

Brief Submitted on Behalf of RB3 Properties Inc.

RB3 Properties appeared before the Regina Planning Commission on September 9 and addressed the Commission in opposition of the proposed the rezoning of the Temporary Parking Lot. **Attached hereto as Exhibit "A" a copy of the report from the Regina Planning Commission for the September 30, 2020 City Council Meeting confirming this.**

The report also confirms that the Commission adopted a resolution to table this report until such time as the Regina Planning Commission has had opportunity to review the report on MN20-19, the Temporary Parking Lot Policy.

It also states that the City Clerk determined that this matter should be considered by City Council at its meeting on September 30, 2020.

As one of the interested parties, we were never notified of this decision or given an opportunity to speak in opposition of the proposed plan.

When we emailed the office of the city clerk, we were advised that the City Clerk ruled shortly after the meeting that it was procedurally out of order, and I was provided with a copy of minutes which I was advised were published on the website on September 17, 2020. **Attached as Exhibit "B" is a copy of the email with the Clerk's office, minutes we were provided**

It is through the attachments of Magnetic Capital's brief submitted on September 24 2020, did we discover the communication setting this out, and when the decision was made. The minutes of the meeting was revised to reflect this decision. **Attached as Exhibit "C" the letter and email correspondence between Magnetic Capital and the office of the City Clerk.**

Magnetic had stated that they were not aware of the decision because they did not remain the call to hear the deliberations. This is a circumstance, where we remained on the call, heard the deliberations and were of the understanding that this matter was tabled. We were surprised not only to find out in the newspaper that this parking lot was approved by City Council, but the fact that we were not notified or given an opportunity to speak as well.

Our submissions are as follows:

We highlight the facts of what transpired following the Planning Commission, so that City Council can be aware of the facts, and why we feel there is a lack of due process in the circumstances.

We submit for reference the judicial case of *P.J.D. Holdings Inc. and The City of Regina*, 2010 SKQB 386. This was a case in which the courts found a duty of fairness was required and quashed a City Council decision and had it set aside. My client is uninterested in pursuing this step.

As an interested party we want to make two submissions:

1. We question why the City would allow this temporary parking, when it contravenes all current policies.
2. My client has already been economically impacted as a result of the pandemic, and this temporary parking will only create additional hardships.

RB3 Properties owns properties located near 1971 Albert Street. In particular, 1901 Albert, 1929 Albert St, and 1935 Albert Street and 1971 Smith Street.

Currently, of these properties there are 2 parking lots on 1900 Block Albert Street and one located at 1971 Smith Street. Since the lockdown from COVID, the revenue at both 1935 Albert Street and 1971 Smith Street have decreased by 83%. This does not only impact the owner, but the operator IMPARK who have entered into a revenue sharing agreement for operating the parking lot.

The other lot is currently leased and through the company's request for abatement and have reported a 100% cost recovery lost resulting from their employees working remotely from home.

As part of the application before you, the applicant has stated "the ability to park vehicles on site during the predevelopment phase will ensure municipal taxes are maintained throughout that time without the need to levy the property with additional debt that could stall or inhibit the building process".

It is our submission that granting the application for this reason, and on a temporary basis is actually passing the buck on to those already being financially devastated by the current state of emergency. We understand that the cost of development will bear some cost, but municipal taxes is something the rest of the market faces as well.

We submit that the Regina Planning Commission took the prudent step to table the parking lot until the findings of the Temporary Parking Report.

Attached as Exhibit "D" is a copy of the letter my client received seeking feedback on allowing temporary downtown surface parking lots space on October 15, 2020. This letter and study is being conducted after the approval of City Council on September 30, 2020. We struggle with reconciling how this can occur.

The Regina Downtown Neighbourhood Plan was clear that no new surface parking be allowed. There must be significant reasons behind this, and research that has gone into such a recommendation. We asked that that be information gathered, and that the economic impact to existing operators be studied. In all circumstances, even if the City does not wish to study the economic impact to the existing businesses, the rezoning should not occur until the Temporary Parking Policy is properly reviewed.

All of which is respectfully submitted this 22 day of October, 2020.

A handwritten signature in blue ink, appearing to read "Thomas H. Le", is written over a horizontal line.

Thomas H. Le

Butz & Company – Barrister & Solicitors

"Exhibit A"

**Regina Planning Commission: 1971 Albert Street Contract Zone
Application (PL202000118)**

Date	September 30, 2020
To	His Worship the Mayor and Members of City Council
From	Regina Planning Commission
Service Area	City Planning & Community Development
Item #	CR20-83

RECOMMENDATION

Regina Planning Commission recommends that City Council:

Table this report until such time as Regina Planning Commission has an opportunity to review the report on MN20-19, the Temporary Parking Lot Policy.

HISTORY

At the September 9, 2020 meeting of Regina Planning Commission, the Commission considered the attached report RPC20-31 from the City Planning & Development Division.

The following addressed the Commission:


- Thomas Le, Butz & Company, representing Gus Kolitsas, RB3 Properties Inc.; and
- Dave Brundige, Willows Wellsch Orr and Brundige LLC, representing Magnetic Capital Corp.

The Commission adopted a resolution to table this report until such time as Regina Planning Commission has an opportunity to review the report on MN20-19, the Temporary Parking Lot Policy.

Owing to the urgency of the application, as advanced by the applicant, and in light of the fact that Regina Planning Commission does not have delegated authority with respect to the

final decision to be taken by City Council, the City Clerk determined that this matter should appropriately be considered by City Council at its meeting on September 30, 2020.

Respectfully submitted,
REGINA PLANNING COMMISSION


Elaine Gohlke, Secretary 9/25/2020

ATTACHMENTS

RPC20-31 - 1971 Albert Street-Contract Zone Application.pdf

Appendix A-1 (Aerial Map)

Appendix A-2 (Site Plan)

Appendix B

Exhibit "B"

Thomas Le

From: Elaine Gohlke <EGOHLKE@regina.ca>
Sent: Tuesday, October 6, 2020 8:17 AM
To: Thomas Le
Cc: Jim Nicol
Subject: RE: [External email] RE: Invitation to Regina Planning Commission - September 9, 2020
Attachments: rpc0909m20.doc

Good morning,

My apologies for any misunderstanding you may have had regarding the process that is used for consideration of items at Regina Planning Commission and City Council. We do not contact interested parties after a meeting unless the item had actually been referred to a different date. Had that happened, we would have notified you and other interested parties that it was not being considered until a future date and you/they would be notified when it was coming back to Regina Planning Commission. Having said that, we understand that the process is not familiar to most and are more than happy to confirm the decision and answer any questions that interested parties have after meetings, and do so frequently.

