 85-87:

[66] The power to so amend is not unlimited:

> … **Any regulation that is made [in this context] must be consistent both with specific provisions of the enabling statute and with its overriding purpose or object** (*Waddell v. Governor in Council* (1983), 1983 CanLII 189 (BCSC), 8 Admin. L.R. 266 (B.C.S.C.), at p. 292, quoted in *Katz Group*, at para. 24), **and it must be "within the scope [of] and subject to the conditions prescribed" by that statute** (*Re Gray*, at p. 168). Therefore, the scope of the authority delegated in s. 168(4) is limited by and subject to the provisions of the *GGPPA*. **The Governor in Council cannot** use s 168(4) of the *GGPPA* to **alter the character of Part 1 of the statute** …. Moreover, the Governor in Council's power under s 168(4) can be revoked by Parliament. [para 87] [emphasis added]

[67] Applying those principles here, notice per para 692(5.1)(a) (i.e. to every affected property owner) achieved the purposes of ss 692(4) i.e. notice to an affected property owner and all adjacent property owners. Even with the modified notice provision, all affected received notice.

[68] The applicants did explain how receiving duplicate notices (e.g. if a given property owner had to receive not only a notice affecting his or her property but also notices concerning all adjacent properties) would have provided any incremental information or otherwise been useful.

[69] All to say: even if the applicants had formally and directly challenged the *Charter* and the added *MGA* notice provision, they would not have succeeded in showing that the amendments were inconsistent with the *MGA*'s other notice provisions or the *Act* generally.

[70] Returning to the applicants' theory here, the noted notice amendment and the City's compliance with it undercut the applicants' reliance on (inapplicable) ss 692(4).

[71] In any case, the amended process (authorizing notice of proposed changes affecting more than 500 properties, with no cap) undercuts their contention that the bylaw had to be changed on a property-by-property or even neighbourhood-by-neighbourhood basis.

12. *Howse* decision unhelpful for applicants

[72] The applicants cite ***Howse v Calgary (City)***, 2022 ABQB 551 *affd* 2023 ABCA 379 to support their zone-by-distinctive-community theory.

[73] But, as the City explains (City Brief (CB) at paras 71-74), that case featured different issues -- principally, the interplay between restrictive covenants and direct-control zoning rules -- and different considerations.

[74] Nothing in either (QB or CA) decision compels or suggests that the City's neighbourhood focus in that case, featuring only one neighbourhood, had to be repeated when the City pursued city-wide changes. as here.

[75] Especially with ***Howse*** not concerning, and in any case not addressing, the proper interpretation of ss 640 and 642 i.e. the scope of which are the central focus here.

13. Conclusion on "no authority per *MGA* text and context"

[76] The City did as directed under para 640(2)(a): it divided the city into districts (or units) for zoning purposes and then set the permitted and discretionary uses for each zone.

[77] The applicants asserted that, per the *MGA,* the City had to district-divide on a community or like-communities basis and the same thing when setting permitted and discretionary uses by district. Per them, s 640 and 642 "carefully cabined" the City's power to district i.e. confined that power within narrow bounds.

[78] As shown above, the opposite is true, with no such directions imposed or even mandatory consideration of community distinctiveness. Or any factor.

[79] This is not to suggest that the City had boundless authority to divide and determine uses.

[80] But the applicants made only one argument here i.e. that those decisions had to turn on community distinctiveness. They did not argue that, in any case, the City lacked authority to divide and determine uses as it did.

[81] On this aspect, it is sufficient to conclude that, contrary to the applicants' assertions, the *MGA* does not require that division and use decisions turn on community distinctiveness.

B. Rezoning not inconsistent with *MGA*'s purpose

1. Applicants' position

[82] According to the applicants, the city-wide scope of the rezoning is at odds with the express purpose of the *MGA*'s planning and development provisions. Per s 617:

> The purpose of [Part 17] and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> > (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
> >
> > (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the **rights of individuals** for any public interest **except to the extent that is necessary for the overall greater public interest.** [emphasis added]

[83] The applicants interpret and apply s 617 this way:

> The fundamental purpose of Part 17 is to ensure a careful balancing of the enjoyment of private property with the public interest, which is impossible when the decision-making process is not careful and contextual. Blanket [or city-wide] upzoning is inconsistent with this purpose and thus unreasonable and unlawful. [AB at para 123]

[84] The applicants did not argue that, in enacting the new zoning bylaw, the City was pursuing aims outside paras 617(a) and (b). They accept, or at least did not challenge, that the City's purpose was to achieve, maintain, and improve the dimensions described in those provisions.

[85] In other words, despite their framing of the issue, the applicants did not actually argue that the City pursued purposes at odds with the *MGA*.

[86] Their argument is instead that, in pursuing legitimate purposes, the City "infring[ed] on the rights of individuals."

[87] I examine that argument below.

2. Applicants' authorities

[88] The applicants first cite ***Love v Flagstaff (County of) Subdivision and Development Appeal Board***, 2002 ABCA 292. They say that:

> … section 617 requires municipalities to **protect individual rights** when engaging in the planned, orderly and safe development of land and when considering the overall public interest. **Encroachment on property rights** must be reasonable and strictly construed. Specifically, the Court [in *Love*] found that:
>
> > [34] The scheme and object of the [*MGA*] reveal a legislative intention not only to expressly protect individual rights but to permit those rights to be eroded only in favour of a public interest and only to the extent necessary for the overall public interest. … It therefore follows that encroachments on individual rights … should be strictly construed.
>
> … In this case [i.e. the Lehodey et al challenge], the **encroachment is the [City's] unilateral decision to redesignate 311,570 individual parcels and the related encroachment impacts to property owners' use and enjoyment of their property.** [AB at paras 133-134]

[89] ***Love*** did not involve changed land use bylaws, instead, the denial of development permits under such a bylaw. At issue was whether the planning of a proposed industrial development was sufficiently advanced to trigger a development-permit rule blocking nearby residential development.

[90] The applicants also cite ***Calgary (City) v Valdun Development Ltd***, 1997 ABCA 134, emphasizing this passage (at para 25):

> … [Council's] decision had the effect of restricting the right of the Respondent [proposed casino operator] to use its land as it saw fit. The Respondent was legally entitled to have that issue decided only in light of the objectives of s. 617, that is, on the basis of the application of planning principles.

[91] The Court of Appeal's comments about property rights in both cases focused on limits on the uses of one's own lands e.g. "The rule in question would prevent me from building a house on my land" or "The rule bars me from setting up a casino on my lands." The Court of Appeal was not commenting, at least directly, on property owners' concerns about neighbouring or nearby owners' uses of their lands.

[92] ***Thomas v Edmonton (City)***, 2016 ABCA 57, is more similar to the present case, as it involved property owners concerned about a potential development by a nearby owner. However, it involved the breach of an existing (i.e. not amended) rule. The Court of Appeal

found that the rule (on community consultation) could not be waived and that a proposed residential development could not proceed without that consultation.

[93] The Court of Appeal's property-rights comments emphasized the importance of consultation and the opportunity for affected parties to provide input. Which occurred here, as discussed further below.

[94] None of these cases involved across-the-board changes to land use bylaws. Or whether such changes, in themselves, infringe property rights.

3. Rights potentially affected here

[95] What are the property rights, or the rights generally, of the applicants in the present case?

[96] The first possibility is property owners' uses of their own lands. As explained in ***Fonseca v. Gabriola Island Local Trust Committee,*** 2021 BCCA 27 at para 41, that is the "core of the zoning power":

> There is no doubt that a legislature may authorize the regulation of private conduct, and in doing so may impair rights that might otherwise exist. As Chief Justice Bauman said in *H. Coyne & Sons Ltd. v. Whitehorse (City),* 2018 YKCA 11 at para. 46, **"the impairment of private rights lies at the core of the zoning power."** The scope of regulation may simply focus on **the use, for example, a landowner may make of his or her own land**, but do so without affecting private property rights that exist at common law as they govern relations between landowners. Alternatively, it is conceivable that a statutory conferral of power to regulate **may also affect, impair or abrogate common law rules, principles, or rights as they run between private persons.** There is nothing in the scope of the zoning power at issue before us that purports to displace or affect any common property rule that governs the relations between private landowners.