Shortly after the meeting, the intent of the motion was looked at more closely by the City Clerk and notwithstanding the Commission's decision, he ruled that it was procedurally out-of-order and that the original report to Regina Planning Commission would go forward to the City Council agenda for Wednesday, September 30, 2020. As requested, attached is a copy of the Minutes for the September 9 Regina Planning Commission meeting that were published on the City of Regina website on September 17, 2020. The Minutes of the meeting state the decision of Regina Planning Commission and should be referenced after the meeting for the decisions made at the meeting. Unfortunately, an interested party's understanding of a motion and what transpired at a meeting can be a matter of interpretation and is unknown to us unless we are contacted for confirmation and/or the next steps in the process.

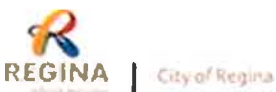
I would note that the Bylaw covering the contract zone application will be considered at the October 28 City Council meeting and you are welcome to appear as a delegation on the Bylaw, if you wish. To appear as a delegation on the Bylaw, I will need a letter requesting permission to appear before City Council and a copy of your presentation, including the request being made of City Council. The deadline for submission is Thursday, October 22, 2020 at 1:00 p.m. and it can be e-mailed to clerks@regina.ca or directly to me at this e-mail address.

Please note that the video of the meeting can be found here: <http://reginask.iqm2.com/Citizens/SplitView.aspx?Mode=Video&MeetingID=4862&Format=Agenda> in case you would like to hear discussion and debate on the item.

Elaine

Elaine Gohlke
Council Officer
Office of the City Clerk

P: 306.777.7184
F: 306.777.6804
E: egohlke@regina.ca
[Regina.ca](http://regina.ca)



rom: Thomas Le <Thomas@butzlaw.ca>

Sent: Thursday, October 1, 2020 11:29 AM

To: Elaine Gohlke <EGOHLKE@regina.ca>

Cc: Gus Kolitsas <guskolitsas@hotmail.com>

Subject: RE: [External email] RE: Invitation to Regina Planning Commission - September 9, 2020

Hi Elaine,

I just wanted to follow up on this. My clients and I learned today through CBC, that this matter appeared before City Council last night.

In your previous correspondence, this was my understanding:

"Unless this item is tabled or referred by Regina Planning Commission, it will be forwarded to City Council at its meeting scheduled for Wednesday, September 30, 2020. If you wish to address City Council, you must submit the following to the City Clerk's Office by 1:00 p.m. Thursday, September 24, 2020

1. A letter requesting permission to appear before City Council.
2. A copy of your presentation (i.e. a brief which sets out the full text of your presentation and the request being made of City Council.)"

It was my understanding when I appeared before the Planning Commission that it was tabled until next year and was not going forward to City Council for a decision. Can I have a copy of minutes of the minute confirming this? There was a motion at the meeting for this.

The CBC news article indicated this was the case, but there was a special request for this matter to be returned for a decision immediately.

I guess my question is was why weren't we notified when this was put back on the Agenda?

Thomas

From: Elaine Gohlke <EGOHLKE@regina.ca>

Sent: Wednesday, September 9, 2020 7:04 AM

To: Thomas Le <Thomas@butzlaw.ca>

Subject: RE: [External email] RE: Invitation to Regina Planning Commission - September 9, 2020

Good morning,

As requested, attached is a copy of the agenda for today's Regina Planning Commission meeting, together with a copy of the report you are appearing as a delegation on. Below are the guidelines for appearing as a delegation.

This will confirm your request to appear as a delegation via teleconference at Wednesday's Regina Planning Commission meeting. The meeting starts at 4:00 p.m. You will be attending via teleconferencing and participating by phone only, so you will not require equipment with a camera.

This will also confirm the phone number that you will be calling from is **306-596-0515**. I will e-mail you a short time before your item will be considered, so please watch for my e-mail. **Only this phone number will be admitted to the virtual waiting room, so if something happens that you have to change the phone number, please e-mail me immediately with the new phone number.**

Phone Number: 306-271-0415 (Toll Free) - *This is the number you phone to attend the meeting.*

Conference ID: 882 481 047# – *You will be asked to enter this number to join the meeting.*

Meeting Guidelines

These guidelines must be followed for attending the meeting by teleconference.

Your presentation and any responses to questions must be respectful. You must follow any requests made by the Chairperson or you may be asked to leave the meeting.

1. You must be on standby at the start of the meeting, but do not call in until you have received an email from the Office of the City Clerk to call into the meeting.
2. Call in promptly when you receive notification or you may miss your opportunity to address Regina Planning Commission.
3. When you call into the meeting, you will be placed in the “virtual waiting room” until the Chairperson calls upon you to address the Commission. *(You may be in the waiting room for a while before being called on to speak and may be kicked out after 15 minutes. If this happens, just call back into the meeting.)*
4. The Chairperson will welcome you to the meeting and:
 - Ask you to identify yourself for the record and who you represent;
 - Tell you that you have 5 minutes to make your presentation;
 - Ask you to use *6 to unmute your phone before you begin to speak;
 - Advise you if members of the Commission have any questions;
 - After all the questions have been asked, or if there are no questions, the Chairperson will thank you and ask you to leave the call. If you are having trouble leaving the call promptly, we will end the call for you.

You are welcome to watch the meeting while you are waiting in the virtual meeting room. The meeting can be viewed on the Regina.ca [Meeting Portal](#), [Access 7](#) or Access Communications Channel 7.

PLEASE NOTE: If you are viewing the meeting live on your television, phone, iPad, tablet or computer/laptop, **please be sure to mute your television/device during your presentation.** There is a delay in the live stream and you may find it distracting as there will be an echo if mute is not used during your presentation.

If you experience any issues when calling into the meeting, please contact our technical support at 306-541-4581 or by e-mail at egohlke@regina.ca.

If you have any questions, please let me know.

Elaine

Elaine Gohlke
Council Officer
Office of the City Clerk

P: 306.777.7184
F: 306.777.6804
E: egohlke@regina.ca
Regina.ca



From: Thomas Le <Thomas@butzlaw.ca>
Sent: Tuesday, September 8, 2020 3:43 PM
To: Elaine Gohlke <EGOHLKE@regina.ca>
Cc: Pho Le <lequangpho@hotmail.com>; Gus Kolitsas <guskolitsas@hotmail.com>
Subject: [External email] RE: Invitation to Regina Planning Commission - September 9, 2020

Hi Elaine,

I spoke with you earlier this morning. Please confirm our delegation attendance. My cellphone number is (306) 596-0515. I look forward to receiving the call information from you, and agenda if possible.

I will be speaking on behalf of the delegation of Gus Kolitsas, the principal owner of RB3 Properties Inc., which owns of several existing downtown parking lots near the planned location.

Regards,

Thomas Le
Associate



BUTZ & COMPANY
BARRISTERS & SOLICITORS

Office: (306) 359-5448
Toll Free: (877) 655-7656
Fax: (306) 559-2889
2510 13th Avenue
Regina, SK S4P 0W2

From: Elaine Gohlke <EGOHLKE@regina.ca>
Sent: September 4, 2020 11:41 PM
Subject: Invitation to Regina Planning Commission - September 9, 2020

Dear Sir/Madam:

Re: 1971 Albert Street Contract Zone Application (PL202000118)

Please be advised that Regina Planning Commission will be considering the attached report at its meeting scheduled for Wednesday, September 9, 2020, at 4:00 p.m. As City Hall is closed to the public to help contain the spread of COVID-19, the Regina Planning Commission meeting will be streamed live on the Regina.ca [Meeting Portal](#), [Access 7 website](#), and when community programming permits, broadcast on Access Communications, Channel 7. You are welcome to watch on any of these sites.

In response to Public Health Orders, we are implementing a temporary option that allows citizens interested in appearing as a delegation to do so by using teleconferencing. You may address Regina Planning Commission, subject to a 5 minute time limit, after which there may be questions by the members. If you wish to appear at Wednesday's meeting via teleconferencing, you must provide me with the unblocked phone number you will be using to call into the

meeting by 5:00 p.m. noon on Tuesday, September 8, 2020. Once I have this, I will provide you with information on how to join the meeting and guidelines you will have to follow.

Unless this item is tabled or referred by Regina Planning Commission, it will be forwarded to City Council at its meeting scheduled for Wednesday, September 30, 2020. If you wish to address City Council, you must submit the following to the City Clerk's Office by 1:00 p.m. Thursday, September 24, 2020

1. A letter requesting permission to appear before City Council.
2. A copy of your presentation (i.e. a brief which sets out the full text of your presentation and the request being made of City Council.)

If you have any questions regarding the contents of the report, please contact at Binod Poudyal at 306-535-9531. If you have any questions regarding the meeting, please email me at egohlke@regina.ca.

Yours truly,



Elaine Gohlke, Secretary
Regina Planning Commission

Attachment

Elaine Gohlke
Council Officer
Office of the City Clerk

P: 306.777.7184
F: 306.777.6804
E: egohlke@regina.ca
Regina.ca



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AT REGINA, SASKATCHEWAN, WEDNESDAY, SEPTEMBER 9, 2020

AT A MEETING OF REGINA PLANNING COMMISSION
HELD IN PUBLIC SESSION

AT 4:00 PM

These are considered a draft rendering of the official minutes. Official minutes can be obtained through the Office of the City Clerk once approved.

Present: Councillor Barbara Young
Councillor Jerry Flegel (Teleconference)
Councillor Andrew Stevens (Videoconference)
Frank Bojkovsky (Videoconference)
Biplob Das (Videoconference)
Adrienne Hagen Lyster (Videoconference)
Cheri Moreau (Videoconference)
Tak Pham (Videoconference)
Steve Tunison (Videoconference)
Celeste York (Videoconference)

Regrets: Jacob Sinclair

Also in Attendance: Council Officer, Elaine Gohlke
Legal Counsel, Cheryl Willoughby (Videoconference)
Executive Director, City Planning & Community Development,
Diana Hawryluk
Director, Planning & Development Services, Fred Searle
Manager, East Planning, Munir Haque (Videoconference)
Manager, West Planning, Yves Richard (Videoconference)
Senior City Planner, Ben Mario

APPROVAL OF PUBLIC AGENDA

Councillor Andrew Stevens moved, AND IT WAS RESOLVED, that the agenda for this meeting be approved, as submitted, and that the delegations be heard in the order they are called forward by the Chairperson.

ADOPTION OF MINUTES

Steve Tunison moved, AND IT WAS RESOLVED, that the minutes for the meeting held on August 13, 2020 be adopted, as circulated.

(The meeting commenced in the absence of Councillor Flegel and Frank Bojkovsky.)

ADMINISTRATION REPORTS

RPC20-294801 E. Victoria Avenue - Discretionary Use and Removal of Holding Overlay Zone Application (PL202000117)

Recommendation

Regina Planning Commission recommends that City Council:

1. Approve the application to rezone the property located at 4801 E. Victoria Avenue, as shown in Appendix A-1, by removing the H – Holding Overlay Zone from the MLM – Mixed Large Market Zone for the property.
2. Approve the discretionary use application to allow a proposed “Retail Trade, Shop,” greater than 6,000 square meters located at 4801 E. Victoria Avenue as shown in Appendix A-2.
3. Direct the Development Officer to issue a development permit subject to the following conditions:
 - a. The development shall generally be consistent with the plans attached to this report as Appendix A-2 inclusive, prepared by P3A and dated April 8, 2020.
 - b. The applicant will be required to fully execute the servicing agreement and obtain an executed subdivision plan prior to the issuance of a development permit.
 - c. Parking shall not be allowed along the drive aisle abutting Optimist Drive.
 - d. The development shall comply with all applicable standards and regulations in *the Regina Zoning Bylaw 2019-19*.
4. Direct the City Solicitor to prepare the necessary bylaw to authorize the respective Zoning Bylaw amendment.
5. Approve these recommendations at its September 30, 2020 meeting, following the required public notice.

Chad Jedlic and Blair Forster, representing Forster Harvard Development Corp., addressed the Commission.

Biplob Das moved that the recommendation contained in the report be concurred in.

Biplob Das	Yes
Adrienne Hagen Lyster	Yes
Cheri Moreau	Yes
Tak Pham	Yes
Steve Tunison	Yes
Celeste York	Yes
Councillor Andrew Stevens	Yes
Councillor Barbara Young	Yes

The motion was put and declared CARRIED.

RPC20-305601 Parliament Avenue - Concept Plan Amendment/ Zoning Bylaw
Amendment/ Discretionary Use - PL202000116

Recommendation

Regina Planning Commission recommends that City Council:

1. Approve the application to amend the Harbour Landing Concept Plan to re-designate the property located at 5601 Parliament Avenue from High-Density Residential to Low-Density Residential, in accordance with the Concept Plan shown in Appendix A-3.1.
2. Approve the application to rezone the property located at 5601 Parliament Avenue, legally described as Block BB, Plan No. 102177503, from RH – Residential High-Rise Zone to RU – Residential Urban Zone.
3. Approve the discretionary use application for the proposed development of Building, Planned Group located at 5601 Parliament Avenue, being Block BB, Plan No. 102177503 in the Harbour Landing neighbourhood.
4. Direct the Development Officer to issue a development permit subject to the following conditions:
 - a. The development shall be generally consistent with the plans attached to this report as Appendix A-3.2, prepared by StreetSide Developments, dated June 18, 2020; and
 - b. The development shall comply with all applicable standards and regulations in *Regina Zoning Bylaw 2019-19*.
5. That the City Solicitor be directed to prepare the necessary bylaws to authorize the respective Zoning Bylaw amendment.
6. Approve these recommendations at its September 30, 2020 meeting, after giving the required public notice.