[97] In the present case, the bylaw does not impose any new limitations on property owners' uses of their own property. Instead, as the City argued, it expands their potential uses i.e. in expanding the permitted (allowed) or discretionary (potentially allowed) uses, or both, across the board.

[98] The second possibility is the impact of zoning on common-law rules, principles or rights governing relations between landowners, as discussed in the second half of the ***Fonseca*** excerpt.

[99] The applicants did not assert such rights here.

[100] The third possibility, and the one asserted by the applicants in their statutory-purpose argument (at least implicitly), is a right to the continued existence of the previous zoning regime i.e. a continuing (and same) right to object to proposed developments or redevelopments by nearby property owners, which was infringed when narrowed by the new bylaw.

[101] Do the applicants have such a right?

4. No right to continued existence of zoning regime

[102] As explained above, the City has an unquestioned power to amend its land use bylaw. Per ss 191(1):

> The power to pass a bylaw under this or any other enactment includes a power to amend or repeal the bylaw.

[103] Given that power, it cannot be said that property owners have a right to the continued existence of the regime prevailing at any given time. As explained in ***Welbridge Holdings Ltd. v. Greater Winnipeg (Metropolis)***, 1970 CanLII 820, 12 DLR (3d) 124 at 155-156 (MB CA) (appeal dismissed without discussion of this point [1971] SCR 957):

> … The metropolitan corporation was at liberty … to repeal or make whatever other change it might in the public interest deem desirable in the zoning of the lots. **No one obtains vested rights upon the mere passage of a zoning by-law or a by-law varying a zoning by-law.**
>
> …
>
> The whole object and purpose of a zoning statutory power is to empower the municipal authority to put restrictions, in the general public interest, upon the right which a landowner, unless and until the power is implemented, would otherwise have to erect upon his land such buildings as he thinks proper. **Hence the status of land owner cannot *per se* affect the operation of a by-law implementing the statutory power without defeating the statutory power itself.** Prior to the passing of such a by-law the proprietary rights of a landowner are then insecure in the sense that they are exposed to any restrictions which the city, acting within its statutory power, may impose. [citing ***Canadian Petrofina Ltd v Martin***, [1959] SCR 453 (per Fauteux J.)] [emphasis added]

[104] See also ***Gematt Asphalt Products, Inc. v Town of Sardinia***, (1996) 664 NE 2d 1226, 87 NY 2d 668 at 684 (Court of Appeals of the State of New York):

> … Insofar as petitioner contends that the amendments prohibit the development of new mines, it has no vested right to have the existing zoning ordinance continue unchanged if the Town Board has rationally exercised its police power and determined that a change in the zoning was required for the well-being of the community (see, *Matter of Khan v Zoning Bd of Appeals, 87 NY 2d 344; Rodgers v Village of Tarrytown*, 302 N.Y. 115, 121).

[105] And ***Baker v Algonac*** (1972), 39 Mich App. 526 (Mich Ct. App.) [leave to appeal denied – (1972) 388 Mich 769]:

> … rezoning should be done with caution. Just as rezoning should not be approved to merely benefit a single property owner, so too rezoning should not be invalidated if the public interest outweighs the property owner's reliance. No owner has a right in the continuance of zoning once established. *Lamb* v. *City of Monroe,* 358 Mich 136 (1959); *Pumo* v. *Borough of Norristown,* 404 Pa 475; 172 A. 2d 828 (1961).

[106] And ***Curtiss v Cleveland (City)***, (1957)144 NE 2d 177 at 187, 166 Ohio St 509 at 525 (Ohio Sup Ct)187 (Ohio) ("no property owner has a vested right to have the zoning classification which is in effect when he acquires or improves real estate to remain unchanged").

[107] And Catherine J. LaCroix, "Urban Agriculture and Other Green Uses: Remaking the Shrinking City", (2010) 42 Urb Law 225:

> In the absence of a vested right, no person has a property interest in unchanged zoning. [footnote 262 provides two examples: *Zanghi v Bd of Appeals***,** (2004) 807 NE 2d 221, 226 (Mass App Ct) and *Lucas v SC Coastal Council*, (1992) 505 US 1003, 1027 (property owners must expect that land user regulations will change over time)]

[108] The applicants are accordingly off-target in arguing that their property rights i.e. the bundle of rights inherently associated with ownership of their land -- such as "the right to possess, the right to use, the right to manage, the right to the income [from the land]", and so on – include a right to object to proposed developments on neighbouring or nearby properties. (For the full list of incidents (or rights) of ownership, see A. M. Honoré, "Ownership" in AG Guest, ed *Oxford Essays in Jurisprudence* (Oxford: Oxford University Press, 1961) at 108, from which the "rights" quotation is drawn. To confirm, they do not include a right to object to a neighbour's proposed development.)

[109] The source of that right is instead the City bylaw as it exists from time to time. And as discussed, the bylaw can be changed, including the permitted and discretionary uses and thus the scope of a property owner's objection right.

[110] Accordingly, the changes here did not encroach on private property rights.

[111] The applicants had certain objection rights under the previous bylaw. The City proposed to change the permitted and discretionary uses across the city, as it was entitled to do (as discussed above and below), which would narrow those objection rights.

[112] What rights of property owners were in fact engaged here?

5. Right to provide input on proposed bylaw changes

[113] The answer is the participation rights provided by the *MGA* to the owners of properties affected by the proposed zoning changes and other "affected persons" (possibly including non-landowners e.g. tenants and others, per ***Liquor Stores Limited Partnership v. Edmonton (City)***, 2017 ABCA 130 (Wakeling JA in chambers) at n 17 and ***590470 Alberta Ltd. v. City of Edmonton***, 2004 ABQB 373 (Ross J.) at para 38) i.e. an opportunity to provide submissions on whether the proposed changes should be made.

[114] Starting with a right to notice of the proposed changes, per s 692(5.1) (reproduced again here, along with the key parts of ss 606(6)):

> Where an amendment to a land use bylaw to change the district designation of a parcel of land would affect more than 500 parcels of land …
>
> > (a) the City must give **written notice to the assessed owner** of every parcel of land for which the district designation would be changed [and]
> >
> > (b) the **notice must contain the information** described in section 606(6) ….

> (a) a statement of the **general purpose of the proposed bylaw**, resolution, meeting, public hearing or other thing,
>
> (b) the **address** where a copy of the **proposed bylaw**, resolution or other thing, and any document relating to it or to the meeting or public hearing **may be inspected**,
>
> (c) in the case of a bylaw or resolution, an outline of the **procedure to be followed by anyone wishing to file a petition** in respect of it, and
>
> (d) in the case of a meeting or **public hearing, the date, time and place** where it will be held.
> [indented (a) – (d) from ss 606(6)]

[115] Plus a right to a public hearing, per paras 692(1)(e) and (f):

> Before giving second reading to …
>
> > (e) a proposed land use bylaw, or
> >
> > (f) a proposed bylaw amending a … land use bylaw referred to in [clause] … (e),
>
> a **council must hold a public hearing** with respect to a proposed by law in accordance with section 216.4 after giving notice of it in accordance with section 606.

[116] And a right to participate at the hearing, per ss 216.4(3) and (4):

> (3) A council may, by bylaw, establish procedures for public hearings.
>
> **(4)** In the public hearing, council
>
> > (a) must **hear any person, group of persons or person representing them** who claims to be **affected by the proposed bylaw** or resolution and who has **complied with the procedures** outlined by the council, and
> >
> > (b) may hear any other person who wishes to make representations and who the council agrees to hear.

[117] With the process culminating in a decision by Council, per ss. 216.4(5):

> **(5)** After **considering the representations** made to it about a proposed bylaw or resolution at the public hearing and after **considering any other matter it considers appropriate**, the council may
>
> > (a) **pass the bylaw** or resolution,
> >
> > (b) **make any amendment to the bylaw** or resolution it considers necessary and proceed to pass it without further advertisement or hearing, or

(c) **defeat the bylaw** or resolution.

[118] Via the described process, citizens (including property owners) could offer their views on the proposed changes, with Council considering them, along with "any other matter it considers appropriate", before deciding whether to approve the bylaw.

[119] In other words, not a right to the continued existence of the previous bylaw but a right to comment on the proposed changes to it.

[120] As seen in ***Hosford v Strathcona County***, 2019 ABQB 871 (Ross J.):

> … Part 17 [of the *MGA*] reflects the institution and practices of local democratic government. The authority and obligation to make decisions in the public interest, while reasonably balancing private rights, rest squarely with elected representatives. Provision is made both in the *MGA* and in Council bylaws for participation by affected persons, in public hearings, at public Council meetings, and through other outreach methods. … [para 112] [emphasis added]

[121] Accordingly, I disagree that, in proposing and passing the new bylaw, the City violated or otherwise acted at odds with s 617 i.e. with no property or other right to the continued existence of the previous zoning regime.

6. Individual rights subject to "overall greater public interest"

[122] Even if the rights contemplated by s 617 include the right to object to developments and redevelopments under the previous bylaw, the provision permits infringements of those rights "for any public interest … to the extent that is necessary for the overall greater public interest."

[123] The applicants offered these submissions on how the City had to balance the recognition of property rights and the public interest:

- "careful balancing of the enjoyment of private property with the public interest … is **impossible when the decision-making process is not careful and contextual**. Blanket upzoning is inconsistent with this purpose and thus unreasonable and unlawful" [AB at para 123];
- "… encroachments on individual rights should be **strictly construed**. … [blanket rezoning] is anathema to **careful, contextual analysis**" [AB at para 133]
- "… [section 617] requires that a municipality's zoning decisions entail **careful consideration of their residents' nuanced concerns and considerations** that apply to the affected properties" [AB at para 136];
- "… municipal planning must **balance broader community values with individual rights**. … [the *MGA* requires] an appropriate balance between the rights of property owners and the larger public interest. … [municipal] powers must respect private rights within reasonable public interest limits" [AB at para 137];
- "In order to respect property rights and ensure encroachments on those rights for reasons of the public interest are **strictly construed and**

> **reasonable**, municipalities must engage in community-specific zoning as envisaged by the *MGA*" [AB at para 139]; and
>
> - "City-wise rezoning does not comply with the constraint that **planning decisions must be contextual** and infringe individual property rights only to the extent that is necessary. … This Court must interpret the *MGA* narrowly to prevent sweeping zoning changes absent specific legislative approval, as blanket upzoning cannot align with the intent to preserve individual property rights within reasonable public interest constraints" [AB at para 142]. [emphasis added]

[124] But they offered no submissions on why the proposed changes were not or could not have been in the "overall greater public interest."

[125] They did not discuss or mention the housing crisis perceived by the City, the City's overall strategy to increase housing of all kinds, or any potential benefit of increased densification across the city.

[126] They did not mention the City Administration report recommending adoption of the new bylaw or engage on any of the pro-bylaw reasons referred to in it (including the City-stated principle of "maintaining equity across the city, such that rezoning should apply to all low-density residential communities"), whether to refute, challenge, qualify, seek to refine or narrow, or otherwise offer a counter-view to them.

[127] Neither did they explain why the s 617 balancing exercise was "impossible" with city-wide rezoning.

[128] For example, they did not assert that the City was or remained unaware of the concerns of the thousands of citizens who provided written and in-person submissions on the proposed bylaw. Including (in many of them) accounts of how the rezoning changes would or might affect them.

[129] Or that the City was otherwise unaware of differences among Calgary neighbourhoods and how increased density might manifest in each of them.

[130] Or that the City's own research on and investigations into increased density did not yield an understanding of the impacts of increased density across the City.

[131] Or that conducting neighbourhood-by-neighbourhood assessments of the pros and cons of increased density (i.e. per the proposed bylaw) would necessarily have yielded a richer or deeper or otherwise materially different picture for Council.

[132] Or in any case provide any evidence of details or nuances of the impacts of the proposed rezoning, even in general terms, that were missed by the City's hearing process.

[133] Or what different hearing and other process(es) the City should have pursued here and why they were required by the *MGA* in the circumstances here.

[134] Or overall that Council otherwise failed in their task of balancing the impacts of s 617-recognized rights with the overall greater public interest.

[135] In short, the applicants focused exclusively on the "rights" side of the balancing equation, offering no submissions on the "overall greater public interest." How can they then assert that

the City somehow failed to achieve the purposes of s 617, which is all about balancing those rights with that interest?

[136] Even on this broader view of the rights contemplated by s 617, the applicants failed to show that pursuit of city-wide rezoning was inconsistent with that provision.

7. *MGA*'s broader purposes

[137] The applicants also under-emphasize s 3 *MGA*:

> The purposes of a municipality [include]
>
> > (a) … provid[ing] good government,
> >
> > (a.1) … foster[ing] the well-being of the environment,
> >
> > (a.2) … foster[ing] the economic development of the municipality,
> >
> > … [and]
> >
> > (c) … develop[ing] and maintain[ing] safe and viable communities ….

[138] And the broad authority provided by the *MGA* to enact bylaws to achieve these purposes. Here is s 8.1 (added for Calgary purposes by the *Charter*, ss 4(4)):

> 8.1 Without restricting the generality of sections 7 [general jurisdiction to pass bylaws)] and 8 [powers under bylaw], the council may pass a bylaw for any municipal purpose set out in section 3 [*MGA*].

[139] The specific land-use-bylaw power is itself broad:

> **640(1)** Every municipality must pass a land use bylaw.
>
> (1.1) A land use bylaw may prohibit or r**egulate and control the use and development of land and buildings** in a municipality, including, **without limitation**, by
>
> > (a) imposing design standards,
> >
> > (b) **determining population density,**
> >
> > (c) **regulating the development of buildings,**
> >
> > … and
> >
> > (e) providing for **any other matter council considers necessary to regulate land use** within the municipality. [emphasis added]

[140] Per the *Charter*, ss 640(1) *MGA* is modified to the following for the purpose of applying to the City:

> A City land use bylaw may prohibit or regulate and control the use and development of land and buildings in the City **in any manner the council considers necessary**. [*Charter*, ss 4(35)] [emphasis added]

[141] The applicants did not show that, in enacting the new bylaw, the City acted inconsistently with these broad purposes and powers.

C. Legislative character of the new bylaw

1. Applicants' position

[142] Finally on statutory authority, the applicants assert that the City lacked the power to act "legislatively" i.e. to enact general and city-wide zoning rules i.e. versus via amendments geared to specific properties, streets, or neighbourhoods.

[143] They submit:

> Insofar as the [City] submits that the [new-bylaw-generating] process employed was legislative and that because it was legislative the Applicants are not entitled to procedural fairness, the Applicants respond that **for the reasons aforesaid**, the *MGA* precludes a legislative process to redesignate [i.e. rezone] land. The statutory scheme of the *MGA*, and **the [cases] cited below dating to 1965[,]** confirm that the *MGA* authorizes redesignation only following a quasi-judicial process.
>
> The *MGA* does not empower a municipality to redesignate land through legislation.
>
> If the Bylaw was legislative in nature, instead of a decision by the [City], it is *ultra vires* [i.e. outside the City's powers]. The *MGA* only authorizes a municipality to make decisions about whether to redesignate land. It does not authorize municipalities to pass legislation redesignating land. [emphasis added]

[144] These are the applicants' entire submissions on this point. It is not clear what they are referring to in "for the reasons aforesaid" and "the [cases] cited below dating to 1965" passages.

[145] They did not refer directly to any cases or other authorities in these paragraphs.

[146] In any case, the applicants are off-target here, as explained below.

2. City empowered to act legislatively

[147] First, the City acknowledged that the applicants, and all persons affected by the proposed bylaw, were entitled to procedural fairness (details discussed later).

[148] Second, as explained earlier, the *MGA* expressly empowers the City to enact a new general zoning bylaw. By definition, that is a legislative (law-making) process, as confirmed in ***Catalyst Paper Corp v North Cowichan (District)***, 2012 SCC 2:

> The case law suggests that review of municipal bylaws must reflect the broad discretion provincial legislators have traditionally accorded to municipalities engaged in delegated legislation. **Municipal councillors passing bylaws** [there concerning taxation] **fulfill a task that affects their community as a whole and is legislative rather than adjudicative in nature. Bylaws are not quasi-judicial decisions. Rather, they involve an array of social, economic, political and other non-legal considerations.** …[para 19] [emphasis added]

[149] And in ***Save Richmond Farmland Society v Richmond (Township)*** [1990] 3 SCR 1213 at 1231-32 (per Lamer CJ and LaForest and L'Heureux-Dube JJ., concurring in the result):

> … [this is] a hearing that is mandated in order to consider a rezoning "initiated by Council itself and driven by policy". A community plan or a **comprehensive**

> **zoning by-law represents a general statement of the broad objectives and policies of the local government respecting the form and character of existing and proposed land use** (see s. 945(1) *Municipal Act* [BC]), and the **adoption of such a measure is less a judicial process than a legislative one**. The aldermen who participate in such a process should be viewed accordingly not as judges, but as elected representatives who are answerable to the concerns of their constituents.