Jonathon Osachuk, representing StreetSide Developments, addressed the Commission.

Steve Tunison moved that the recommendation contained in the report be concurred in.

Steve Tunison	Yes
Celeste York	Yes
Councillor Andrew Stevens	No
Biplob Das	Yes
Adrienne Hagen Lyster	Yes
Cheri Moreau	Yes
Tak Pham	Yes
Councillor Barbara Young	Yes

The motion was put and declared CARRIED.

RPC20-31 1971 Albert Street Contract Zone Application (PL202000118)

Recommendation

Regina Planning Commission recommends that City Council:

1. Approve the application to rezone the property located at 1971 Albert Street, Lot 50, Blk/Par 342, Plan 102032255 from DCD-D – Downtown Direct Control District Zone to Contract Zone.
2. Approve execution of a contract zone agreement between the City of Regina and the applicant/owner of the subject properties, which shall include the following terms:
 - i. The agreement shall allow for the carrying out of a specific proposal on the lands described as a temporary “Transportation, Parking Lot” lot a period of one year from the date of execution of the Contract Zone agreement.
 - ii. That issuance of development permits and the execution of the contract zone agreement shall be conditional on the applicant being confirmed as the registered owner of the property or the consent of the owner being obtained.
 - iii. That construction of a centre median along Albert Street shall be required to permit the optional right-in-right-out access.
 - iv. The parking lot shall meet all standards for “Transportation, Parking Lot” except that:
 - a. Surface may be minimum 150 mm densely packed gravel or asphalt planings with a dust inhibitor to the satisfaction of the Director of Planning and Development Services;
 - b. The parking lot must meet the requirements of the City of Regina Standard for Drainage from Building Site and Parking Lot Developments in order to obtain a building permit.
 - v. The development shall generally conform to the attached plans as labelled Appendix A-2 of this report, prepared by Property Development Support Services Inc. and dated May 12, 2020.

- vi. Signage on the subject property shall comply with the development standards for the DCD-D Downtown Direct Control District Zone.
 - vii. Any zoning-related detail not specifically addressed in the contract zone agreement shall be subject to applicable provisions of the *Regina Zoning Bylaw 2019-19*.
 - viii. The agreement shall be registered in the City's interest at the applicant's cost pursuant to Section 69 of *The Planning and Development Act, 2007*.
3. Direct the City Solicitor to prepare the necessary bylaw to authorize the respective Zoning Bylaw amendment.
 4. Approve these recommendations at its September 30, 2020 meeting, and consider the proposed bylaw at a succeeding meeting after giving the required public notice.

The following addressed the Commission:

- Thomas Le, Butz & Company, representing Gus Kolitsas, RB3 Properties Inc.; and
- Dave Brundige, Willows Wellsch Orr and Brundige LLC, representing Magnetic Capital Corp.

(Frank Bojkovsky joined the meeting.)

Cheri Moreau moved that the recommendation contained in the report be concurred in.

(Councillor Flegel joined the meeting.)

Councillor Andrew Stevens moved that this report be tabled until such time as Regina Planning Commission has an opportunity to review the report on MN20-19, the Temporary Parking Lot Policy.

Cheri Moreau	Yes
Tak Pham	Yes
Steve Tunison	Yes
Celeste York	Yes
Councillor Andrew Stevens	Yes
Frank Bjkovsk	Yes
Councillor Jerry Flegel	No
Biplob Das	Yes
Adrienne Hagen Lyster	Yes
Councillor Barbara Young	No

The motion was put and declared CARRIED.

Owing to the urgency of the application, as advanced by the applicant, and in light of the fact that Regina Planning Commission does not have delegated authority

with respect to the final decision to be taken by City Council, the City Clerk determined that this matter should appropriately be considered by City Council at its meeting on September 30, 2020.

ADJOURNMENT

Celeste York moved, AND IT WAS RESOLVED, that the meeting adjourn.

The meeting adjourned at 5:10 p.m.

Chairperson

Secretary

APPENDIX "D"

WILLOWS WELLSCH ORR & BRUNDIGE LLP

BARRISTERS, SOLICITORS & NOTARIES

#401 - 1916 DEWDNEY AVENUE • REGINA, SASKATCHEWAN • S4R 1G9 • TELEPHONE: (306) 525-2191 • FAX: (306) 757-8138

Exhibit "C"

G. Gregory Willows, Q.C.
B.A., J.D.

Hal B. Wellsch
B.A., LL.B.

Donald G. Orr
B.Admin., LL.B.

David J. Brundige, Q.C.
B.A. (Hons.), J.D.

J. Paul Malone
B.A., LL.B.

Scott A. Mazinke *
B.Admin., LL.B.

Louis A. Browne
B.A. (Hons.), LL.B. (Dist.)

Matt M. Sirols
B.A. (Hons.), LL.B.

Monte L. Stewart
B.Admin., LL.B.

Timothy J. Beler
B.A., LL.B.

Alexander R. Deacon *
B.A., J.D.

Travis C. Avery
J.D., B.Comm

Sean P. Watson
J.D.

Lindsay N. Hjorth
B.A., J.D.

Lucas M. K. Richards
Student-At-Law

Member of Collaborative *
Lawyers of Saskatchewan

Robert D. McCrank (Inactive)

Richard P. Hendek, Q.C. (Retired)

Nicholas A. Kaufman, Q.C. (Retired)

Stewart D. Orr (1989-2015)

REGINA OFFICE:
TELEPHONE: (306) 525-2191
FAX: (306) 757-8138

GRENFELL BRANCH OFFICE:
BOX 175, GRENFELL, SK, S0G 2B0
TELEPHONE / FAX: (306) 697-2500

September 10, 2020

Via Fax: 306-777-6809

City of Regina
Office of the City Clerk
PO BOX 1790
2476 Victoria Ave.
Regina, Saskatchewan S4P 3C8

Attention: JIM NICOL

Dear Sir:

RE: 1971 Albert Street, Regina, SK
Contract Zone Application (PL202000118)
Item # RPC20-31
Our File # 72053 DJB

Our office represents Magnetic Capital Group Inc. The Applicant in item # RPC 20-31 which was heard yesterday by the Regina Planning Commission.

After our virtual presentation, we left the call and were not aware the Commission was considering referring the matter back to the Administrator to come forward with a parking report next March.

Had we been aware that that option was being considered we would have made the Commission aware that the original possession date was September 1, 2020 and has been delayed because we have to attain a temporary Parking Permit. We would have also made them aware that this was a condition of the March 2, 2020 accepted offer and of the May 7, 2020 Order of Sale to our client and that we have been working on getting the permit for four months.