[150] Same conclusion in ***Wiswell v Metropolitan Corporation of Greater Winnipeg***, [1965] SCR 512 at 520, per Martland and Hall JJ. (Cartright and Spence JJ. concurring on this aspect) (paragraph beginning "I agree with Freedman JA"); ***Gruman v Canmore (Town)***, 2018 ABQB 507 at paras 97-98 (Gates J.); ***Community Association of New Yaletown v Vancouver (City)***, 2015 BCCA 227 at paras 58-61 (SCC leave denied 2015 CanLII 69439); and ***Re McMartin and Vancouver (City)***, 1968 CanLII 575 (BCCA), 70 DLR (2d) 38 at 40 (per Davey CJBC).

[151] Same here -- in enacting a new city-wide zoning bylaw, Council was performing a legislative function. As expressly authorized by the *MGA*.

D. Conclusion on statutory authority

[152] As explained above, the applicants are off-target in perceiving zone-by-distinct-community signals in the *MGA*, understanding the *MGA*'s purposes to preclude the City performing a general rezoning, and believing that such legislative work is beyond the City's capacity.

[153] The applicants' core position here was that absent express *MGA* authority to perform city-wise rezoning, the City lacked such authority.

[154] As explained, the City had express authority to pass the new bylaw, per ss 3, 8.1, 191, and 640.

[155] Subsections 191(1) (power to amend or repeal any bylaw) and 640(2) ("land use bylaw may … regulate and control the use and development of land and buildings in a municipality") would be sufficient on their own.

[156] Add to that the broad authority under ss 3 and 8.1 to enact bylaws to "provide good government, … foster the economic development of the municipality, [and] develop and maintain safe and viable communities", it is hard to see how the City could lack authority over any dimension of such a quintessential civic task as zoning or rezoning the city.

[157] Particularly in light of the "broad and purposive approach to the interpretation of municipal powers" endorsed by the Supreme Court of Canada in ***United Taxi Drivers' Fellowship of Southern Alberta v Calgary (City)***, 2004 SCC 19, which recognized the *MGA* as conferring "broad authority over generally defined matters" and requiring "greater flexibility [for modern municipalities] in fulfilling their statutory purposes" and "[interpretation of the *MGA*'s provisions] in a broad and purposive manner" (from paras 6 and 7). See also ***Kozak v Lacombe (County)***, 2017 ABCA 351 at paras 22-25.

[158] As reinforced in ***Auer v Auer***, 2024 SCC 36:

> ... the **challenged subordinate legislation and the enabling statute should continue to be interpreted using a broad and purposive approach** (*Green*, at para. 28; *West Fraser Mills*, at para. 12). ... [para 33] [emphasis added]

[159] ***Auer*** also confirmed (in the opening words of para 33) the presumed validity of subordinate legislation, including municipal bylaws, meaning that the applicants had the onus (not discharged here) to show that the City lacked authority to enact them.

[160] And also that the Court's role in such *vires* (or statutory authority) reviews is limited:

> … a *vires* review does **not involve assessing the policy merits of the subordinate legislation to determine whether it is "necessary, wise, or effective in practice"**. Courts are to review **only the legality or validity of subordinate legislation** (*West Fraser Mills*, at para. 59, per Côté J., dissenting, but not on this point; *La Rose v. Canada*, 2023 FCA 241, 488 D.L.R. (4th) 340, at para 26; see also *Mancini*, at p. 276).

[161] Finally on this aspect, per s 539 *MGA*, "[n]o bylaw … may be challenged on the ground that it is unreasonable."

[162] I conclude that the *MGA* provided clear authority to the City to enact the new zoning bylaw.

[163] The Applicants and the City agreed that the standard of review on statutory authority was reasonableness: ***Auer*** at paras 24-28.

[164] The City's implicit determination that it had the necessary authority was both reasonable and correct. In my view, no other reasonable interpretation of the governing *MGA* provisions is available.

III. Procedural fairness

A. Applicants' position

[165] The applicants also argue that the City was procedurally unfair to them.

[166] Here are their chief arguments:

> The fundamental flaw is that the process followed had the **form of a hearing**, but was **in reality an empty shell,** as it failed to ensure **meaningful participation** of landowners whose enjoyment of property would be severely impacted by the Bylaw. [AB at para 151]
>
> … the Applicants did not get the **meaningful hearing guaranteed by the *MGA*** alongside 311,570 other landowners. [AB at para 177]
>
> The public rezoning hearing allows affected persons to **articulate the impacts** to the use and enjoyment of their property and advocate for reasonable encroachments on property rights. This has historically been (and under the *MGA* must be) an **inherently contextual exercise** that accounts for broad concerns including massing, overshadowing, height, lot coverage, noise, traffic and parking congestion, loss of property value, destruction of mature trees and greenspaces, and safety. [AB at para 185]
>
> By selecting a procedure where the [City] redesignated 311,570 parcels at once, it **ignored the specific concerns raised by the Applicants** in their written and oral submissions. A fair process requires a reduced scale. [AB at 199]

> Section 692(1) (City's duty to hold a public hearing) guarantees a right to meaningful participation. **The [City] could not choose a process that circumvented that guarantee made in the *MGA***. In other words, it could not avoid the implications of section 692(1) by choosing a public process that rendered that section meaningless. [AB at para 201]
>
> By choosing to proceed in this manner **the [City] avoided site- and neighbourhood-specific processes required by s. 692(1)** and the overall scheme of its planning authority under the *MGA*. [AB at para 205]
>
> The Bylaw's profound impact on individual property rights and neighbourhood characteristics **brings it closer to a judicial-style decision**, especially from the perspective of those directly affected. Residents face impacts on their properties and community dynamics in ways that vary across the City. [AB at para 207]
>
> The Applicants had a **legitimate expectation their concerns would be heard** instead of drowned in the chorus of a process concerning 311,570 parcels of land. The Applicants' legitimate expectation is informed by the processed afforded in the *MGA*. [AB at para 214]
>
> … [the City's] **choice of procedure cannot undercut rights guaranteed by statute**. Ultimately, it is for the court to decide whether the **meaningful hearing guaranteed by s. 692 was respected or not**. A creature of statute cannot [require] defence to effect an **end-run around a statutory guarantee**. [AB at para 219]
>
> … There was **no capacity** for the [City's] Council **to adequately hear, consider, and make a decision** on the concerns raised by the Applicants and other affected parties. [AB at para 224]
>
> … the process employed by the [City] to redesignate 311,570 parcels [did not give] Council the opportunity to **meaningfully consider the record before it**. [AB, para 225] [emphasis added]

[167] The applicants also argued that "[t]he context of Part 17 of the *MGA* ["Planning and Development"] **informs a higher duty of procedural fairness**", "the *MGA* offers other contextual indications that **a higher duty of procedural fairness is owed when redesignating land**", "where decisions significantly impact individuals, **procedural fairness obligations increase**", and "the ***Baker* [*v Canada (Minister of Citizenship and Immigration)***, [1999] 2 SCR 817] factors informs **a higher degree of procedural fairness**." [AB at paras 178, 180, 203, and 222]

[168] But they did not describe what additional or different processes were needed to achieve the asserted higher duty i.e. beyond the *MGA* public hearing process.

[169] Similarly, their brief refers to common law procedural-fairness principles. But they did not argue that those principles required any additional or different process than that required by the *MGA*.

[170] In the end, the applicants did not seek any process other than that required by the *MGA*.

[171] They did not argue that the City fell short in providing notice of the proposed bylaw.

[172] They did not say the City erred in holding a public hearing.

[173] They did not ask for any other process.

[174] Their arguments are that, given the city-wide scope of the proposed bylaw, the public hearing did not provide a meaningful opportunity for input or for Council to consider that input.

B. Procedural-fairness analysis

[175] I disagree, for the following reasons.

1. Legislative, not judicial, process

[176] First, enacting a general rezoning bylaw is not a judicial process.

[177] The applicants argue that "the redesignation [was] **designed to resemble** a legislative process" [AB at para 160].

[178] It *was* a legislative process, involving many considerations beyond the impact of increased density on property owners across the city, such as the capacity of the City's housing stock to meet current demands, expected population increases, maintaining and increasing the City's capacity to attract new businesses and other enterprises, increasing housing options across the City, the best options for managing the City's growth as between increased density and suburban development, and how increased density (if approved) should occur across the City.

[179] The applicants acknowledge that, in a legislative exercise, a "lower level" of procedural fairness may be required. They point to ***Hosford*** as an example of legislative decision-making, stating:

> Municipal development plans are legislative in nature and do not lend themselves to a quasi-judicial framework. For example, municipal development plans are required to address, [among other things], "the future land use within the municipality", "the manner of and the proposals for future development in the municipality"; and "the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities …." These facets are strictly policy goals and therefore municipal development planning is a legislative function, not a quasi-judicial function." [AB at para 174] [footnote omitted]

[180] The same is true of the enactment of a new land use bylaw, which is also a multi-dimensional, balancing-of-interests, and planning and coordination exercise. Per ss 640(1.1) (reproduced again for convenience here):

> A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality, including without limitation, by
>
> a) imposing design standards,
>
> b) determining population density,
>
> c) regulating the development of buildings,
>
> d) providing for the protection of agricultural land, and
>
> e) providing for any other matter council considers necessary to regulate land use within the municipality.

[181] And as confirmed by the cases discussed in paras 147-151 above.

[182] Accordingly, whatever additional procedural rights (not identified by the applicants) might accompany a judicial or quasi-judicial process are not engaged here.

2. "No meaningful process" argument not made out

[183] The applicants invoke s 692 (public hearings) as the source of their right to procedural fairness. They argue that the public hearing here was not meaningful as its focus was city-wide, not neighbourhood-by-neighbourhood.

[184] However, s 692 does not direct a different hearing process depending on the scale of the proposed changes or the number of affected parties.

[185] As noted earlier, the *MGA* provides a notice process where more than 500 parcels are affected, with no cap.

[186] In any case, the applicants did not provide evidence or argue that, viewed against the collective input of property owners and others at the public hearing (over 700 in-person presentations and over 6,000 written submissions), any particular detail or nuance of the impact of increased density was not addressed.

[187] They did not provide evidence from any person who did not provide in-person or written submissions at the public hearing that, if neighbourhood-by-neighbourhood hearings had been held, they would have provided submissions. Or that those submissions would have added materially new or different information or perspectives.

[188] They did not provide evidence from any person who made in-person or written submissions at the hearing that they would have offered additional or different submissions if a per-neighbourhood hearing approach had been used.

[189] They did not argue that the time allotted to in-person presenters, while brief, was inadequate. Or that limits were imposed on written submissions or, if any, that they were too constraining.

[190] They did not provide evidence on or argue that any person wishing to make in-person or written submissions at the public hearing was not permitted to do so.

[191] As noted, the applicants argued that "[t]here was no capacity for the [City's] Council to adequately hear, consider and make a decision on the concerns raised by the Applicants and other affected parties" and that "[the City's process did not give it] the opportunity to meaningfully consider the record before it."

[192] They provided no evidence to support either assertion. Neither did they point to any councillor(s) objecting, at the vote on the bylaw, that any individual councillor, group of councillors, council as a whole, or the City administration, had been unable to hear, see, understand, or consider the in-person and written submissions or, concerning the latter, any synopses prepared by the administration.

[193] They did not argue that the decision approving the bylaw was made in bad faith or for improper reason(s).

[194] The applicants disagree with the Council's decision. But that does not mean they did not receive procedural fairness.

[195] In this case, that meant notice of the proposed bylaw, an opportunity to provide their perspectives, and a Council open to hearing and considering them.

[196] The applicants did not prove that any element was lacking here.

[197] Accordingly, I find that the City provided an adequate, reasonable, and correct level of procedural fairness here.

IV. Alleged closed-mindedness of one councillor

[198] The applicants' final argument is that one councillor, Gian-Carlo Carra (Ward 9), was closed-minded at the hearing i.e. not open to persuasion (the parties agree that that is the applicable test) and that, as a result, the entire hearing was tainted, rendering the new bylaw void.

[199] I disagree, as explained below.

A. Source of applicants' evidence

[200] The applicants rely on the evidence of George Clark, who attended a pro-blanket-rezoning meeting at the downtown Calgary library on April 13, 2024 and afterwards posted social-media accounts of the meeting focusing largely on Councillor Carra's participation at the meeting, followed later by his complaint to the Integrity Commissioner on that subject and an affidavit sworn by Mr. Clark (same subject) relied on by the applicants here.

B. Analysis of reliability and credibility

[201] I find that Mr. Clark was not a reliable or entirely credible witness, for these reasons.

1. Adding details

[202] Mr. Clark's account expanded as time went by, especially about Councillor Carra's alleged activities and statements at the meeting. With unconvincing explanations about why. To the point I find his piling-on comments not credible.

[203] In his initial "AlbertansFirst" Twitter post (in five parts), on the morning of April 14, 2024 i.e. about 18 hours after the meeting ended, he reported that "[Councillor Carra] is working directly with 3rd party Lobbying Groups such as @YYCNeighbours and @calgarysfuture to solicit, train & support YES activists looking to influence Council's vote. He did most of the training!" And that he and Council could implement change, "majority opposition be damned." And referred to "the 18-20 attendees "[framing] the NO side opponents as wealthy, racist and violent." And declined to answer why he had not held a townhall on blanket rezoning with his constituents. And admitted to "not being open minded or willing to listen to opponents …."

[204] This was followed by a Facebook post later that day (4.09 pm) adding that the Councillor himself (i.e. a presenter at the meeting) "attack[ed] the NO side for the upcoming April 22nd Public Hearing …" (i.e. not just other attendees doing so), albeit with no details of the alleged attacks.

[205] Followed by his complaint on April 15, 2024 to the Integrity Commissioner, adding details such as the Councillor portraying the "No" side as basing their views on disinformation and speaking of them in a disrespectful and hate-filled manner" (per the Integrity Commissioner's synopsis of the complaints in her May 22, 2024 decision on the complaint) i.e. adding details of the earlier referenced "attacks."

[206] Followed by his affidavit sworn on May 9, 2024, adding (at least to the two initial accounts above) that the Councillor described the public hearing as "a formality that he needed to get through …", that he had declined to hold a public townhall on blanket rezoning because he had "no interest" in hearing citizen concerns and that any such concerns "would not have any bearing on his decision to promote and pass the [blanket rezoning] bylaw", and that the Councillor repeated his "mind is made up", will not listen to opponents", and "opponents racist and exclusionary" comments privately to Mr. Clark after the meeting.

[207] In cross-examination on his affidavit, Mr. Clark explained (or tried to) why his Facebook post did not include certain details featured in the later affidavit. Per him (in part):

> So when I'm posting, I endeavour to leave it in a size that's readable because if you put too much information in any particular post, people will see how long it is, and they won't bother reading it.

[208] I find it unlikely that, if the Councillor had indeed criticized the NO side, and in the alleged terms, Mr. Clark would have omitted such an attack from his Twitter post and the details from his Facebook post. Same for the alleged repetition of those attacks, with details, in the alleged private conversation with Mr. Clark.

[209] Particularly where the Facebook post includes Mr. Clark's express reference to the number of views of his Twitter post and the exhortation to his Facebook friends to "see if Facebook can outdo the X/Twitter crowd, share the heck out of this."

[210] In other words, with Mr. Clark apparently aiming to maximize viewing and sharing, it seems counterintuitive he would omit such surprising and "sensational" details in his initial accounts.