Since it is a condition of the offer, we cannot move forward until this condition is met.

Unfortunately, this delay likely puts the project into jeopardy. It will be a full year since the Court Order granted and my client does not believe



WEBSITE: www.wwo LLP.com
EMAIL: reception@wwo LLP.com

its investors will be patient and allow us to continue to pursue the project. Nor are we certain that the Vendor will wait for its monies. Additionally, the amount of costs and penalties due to the City will likely make the project not financially viable, as the numbers were tight to start with.

We therefore, are requesting the City of Regina put forward to Regina City Council the simple question of whether a temporary parking permit will be granted. We appreciate that the decision rests with the City but we believe that this is an issue of sufficient importance and that elected officials should make the decision – not an appointed body. Furthermore, had the Commission known that the referral would have killed the project, perhaps they would have made a decision rather than referred it back to the Administration.

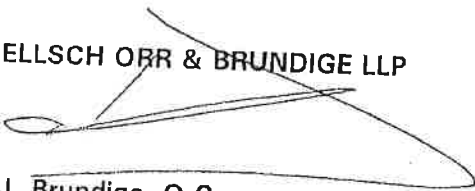
In any event the decision as it stands the likely effect of the existing Order will be that Magnetic Capital Group Inc. may have to withdraw its offer. The City can then take title of the Property for the back taxes that are owed.

I look forward to a prompt response.

Yours truly,

WILLOWS WELLSCH ORR & BRUNDIGE LLP

Per:


David J. Brundige, Q.C.

/rn

APPENDIX "E"

From: Jim Nicol [mailto:JNICOL@regina.ca]

Sent: September 17, 2020 2:49 PM

To: Reception <Reception@wwobllp.com>

Cc: Elaine Gohlke <EGOHLKE@regina.ca>; Amber Ackerman <AACKERMA@regina.ca>

Subject: 1971 Albert Street - ATTENTION: David Brundige

Good afternoon. I am writing further to the recommendation made at the September 8, 2020 meeting of the Regina Planning Commission respecting your Contract Zone Application and in response to your letter to me dated September 10, 2020.

Notwithstanding the Commission's decision last week to table this matter until such time as a separate report on temporary parking lots returns to City Council in early 2021, I have ruled that this is procedurally out-of-order. **As a result, the original report to Regina Planning Commission respecting your application will be placed on the City Council agenda for Wednesday, September 30, 2020.**

Similar to your presentation at the Commission, you may attend the meeting via teleconference. To attend, you must provide my office with the telephone number you will be using to call in. This can be done by email to clerks@regina.ca or by calling 306-777-7262 **no later than 12 p.m. on Tuesday, September 29, 2020.** You will receive meeting details and instructions after you have confirmed your attendance for the meeting.

If you wish to address Council at this meeting, **you must provide a written submission by 1 p.m. on Thursday, September 24, 2020.** Details on what should be included in your written submission are available on Regina.ca or by calling the Office of the City Clerk at 306-777-7262.

Jim Nicol
City Clerk
City of Regina
2476 Victoria Avenue
Regina, SK S4P 3C8

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City of Regina

Exhibit "D"

October 15, 2020

RB3 PROPERTIES INC.
#306 2010 11TH AVENUE
REGINA, SK S4P0J3

Dear RB3 PROPERTIES INC.:

Re: **Seeking Your Feedback on Allowing Temporary Downtown Surface Parking Lots**

The City is considering a change that would allow temporary surface parking lots in the downtown. Currently, new stand-alone (i.e. without a storefront) surface parking lots are not permitted within this neighbourhood. We are interested in your input, as a downtown stakeholder. Specifically, we are seeking to understand the potential implications of this change and feedback on potential requirements and safety measures.

You can provide feedback by visiting regina.ca/lot to complete a short questionnaire. Input will be accepted until November 2, 2020. Also, if you have tenants or know of other stakeholders in the downtown that would be interested in participating, please pass along this information to them.

This outreach is in response to an August 2020 City Council motion to consider making temporary parking lots permissible in the downtown. Your feedback will help inform the report on this matter that will be taken for consideration to Regina Planning Commission and City Council in January 2021.

If you have any questions, please contact me at **306-529-5830** or email msliva@regina.ca.

Sincerely,

Michael Sliva
City Planner II

Planning & Development Services Department
City Planning & Community Development Division
Queen Elizabeth II Court | 2476 Victoria Avenue
PO Box 1790 | REGINA SK S4P 3C8
P: 306-529-5830
Regina.ca



QUEEN'S BENCH FOR SASKATCHEWAN

Citation: **2010 SKQB 386**

Date: **2010 10 14**
Docket: Q.B.G. No. 1348 of 2010
Judicial Centre: Regina

BETWEEN:

P.J.D. HOLDINGS INC.

APPLICANT

- and -

THE CITY OF REGINA

RESPONDENT

Counsel:

Patrick N. McDonald, Q.C.
Christine L. Clifford

for the applicant P.J.D. Holdings Inc.
for the respondent City of Regina

JUDGMENT
October 14, 2010

POPESCU J.

I Introduction

[1] The applicant, P.J.D. Holdings Inc. ("P.J.D.") applies for the judicial review of a decision of Regina's City Council ("City Council") to deny conversion of its property at 4303 Rae Street, Regina, Saskatchewan ("the property"), from rental accommodations to condominiums.

[2] Representatives of P.J.D. appeared before City Council on May 25, 2010 in order to make a presentation to City Council in favor of permitting P.J.D. to convert the property from apartments to condominiums. P.J.D. followed City Council's rules of

procedure and filed, more than five days in advance of City Council's meeting, a written request to appear and a written brief setting forth the text of the oral presentation intended to be made to City Council.

[3] P.J.D. representatives then appeared before City Council and read their brief as per City Council protocol. After P.J.D.'s oral presentation, several city councillors posed questions. During this exchange, one of the councillors mentioned that he had received "very disturbing letters" from tenants of the property and then inquired whether certain accusations made in the letters against P.J.D. were true. P.J.D. was absolutely unaware of the existence of these "very disturbing letters". P.J.D. representatives answered the questions, including those that arose from the undisclosed letters, the best that they could, not having seen them and without full knowledge of their content.

[4] City Council proceeded to consider the application for condominium conversion and passed a motion that the letters submitted by the tenants, "form part of the official record".

[5] City Council unanimously rejected P.J.D.'s request for the condominium conversion of the property.

[6] P.J.D., through an access to information request, obtained copies of the "very disturbing letters". The two letters cast a very dim light on P.J.D. and, among other things, accused P.J.D. of making threats and offering bribes to some of the tenants.