[211] In first reporting that "attendees" at the meeting framed the NO side as "wealthy, racist and violent", then that the Councillor himself had "attacked" the NO side albeit without any details, later that the Councillor had characterized the NO side as "racist", "blowhards", and "exclusionary", and finally that the Councillor had repeated the first and third comments in the alleged private conversation, Mr. Clark loses credibility, especially when he offers no plausible explanation for this expanding and increasingly alarming account of the Councillor's alleged behaviour.

2. No independent evidence from meeting or contemporaneous notes

[212] Further, the noted details were added despite Mr. Clark testifying he did not audio- or videorecord or take contemporaneous notes of the meeting proceedings. Neither did he refer to notes of any other person attending the meeting or of checking with others attending the meeting as to their recollections of what was said and by whom.

[213] In other words, he provided no corroboration for any element of his account of the meeting.

[214] Here I note that the affidavit came 26 days after the meeting and 24 days after the complaint to the Integrity Commissioner.

3. Mixture of "direct quotes" and "best recollections"

[215] The absence of any recording of the meeting and contemporaneous notes, plus the long lag between the meeting and the affidavit, cause me concern about the reliability of the "direct

quote" segments of Mr. Clark's affidavit i.e. where (per his cross-examination testimony) quotation marks signal verbatim reproductions of what the Councillor said (per Mr. Clark).

[216] Mr. Clark did not explain how he was able to produce verbatim accounts almost a month after the meeting.

[217] As well, per him, statements attributed to the Councillor without quotation marks are "more of a general recollection." That includes the assertions that the Councillor was not open to hearing "[what] constituents of blanket rezoning might wish to inform him of", that "his mind was made up and that the public hearing was a formality that he needed to get through …", and (from the asserted private conversation) that "his mind was made up and that he had no intention of listening to anyone opposing blanket rezoning." (To be clear, the quotation marks here are mine, not from the affidavit.)

[218] Where the central allegation of Mr. Clark is that the Councillor presented as closeminded at the meeting, it is puzzling and concerning that he was only able to provide "general recollections" i.e. assuming he could provide pinpoint descriptions of anything said, one month out.

4. Not a dispassionate observer

[219] I do not find Mr. Clark to have been a neutral and dispassionate observer of the meeting.

[220] Per his Facebook account, he "CAUGHT" the Councillor training yes-side individuals at the meeting.

[221] In that account, he asked "Did [the mayor] authorize Councillors to work directly for the Lobbying DONORS who funded their campaigns?"

[222] That was a reference to groups he described as YYC Neighbours and CalgarysFuture.

[223] But his post included no information to confirm or suggest that either group was a "donor" or, if so, that their donations extended to campaign donations, or that, if so, either or both had donated to the Councillor's election campaign(s).

[224] Those allegations were not repeated in Mr. Clark's affidavit, where he describes the two groups (there described as "More Neighbours Calgary" and "Calgary's Future") as "unincorporated organizations" and attached as Exhibits A and B the "About" pages from the website of each.

[225] Neither "About" page says anything about making donations, campaign or otherwise, to anyone, let alone Councillor Carra.

[226] In his Twitter and Facebook posts, Mr. Clark stated:

> If @CalgaryRecall or @ProjectYYC or recallgondekyyc held April 22nd training sessions with Developer Lobbyist funding support & Councillor Trainers, the @CBCNews, @calgaryherald, [and] @CTV outrage [would be] immense!

[227] The insinuation is that the meeting in question was funded by yes-side lobbyists. With no evidence to support that. And the assertion noticeably absent from his affidavit.

[228] Neither did he show anywhere that the Councillor was "work[ing] directly" for either organization i.e. versus making a presentation at an event organized by them.

[229] In the Facebook post, Mr. Clark also alleged that the Councillor was "working with the big union backed campaign donor PAC", without detailing there (or elsewhere in the materials on the record) who he was referring to or how the Councillor was "working with" whoever he was referring to.

[230] In his Twitter and Facebook posts, Mr. Clark included an (alleged) detail that the Councillor viewed no-side supporters as trying to "destroy his life savings by opposing a [certain development]."

[231] That allegation disappeared in his affidavit.

[232] Presumably such a "sensational" detail was not overlooked. I infer that Mr. Clark added this detail to his earlier accounts without foundation.

[233] I find Mr. Clark attended the meeting with an axe to grind. Not in the sense that he was apparently opposed to blanket rezoning. But in the sense (reflected in the noted comments) that he was on a mission to vilify the meeting organizers and the Councillor, whether conceived in advance of or while attending the meeting.

5. Inconsistencies

[234] In his Facebook post, Mr. Clark stated: "[Councillor] Carra didn't answer WHY he hadn't held an open townhall on [blanket rezoning] …."

[235] In his affidavit, he deposed:

> I raised my hand [at the meeting] and asked [Councillor Carra] why he hadn't held a public townhall to hear form Ward 9 residents. His response was that he "had no interest" in hearing their concerns and that "they would not have any bearing on his decision to promote and pass the [blanket rezoning] bylaw.

[236] In other words, first "no answer", then "detailed answer."

[237] Asked to explain the discrepancy in cross, he testified:

> [The Councillor] did not, in his response, give a reason why. He just said he had no interest. To me, that wasn't a reason. … [The Councillor's stated reasons, as alleged] wouldn't be a reason, to me. That would be like a 5-year-old saying because I don't wanna, right? I would want to know a reason. … He did not appropriate answer [my question] because I specifically asked him why.

[238] The point here is not whether Mr. Clark in fact asked this question or whether it was a good or bad question. It is that Mr. Clark shows himself to be an unreliable reporter of events. Even if he found the Councillor's response (if the dialogue happened at all) to have been unsatisfactory (and such a response, if it was made, would seem unsatisfactory), he erred in first reporting that the Councillor did not offer a response. Which I find undercuts his credibility.

[239] In his Twitter report, he said that the meeting attendees framed the no side as "[in part] … violent." Same in his Facebook post. With no details.

[240] That allegation is not repeated in his affidavit. Presumably an accusation of violence, startling at minimum, would not be forgotten or discarded.

[241] I infer that Mr. Clark added that detail, with no foundation, in his first two accounts.

6. Lack of context

[242] As noted, Mr. Clark's affidavit did not attach a video or audio recording of the meeting in question or (at minimum) Councillor Carra's presentation and his remarks overall, a transcript of any segment, or even a synopsis of the overall discussions at the meeting or the overall Carra segment. (Per Mr. Clark, Councillor Carra's presentation lasted approximately one hour).

[243] Mr. Clark instead focused on a handful of (alleged) excerpts from the Councillor's presentation.

[244] He did not give evidence that, in the balance his remarks, the Councillor maintained the same (alleged) stances i.e. the opponents of blanket rezoning hold unacceptable attitudes and that his mind was irrevocably set on supporting blanket rezoning. Or that Councillor Carra offered no "on the other hand"-type comments or otherwise eclipsed, made conditional, or diminished the weight of the quoted comments e.g. said nothing about a councillor's obligation to keep an open mind, despite firm opinions on proposed resolutions.

[245] Gauging solely from the Clark affidavit, it is not possible to determine whether, in the context of his full presentation and remarks overall, the quoted comments are an accurate capture of the "net" (i.e. overall) views of the Councillor at the meeting.

7. Prejudgment

[246] Another reason to question Mr. Clark's reliability and credibility is his willingness to prejudge the outcome of his complaints about Councillor Carra to the Integrity Commissioner.

[247] Per his written submission to the City as part of the blanket-rezoning hearings, Mr. Clark outlined the thrust of his concerns about the Councillor arising from the meeting in question. He then wrote "[the Councillor] has chosen to violate the following Code of Conduct for Elected Officials Bylaw s 10(b), 11, 17, 40 & 41. I am submitting this complaint with the City's Integrity Commissioner on April 15, 2024."

[248] In other words, in advance of even making his complaint, he declared "violations" of the noted provisions.

[249] As it turned out, the Integrity Commissioner rejected all of Mr. Clark's complaints, clearing the Councillor on all counts.

8. Camouflaged motivation

[250] In his affidavit, Mr. Clark described neutral motivations for attending the meeting and for commenting on public affairs generally.

[251] On the first aspect, he said he "attended the event because I wanted to learn more about why Calgarians were interested in supporting blanket rezoning."

[252] On the second, he described himself as "active on social media."