[7] P.J.D. now brings an application pursuant to Part Fifty-Two of *The Queen's Bench Rules* requesting that this court quash the resolution of City Council and refer the

condominium conversion application back to City Council to be dealt with on a proper basis. There are two grounds advanced for seeking this remedy:

1. City Council breached the duty of fairness owed to P.J.D. by considering and relying upon two highly controversial letters in making its decision to deny P.J.D.'s request for a condominium conversion, without disclosing the full contents of those letters to P.J.D. and without giving P.J.D. an opportunity to respond to the allegations contained in those letters.
2. The decision of City Council to deny the condominium conversion application is unreasonable and should be set aside.

II The Facts

[8] P.J.D. is the owner of the property, which is an 18-unit apartment building. The process of converting apartments to condominiums is governed by the provisions of *The Condominium Property Act, 1993*, S.S. 1993, c. C-26.1 ("the CPA"). City Council is, by definition, "the local authority" for condominium conversions occurring within the City of Regina. P.J.D. applied pursuant to the CPA for City Council, as the local authority, to direct the issuance of a certificate pursuant to ss. 10(1)(b) and 5(e) of the CPA.

[9] Subsections 10(1)(b) and 10(5)(e) of the CPA read as follows:

10(1) Every plan submitted for approval as a condominium plan must be accompanied, in the prescribed manner, by:

....

- (b) a certificate of the clerk of the local authority stating that the proposed division of the buildings or land, as shown in the plan, has been approved by the local authority or an official designated

by the local authority for that purpose; and

...

(5) On an application for a certificate pursuant to clause (1)(b), the local authority shall direct the issue of the certificate if it is satisfied that:

....

(e) where the application relates to the conversion of existing premises used for apartments, flats or tenements into units:

(i) the conversion will not significantly reduce the availability of rental accommodation in the area;

(ii) the conversion will not create significant hardship for any or all of the tenants of the existing premises; and

(iii) the building and the parcel have the physical characteristics considered necessary by the local authority to make the premises suitable for conversion.

[10] On May 12, 2010, prior to the City Council meeting of May 25, 2010, the proposed condominium conversion application was considered by the Regina Planning Commission (“the Planning Commission”). It is customary for the Planning Commission to review proposed condominium conversions in advance of the City Council meeting and to make a recommendation to City Council. The recommendation of the Planning Commission was to deny the application. It reads as follows:

RECOMMENDATION

Your Administration recommends that the application for the condominium conversion of the existing apartment building, located at 4303 Rae Street — Lot 7-11/S’_12, Block E, Plan 66R01711 be DENIED as it fails to meet the requirements of one or both of *The Condominium Property Act, 1993* and the City of Regina Condominium Conversion policy.

[11] Notwithstanding the “recommendation” of the Planning Commission, City Council has the ultimate discretion to allow, or deny, the proposed condominium conversion. This is evident in the Planning Commission’s May 12, 2010 report where it

states:

In the event Council wishes to approve the application on the basis of the above, the Administration notes that there are outstanding hardship issues to be addressed relevant to both the City's Condo Policy and *The Condominium Property Act*. A revised tenant offer, similar to previous applications may provide a basis for resolving these issues.

[12] The recommendation of the Planning Commission was shared with P.J.D. in advance of the May 25, 2010 City Council meeting.

[13] Given the negative recommendation of the Planning Commission, P.J.D. did not approach the May 25, 2010 City Council meeting with the intention of requesting that the condominium conversion be approved, but rather was intending on requesting that the matter be referred back to the Administration so that further efforts could be made to placate the existing tenants. According to the written submission filed with City Council, P.J.D.'s request was as follows:

Our Request

City Council, RPC and the Planning Department have all worked closely with applicants and tenants and have as a result come up with a number of resourceful and effective solutions for addressing availability and hardship in a manner which provides for rehabilitation of our housing stock and fair treatment for tenants.

A number of circumstances surrounding this application have not allowed for full review of the options which are now available.

We are requesting Council to not deny this application but rather to refer it back to the Administration to take such action as the Administration deems warranted in making sure that tenants understood the Applicants offer and to thereafter report back to Council.

[14] P.J.D. was notified that the condominium conversion application would

come before City Council on May 25, 2010 and was advised in correspondence that it would have the opportunity to address City Council in accordance with the following procedural requirements:

... If you wish to address City Council, you must submit the following to the City Clerk's Office by 1:00 P.M., Thursday, May 20, 2010:

1. A letter requesting permission to appear before City Council.
2. A copy of your presentation (i.e. a brief which sets out the full text of your presentation and the request being made of City Council.)

[15] P.J.D. complied with the above criteria and attended the May 25, 2010 meeting of City Council. What occurred at that meeting, with respect to the condominium conversion application, is not disputed. A full audio/video recording of the entire proceeding was filed with the court. Also, Ross Keith, a representative of P.J.D., filed an affidavit in which he explains what occurred. The following is an excerpt from his affidavit:

25. The application came before Council on May 25, 2010. I appeared on behalf of the owner. I had filed a written request to appear, along with our brief, five days prior to the hearing as required by the Council's rules of procedure (see letter from City of Regina dated April 28, 2010, attached as Exhibit "L"). A copy of the written brief and covering letter is attached as Exhibit "M". A representative of the Regina Anti-Poverty Committee spoke first. He was opposed to the application. No questions were asked of him by Council. I then took the podium, along with Mike Taschuk, the principal of P.J.D. Holdings. I was directed by the Mayor to follow my written brief and I did so by reading it. We then answered questions from Councillors. There were questions about building maintenance and about the effect of condominium conversion on the availability of rental accommodation. At this point Councillor Hincks rose to speak. He said the Councillors had received what he called "very disturbing letters" from tenants. I had never heard of such letters until that very moment. Councillor Hincks asked about two statements in the letters, whether they were true. He did not show us the letters or provide copies. He said the letters stated the landlord threatened a \$250/month rent increase. Mike Taschuk answered, "I didn't say that". Then he said the

letters stated the landlord would serve 30 day notices to vacate if necessary. Mike Taschuk proceeded to answer that question in some detail. The Mayor then cut him off saying the question was answered. The Mayor asked Councillors if they had further questions. No one indicating so, he immediately concluded our appearance, saying “thank you”. I had no opportunity to speak further or to address the matter of the letters at all. No other delegation appeared on the application, neither the tenants who had apparently written the letters nor anyone else.

26. Council proceeded with its consideration of the application. A motion was made by one of the Councillors to include the letters in the record and the motion passed unanimously. Various members of Council spoke to the application and in doing so referred to the letters they had received. They said the letters disclosed “bullying” by the landlord, “threats” and “intimidation”. One Councillor said she had “great concern” with the letters, and “I have to support the administration having seen these letters”. She did not state what concerned her about them. It appeared to me the letters were very much affecting the judgment of members of Council. I did not know what was in the letters, beyond what appeared from Councillor Hinck’s two questions to Mike Taschuk. A vote was ultimately taken on the application and it was denied by unanimous vote of Council. Attached and marked Exhibit “N” is a copy of the decision of Council.

[16] The decision of City Council was formally documented as follows:

City Council, at its meeting held on May 25, 2010, considered the report from the Regina Planning Commission and adopted the following resolution:

1. The application for the condominium conversion of the existing apartment building, located at 4303 Rae Street — Lot 7-11/S’_12, Block E, Plan 66R01711 be DENIED as it fails to meet the requirements of one or both of *The Condominium Property Act, 1993*, and the City of Regina condominium Conversion Policy.
2. That the two letters submitted by the tenants on May 25, 2010 form part of the official record and this report.

[17] As a result of the denial, P.J.D. made application, pursuant to the provisions of *The Local Authority Freedom of Information and Protection of Privacy Act*, S.S. 1990-

91, c. L-27.1, to be supplied with the following information:

... copies of the letters that were submitted at City Council on Tuesday May 25th with regard to 4303 Rae Street application for condo conversion ... these letters were added to the file that night and were from the tenants at 4303 Rae Street.

[18] Redacted copies of the two letters were provided pursuant to this formal request. Ultimately, P.J.D. received full unredacted copies and, for the first time, was made aware of the full nature and extent of the allegations being made by the authors of those letters.

[19] It is not necessary to relate the complete details of the contents of those letters here. Suffice it to say that the accusations are serious and extremely negative. There are accusations that the landlord was “prone to threaten and ... bully people” and is “vulnerable to lying in a very underhanded way to get revenge if he can”. There is also an allegation that the landlord “... also threatened to kill a tenant at one time who was behind in his rent, and when the police were called, he disappeared ...”. Additionally, there were suggestions that the landlord was threatening and bribing the tenants. One of the letters states, in part:

... This situation turned out to be a little ugly when ([the landlord]) threatened her if she did not sign the letter, her rent would be increased \$250. [*sic*] a month and also to all tenants and he already has all the rent notice written up for the end of May, ...

[20] Another letter that purports to be initialled by 16 of the 18 tenants, with a notation that “1 tenant away” and “1 [tenant] verbal against Condo conversion declined for self reasons to initial”, states, in part:

The old and new tenants today reject any application for a condo

conversion of [the property], which has been denied denied denied many times over the past 2 years

[21] The long and short of it is that the undisclosed information casts P.J.D. in an extremely negative light and makes serious accusations concerning the reputation, veracity and motivation of P.J.D. It also contains what purports to be an almost unanimous rejection of the condominium conversion proposal by the tenants.

III Issues

1. Was P.J.D. denied procedural fairness when undisclosed letters were considered by City Council in making a decision concerning P.J.D.'s request for a condominium conversion?
2. Alternatively, was the decision of City Council unreasonable such that it ought to be set aside by this court?

IV Analysis

A) *Affidavit Evidence*

[22] The "evidence" that the court has before it on this judicial review application includes the affidavits of Mike Taschuk and Ross Keith, the two representatives of P.J.D. that appeared before City Council, and the affidavit of Joni Swidnicki, the clerk of the City of Regina.

[23] The parties are on common ground that the evidence of Ms. Swidnicki is

properly admissible. Rule 669, contained within Part Fifty-Two of *The Queen's Bench Rules*, sets forth the requirements concerning the "return" which a tribunal is obliged to file with the court if an application for judicial review is launched. It reads as follows:

669(1) Where an application is made for an order by way of *certiorari* or to quash proceedings, a notice to the following effect, adapted as may be necessary and addressed to the court, tribunal or other authority shall be endorsed in or on the notice of motion:

"You are required by the rules of court forthwith to return to the local registrar of this court at the Court House (address in full) Saskatchewan, the conviction, order, decision, (or as the case may be) and the reasons therefor, together with the process commencing the proceeding, and the warrant, if any, issued thereon."

(2) All things required by Subrule (1) to be returned to the local registrar shall be deemed to be part of the record.

[24] The affidavit of Ms. Swidnicki encloses, among other things, the following information:

1. The written submission to City Council made by P.J.D. representatives.
2. The two impugned letters provided to City Council, one dated May 21, 2010 and the other dated May 24, 2010.
3. A DVD of the Access Communications recording of the May 25, 2010 City Council meeting.
4. An excerpt of the minutes of the May 25, 2010 City Council meeting pertaining to the property.

[25] City Council objects to the admissibility of the Keith and Taschuk affidavits. It argues that the affidavit of Ms. Swidnicki, which attaches complete and significant information, is properly admissible and sufficiently provides the court with a full record of the May 25, 2010 City Council meeting. City Council argues that neither the Keith nor the Taschuk affidavit is necessary to establish the evidence that was before City Council and that the endeavour to put additional information before the court is an improper attempt to provide “fresh evidence”. City Council argues that the role of the court in a judicial review proceeding is to determine whether the hearing by the initial statutory decision-maker of a particular matter was conducted in accordance with the principles of natural justice and/or whether the decision rendered by the initial decision-maker was correct or reasonable (depending upon the standard of review) based only upon the evidence that was before the initial decision-maker.

[26] In my view, the position urged by City Council is overly restrictive and does not take into account recent developments in the jurisprudence in this province. Firstly, it always has been the case that it is permissible to use affidavit evidence to prove a fact relevant to a ground of review involving a breach of natural justice, bias, fraud or other matters of this nature. See *S.G.E.U. v. Saskatchewan (Provincial Auditor)* (1986), 29 D.L.R. (4th) 684 (C.A.), and *Revelstoke Pre-Mix v. Chauffeurs, Teamsters and Helpers, Local 395 and Labour Relations Board of Saskatchewan*, [1977] 2 W.W.R. 39 at 44 (C.A.). Secondly, it is now open to a party in this province to put all material before a reviewing court that bears on the arguments that party is entitled to make. In *Hartwig v. Saskatoon (City) Police Assn.*, 2007 SKCA 74, [2007] 10 W.W.R. 689, the Saskatchewan Court of Appeal has settled any controversy regarding the scope of evidence that may be presented to the court on judicial review applications. Mr. Justice Richards, speaking for the court, formulated a new approach that tailors the evidentiary rules to the evolving standards of judicial review:

[20] ... As a result, the position taken by the Minister as to the scope of the materials properly before the Court would, as a matter of practical reality, deny the applicants any prospect of successfully advancing the arguments they are otherwise entitled to make.

[22] ... Judicial review applications proceed within the framework of Part Fifty-Two of the *Rules of Court*. Rule 669 is of particular relevance here as it spells out the requirements concerning the “return” which a tribunal is obliged to make if an application is launched. ...