[253] In redirect following his cross-examination, he described being effectively commissioned by a family member, in 2014, "to start publicly sharing your opinions and your research because I know you can be of value." He said that "since that point, I have been relatively active on Facebook and on Twitter at the time. … at this point, if there's an issue that's current and relevant that I can bring some clarity to, I will get active and post …."

[254] In his affidavit, he described himself as a "third party to these proceedings."

[255] He did not explain how he came to the attention of the applicants here or how and why he swore an affidavit in support of their application.

[256] In any case, these attempts to paint himself as neutral were undercut by his description, in his Twitter and Facebook posts, of blanket rezoning as "this massive property rights seizure."

[257] My assessment of the property-rights aspect is outlined above.

[258] The point here is that Mr. Clark was not in fact neutral on blanket rezoning. He was obviously opposed, which is reflected as well in his self-reported "[speaking] against blanket rezoning" at the Council hearing.

[259] Opposing blanket rezoning, on its own, is obviously not a credibility factor. It becomes one when a blanket-rezoning opponent reports highly inflammatory, and uncorroborated, accusations of prejudgment and holding offensive views against a councillor, which (if accepted) have, or had, the potential to render the councillor and, by extension, potentially the entire Council unable to hold a valid hearing on the bylaw and, in theory, potentially invalidating it.

[260] In that circumstance, it weighs against Mr. Clark's credibility that he tried to depict himself as neutral i.e. to factor out or at least downplay his obvious opposition to blanket rezoning.

9. Conclusions on reliability and credibility

[261] I find Mr. Clark's credibility and reliability are materially undercut by his expanding-and-worsening-details accounts of the meeting, the absence of audio- or videorecording of the meeting, no other corroboration of any aspect of his meeting report, the absence of contemporaneous notes, the almost-month-long gap between the meeting and his affidavit (with its various asserted verbatim quotations), the hedging of some of his central allegations (e.g. "mind closed") as "general recollections only", his obvious animus towards the Councillor and the groups involved in the meeting, the noted inconsistencies in his accounts on material points, the selective nature of his report i.e. lacking even a general synopsis of the Councillor's overall comments, his willingness to prejudge the outcome of his complaints, and his camouflaged motivations.

[262] To the extent that, if this were the only evidence bearing on "closed mind", I would find that the applicants did not prove the point on a balance of probabilities or even raise a *prima facie* case effectively shifting the onus to the Councillor to provide counterevidence.

[263] In a nutshell, Mr. Clark was partisan, not independent. He was motivated by his opposition to the proposed bylaw. He provided a selective and distorted account of the meeting. It is accordingly hard, without corroboration, to gauge which part(s) of his account are accurate, which are partly accurate, and which are not accurate at all.

[264] I also find it noteworthy that the record reflects not one other person, of all the persons with whom the Councillor interacted on the subject of blanket rezoning in the lead-up to and at the public hearings, alleging that the Councillor was closed-minded on the bylaw.

[265] Mr. Clark's solo effort, relied on by the applicants, fails for all the noted reasons.

[266] For the record, the Councillor provided submissions challenging Mr. Clark's report of the meeting to the Integrity Commissioner i.e. as part of her investigation of Mr. Clark's complaints.

[267] As already noted, the Commissioner rejected each of his complaints.

10. No evidence of closed mind at public hearing

[268] In any case, the focus of the "closed mind" analysis is the hearing, including the decision stage. The organizational meeting in question was on April 13, 2024 i.e. eight days before the public hearings began. Even if Councillor Carra had indeed said at that meeting his mind was made up, that was in advance of the hearing. Minds can change, and firmly held opinions can become less so. In any case, even a firmly held opinion does not necessarily translate into an unwillingness to consider contrary views.

[269] Here I emphasize that, in response to a question from Councillor Chabot, the City Solicitor reminded the full council (including Councillor Carra, who was present) that, while they may have opinions on the proposed bylaw, they must be amenable, or open, to persuasion. Here is that dialogue (Council meeting on May 13, 2024 – start of meeting):

> **Mayor Gondek**: So we are at the stage where we are turning to questions for administration but I am just wondering: is there anything that needs to happen in terms of presentation or are we good to go with questions? [pause] Okay, we are good to go. I see a couple of people in the queue, and we have one procedural question, so go ahead, Councillor Chabot.
>
> **Councillor Chabot**: Thank you. I believe we were all circulated with a legal letter recently about somebody possibly [being biased] and not being amenable to persuasion. I was wondering if the Law Department could weigh in on that before we proceed.
>
> **Mayor Gondek**: So just so I can get some clarity from you -- this was a letter circulated by our legal team?
>
> **Councillor Chabot**: No … by an external [person] challenging the legitimacy of a member of Council.
>
> **Mayor Gondek**: Okay let's just make sure that we are clear that this does not [arise] from our legal team.
>
> **City Solicitor**: Thank you. Councillor Chabot. I am not going to comment directly on that, but I think I will make some broad comments on bias in council. This is a good opportunity to remind you all -- and many people sitting in this chair have done it through the years before -- that your obligations for planning items are that you are amenable to persuasion. Courts have recognized in the past, including the Supreme Court of Canada, that [councillors] are in a sense politicians and you don't come to all of these decisions with a completely blank slate. And you may have formed opinions before you get here. But what you need to do is once you are here and deciding this [is] have an open mind and be amenable to persuasion.
>
> **Councillor Chabot**: … So, it's a pretty wide bar. What you're suggesting is that we can have an opinion even before the public hearing as long as we [are or remain] open to persuasion?
>
> **City Solicitor**: Yes, Councillor Chabot. You may have an idea of how you feel about the application before you, but you can't come here with your decision

firmly made. You come here with the ability to be persuaded, be amenable to persuasion.

Councillor Chabot: And that's what being put in question, that's why I am asking. Thank you for that clarification.

[end of that discussion]

[270] Councillor Carra's participation in the hearing, including questions asked to presenters, offers a meaningful window into the state of his mind (e.g. closed or open to persuasion) at the public hearing. Here are two examples, with my assessment of what they signify:

From April 22, 2024 (day #1 of hearings) (approx. 18 minutes from start) [context: request by Councillor Chabot for Council to move into an in-camera discussion with City's Ethics Advisor to discuss issue of councillors potentially having a pecuniary interest in the subject matter of the proposed rezoning bylaw i.e. ownership of one or more properties within the City that may be affected by the proposed bylaw]

Mayor Gondek: [Councillor Carra], you have a question?

Councillor Carra: Well, I am prepared to debate things going in camera to discuss this when it is appropriate to do so.

Mayor Gondek: Okay, let me see if we've got the motion ready.

City Clerk: ... we're ready, Mayor. … so the motion reads "That pursuant to section 27 of the *Freedom of Information Protection and Privacy Act*, Council now move into closed meeting in the Council boardroom to discus confidential matters with respect to item 7.2.1 and further that Dr. Laidlaw [Ethics Advisor] be authorized to attend.

[general discussions, including Mayor Gondek inviting debate on the motion].

Councillor Carra: … I will just say I have a tremendous amount of respect for our Integrity Commissioner and our Ethics Advisor and our City solicitors, and it's always good to hear what they have to say. Having said that, the [*Municipal Government Act*] couldn't be clearer. City Council frequently votes on things that affect individual council members. When we set a tax rate, we're impacted. The *MGA* very specifically states that if this something that affects everybody in the city or a significant number of people in areas of the city or in the city, there is no pecuniary interest. I think this is political theatre, going in to discuss this. I think the in-camera thing is too cloak-and-dagger-y. And I do not think we should be doing this. So, I will be voting against this.

COMMENT: here Councillor Carra expressed his view (not accepted by other councillors, with the in-camera motion passing with only Councillor Carra dissenting, as I recall) that this segment of the hearing should take place in the open i.e. transparently. I see this as a signal of Councillor Carra taking the hearing process seriously i.e. not something to simply get through i.e. not just a charade.

[Later on April 22, 2024 (around 2.19 hours in)]:

> **Councillor Carra**: Okay, before I ask my question of Mr. [Teja], so please stay at the mic, I just want to thank Mr. Bert [Whissell] for his presentation. … it was in the heart of lockdown [that] we went to a virtual approach to public hearings. We didn't know whether it would work or not, and we had some very powerful public hearings in the effort to ... to participate in government from the safety of [one's] home and speak [one's] truths [which] is one of the great things that ... the pandemic gave to us. And so I really appreciate that personal story.
>
> Mr. Teja, you are an expert in this field, and a lot of the technical points that you shared with us closely mirrored what we heard from Administration. I suspect something that we're going to hear extensively from the No side is the impact on property values of this kind of thing. I think Administration's presentation touched on it a little bit. I think yours touched on it a little bit. I was wondering if you wanted to take a little bit of time to tell us a little bit more about what the research is on the impacts of this kind of approach to people's property values.
>
> **COMMENT**: here Councillor Carra first acknowledges the importance of Council's public hearings – fundamentally, the opportunity for Calgary citizens to provide their perspectives. Second, he invites the presenter to elaborate (apparently from a position of expertise or authority) on an issue raised by blanket rezoning. This further signifies Councillor Carra treating the hearing process as meaningful. [Note: this is not an exhaustive account of the Councillor's involvement in the hearing.]

[271] As well, the applicants did not point to anything done or said by Councillor Carra at the public hearings showing or even indicating that, in the same way he presumably hoped to illuminate matters by seeking more information from that presenter i.e. for the collective benefit of Council as a whole, he was not open to hearing and considering what other presenters and other councillors said along the way i.e. that he would not reciprocate with attention and an open mind.

[272] The Applicants also provided no evidence that, after the April 13 meeting, whether in the eight days leading up to the public hearings, during the hearings themselves, or at the voting stage, Councillor Carra had a closed mind i.e. was not amenable to persuasion.

[273] In particular, no evidence that he ignored the clear statement by the City Solicitor on May 13, 2024 i.e. the day before the final vote, that councillors were obliged by the law, including decisions of the Supreme Court of Canada, to remain, or be, open to persuasion i.e. that despite firms opinions they may have on the issues and the proposed bylaw overall, they must remain so open;

[274] As far as I can tell, no other councillor raised any concerns on the record during the hearing, including at the voting stage, as to Councillor Carra's amenability to persuasion during the hearing or at the voting stage. (I acknowledge Councillor Chabot's no-names concern about all councillors being amenable to persuasion and the no-names summary of the obligations of all councillors provided by the City Solicitor.)

[275] Nor did any presenter, as far as I can tell (Mr. Clark's earlier allegations aside).

[276] Nor did the City Solicitor make any on-the-record comments, recommendations, cautions, or otherwise on that subject.

[277] In fact, as far as I can tell, the record reflects no concern from any person involved in the hearings or the voting on the bylaw about Councillor Carra's openness to persuasion at the hearings or during the voting.

[278] Councillor Carra's closing comments (excerpts below) on the bylaw, offered in the round-up of councillor comments on May 14, 2024, taken at face value, reflect an openness to persuasion:

> … I think one of our jobs, I believe, is to govern and not to constantly politic and campaign. And I think when we weigh arguments and make decisions, we have to be swayed not by the virality of an argument, not by how many people are saying something, but by the veracity of an argument, how much weight it carries.
>
> Now, I have been accused of not being amenable to persuasion, and to be fair, you know, I have been on the [leading] edge of this conversation. For 24 years of my life, I have been a believer in mixed density neighbourhoods and advocated for them and designed them and studied them. And as a City Councillor I've advocated for them and supported them, and we've voted many times on this very measure to get it before us. But I do believe very strongly in the public hearing process, and I am always willing to be persuaded. I'm also always willing to wade into arguments and try and persuade myself, which is one of the reasons why people believe I'm closing in my thinking.
>
> I will say that I was swayed by the yes side. …
>
> … I think it's our job, I think it's our job to – to really dig into the veracity of arguments and not their virality. And I hope that the people around this horseshoe who are going to vote no think about that as they make their arguments and they cast their vote. …

[279] As for taking those statements at face value, nothing in Councillor Carra's words or actions at the hearing, including at the voting stage, reflect a locked-against-all-possible-counter-arguments state of mind – indeed, the opposite i.e. a willingness to listen and consider contrary views: he attended what appears to be the vast majority of the hearing, no evidence showed that his attention was otherwise engaged, he asked questions and engaged in discussions, and apparently made no statements during the hearing along the lines of "it does not matter what you [e.g. presenter opposed to blanket rezoning] have to say – it makes no difference to me – I am voting for the bylaw regardless of what you say" or otherwise signal a locked mind and an inevitable "yes" vote.

[280] Similarly, nothing during the hearing or at the decision stage reflected any animus by Councillor Carra towards any opposed-to-blanket-rezoning presenter. In any case, I am not aware of any such allegation, and the applicants did not raise any at the argument of this application on December 11.

[281] Councillors are not obliged to swear or declare or otherwise formally commit or acknowledge that they are approaching, and have approached, hearings and decisions with an open mind. That stance is effectively a default i.e. councillors are effectively presumed to be so operating.

[282] Hence the onus on persons contending otherwise to produce evidence to the contrary, at least *prima facie* evidence. And here there is no such evidence from the hearing or decision stages.

[283] The applicants did not point to any case where a decision maker presenting as open to persuasion during a hearing and at voting was characterized as closed-minded based entirely on (actual or alleged) pre-hearing and statements or actions.

[284] Finally, in her investigation, the Integrity Commissioner apparently did not require or suggest to Councillor Carra that he respond to Mr. Clark's allegations by affidavit, versus simply a written statement.

[285] In his written statement to the Commissioner, Councillor Carra advised that the statements attributed to him by Mr. Clark were not made, were not accurately described, or were taken out of material context. The Comissioner concluded that Mr. Clark's varying descriptions of precisely what Councillor Carra had said rendered them materially unreliable.

[286] I reached the same conclusion, as explained above.

11. Conclusion on allegation of closedmindedness

[287] The applicants' source on this point was not reliable and not entirely credible.

[288] Mr. Clark's uncorroborated and overall questionable evidence did not prove on a balance of probabilities that Councillor Carra exhibited a closed mind on the bylaw at the April 13th organizational meeting.

[289] In any case, no evidence shows that Councillor Carra was not amenable to persuasion during the hearing.

[290] The applicants are unsuccessful on this issue too.

V. Conclusion

[291] The applicants are opposed to the new bylaw.

[292] They challenged it based on a perceived lack of authority for the City to enact it, a shortfall in procedural fairness, and an allegedly closed-minded councillor.

[293] As explained above, they were off-target with each challenge. The City's implicit decision that it had the necessary authority under the *MGA* was both reasonable and correct. The applicants received the required-by-the-*MGA* and otherwise appropriate level of procedural fairness. And they failed to prove their allegation against Councillor Carra.

[294] The applicants did not argue that the bylaw is inherently unreasonable e.g. is a general zoning bylaw that no reasonable city council would enact.

[295] Nor could they have, per s 539 *MGA*. And with the Court's role not extending to evaluating the policy merits of the bylaw.

[296] I close with an instructive excerpt from ***Bonnyville Adjacent Landowners Group v. Demers***, 2003 ABQB 672 (Greckol J. as she then was):

> Some opponents of the trail objected to the trail altogether while others objected to the use of off-highway motorized vehicles on the trail. Still

> others at the August 2001 public meeting objected that they should have their land back, once taken for the railway and now used for a leisure trial …. These concerns and desires of landowners and other users of the trail, arising in the face of the expected whir and whine of dirt bikes, quads and snowmobiles, on the recreational trail and in their back yards, [are] certainly understandable, but unfortunately raise **issues that must ultimately be decided at the ballot box.** Applying the law of judicial review as I understand it, I must dismiss this application. [para 112] [emphasis added]

[297] Calgary City Council acted within its powers, fairly, and with sufficiently open minds.

[298] The application for judicial review of the new general zoning bylaw is accordingly dismissed.

VI. Costs

[299] Both sides asked for costs of the application. As the successful party, the City is entitled to costs.

[300] As for the scale (Schedule C or otherwise) and overall quantum of costs, I invite written submissions from each side (two-page maximum, aside from any supporting materials e.g. cases), with the City's submission due by January 17, 2025 and the applicants' by January 24, 2025.

Heard at Calgary, Alberta on December 11, 2024.
Dated at Calgary, Alberta on January 8, 2025.

Michael J. Lema
J.C.K.B.A.

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