[23] I note, however, that there is nothing in Rule 669 which would be inconsistent with a ruling to the effect that, in appropriate circumstances, parties to judicial review applications are entitled to put before the reviewing court the evidence considered by the tribunal when it made the decision in issue. The fact that the decision of the tribunal, its reasons and the process commencing the proceeding are deemed “part of” the record by Rule 669 does not in itself exclude other materials from the consideration of a court. Indeed, Rule 671 contemplates orders requiring information beyond the return to be brought forward.

[24] In my opinion, therefore, it is necessary to recognize and give effect to the reality that, in order to effectively pursue their rights to challenge administrative decisions from a reasonableness perspective, the applicants in judicial review proceedings must be entitled to have the reviewing court consider the evidence presented to the tribunal in question. No other result is fully consistent with the present substance of administrative law.

...

[32] As indicated, I prefer to base my conclusion in this regard on the straightforward proposition that the parties to a judicial review application should be able to put before a reviewing court all of the material which bears on the arguments they are entitled to make. If a tribunal decision can be challenged because it involves a patently unreasonable finding of fact, then the evidence underpinning that finding should be available for the Court to consider. This is ultimately a sounder and more transparent approach to this issue than one couched in terms of the sometimes elusive notion of “jurisdiction” or framed around the complex and rather uncertain and unsatisfactory body of case law relating to the concept of decisions based on “no evidence”.

[33] Thus, in all of the circumstances, the best course in this area for now is to simply recognize the right of participants in judicial review proceedings to bring forward the evidence which was before the administrative decision-maker. This may be done by way of an affidavit which identifies how the evidence relates to the issues before

the court and which otherwise lays the groundwork for its admission.
That was the general approach taken by Hartwig.

[27] Admittedly, some of the material contained within the Taschuk and Keith affidavits goes beyond the parameters set forth by the Court of Appeal in *Hartwig*. For the purposes of this decision, however, it is appropriate to note that I have only taken into account the affidavit evidence which identifies and lays the groundwork for the procedural fairness application currently before the court. Specifically, and in particular, I have taken into account those portions of the Keith affidavit, primarily found in paras. 25 and 26, wherein he states that the P.J.D. representatives were blind-sided by the introduction and consideration of the two undisclosed letters and that the P.J.D. representatives did not have prior knowledge of the existence of those letters or of their content. This, of course, pertains to the procedural fairness ground and not the reasonableness ground.

[28] In some respects, this issue is somewhat moot in that even if I were to disregard the affidavits of Mr. Taschuk and Mr. Keith, an inference can be drawn from the way in which the matters played out on the DVD recording of the City Council meeting that P.J.D. representatives did not have prior knowledge of the contents of the letters.

B) *Jurisdiction*

[29] The parties agree that this court has jurisdiction to conduct a judicial review of City Council's decision pursuant to Part Fifty-Two of *The Queen's Bench Rules*.

[30] Accordingly, I find that this court has adequate jurisdiction to hear this matter and to quash or sustain the May 25, 2010 decision of City Council with regard to

the condominium conversion application.

C) *Issue No. 1 - Was P.J.D. denied procedural fairness when undisclosed letters were considered by City Council in making a decision concerning P.J.D.'s request for a condominium conversion?*

i) *The Duty of Procedural Fairness*

[31] City Council concedes that if P.J.D. was denied procedural fairness in relation to its decision to deny the condominium conversion, the decision must be set aside and the conversion application returned to City Council for reconsideration. However, City Council disputes that there has been a breach of the duty to provide procedural fairness. City Council contends that the degree of the duty of procedural fairness owed to P.J.D. is very low because the nature of the decision made as to whether to direct the issuance of a certificate pursuant to s. 10 of the CPA is more “legislative” than “*quasi-judicial*”. City Council argues that because it was exercising a legislative-type function, P.J.D. was accorded all of the procedural fairness to which it was entitled. Specifically, City Council submits that the failure to disclose the impugned letters does not constitute a breach of the duty to be procedurally fair.

[32] It is well recognized that the concept of procedural fairness is variable and that the parameters of what constitutes procedural fairness will change depending on the context of the case. In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, Madam Justice L’Heureux-Dubé made the following classic statement:

The existence of a duty of fairness, however, does not determine what requirements will be applicable in a given set of circumstances. As I

wrote in *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at p. 682, “the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case”. All of the circumstances must be considered in order to determine the content of the duty of procedural fairness: *Knight*, at pp. 682-83; *Cardinal*, *supra*, at p. 654; *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)*, [1990] 3 S.C.R. 1170, *per* Sopinka J.

[33] The Supreme Court of Canada, in *Baker*, then set forth some of the factors that ought to be considered when assessing what requirements are necessary to meet the duty to be procedurally fair. In *Mushka v. Candle Lake (Resort Village)*, 2003 SKQB 147, 233 Sask. R. 246, Ryan-Froslic J. summarized the *Baker* factors as follows:

[33] The existence of a duty of procedural fairness does not determine what needs to be done to fulfill that duty. What amounts to procedural fairness in one set of circumstances may be very different than what amounts to procedural fairness in another set of circumstances. The Supreme Court of Canada in *Baker* at paras. 23 to 27 set out five factors a court should consider in determining what requirements are necessary to meet the duty of procedural fairness in a particular case. These factors are not exhaustive and may be summarized as follows:

1. The nature of the decision being made and the process followed in making it (The more important the decision and the closer the process resembles a judicial process, the greater the requirement of procedural fairness.)
2. The nature of the statutory scheme and the terms of the statute pursuant to which the body operates (Greater procedural protections are required where the governing statute provides limited protection, for example, where the decision is final and there is no appeal.)
3. The importance of the decision to the individual(s) affected (The more important the decision, the greater the need for procedural fairness.)
4. The legitimate expectations of the person(s) challenging the decision (If there is a legitimate expectation that a certain procedure will be followed, the duty is greater.)
5. The choice of procedure made by the administrative body itself (Does the statute give the administrative body the ability to

choose its procedure? Does the body have special expertise?)

[34] City Council relies on the reasoning in *Canadian Pacific Railway Co. v. Vancouver (City)*, [2006] 1 S.C.R. 227, 262 D.L.R. (4th) 454, to support its position that the degree of procedural fairness that needs to be provided to P.J.D. in relation to s. 10 of the CPA is low because it is exercising a legislative-type function rather than a *quasi-judicial* function. In that case, Canadian Pacific Railway challenged a bylaw passed by Vancouver city council because, among other reasons, there were a number of procedural irregularities involved in the passing of the bylaw. McLachlin C.J.C., speaking for the court, concluded that the exercise of the discretionary power involved in passing the bylaw in question was not judicial, but legislative, and declined to quash the bylaw notwithstanding some procedural shortcomings. At para. 39, she stated:

[39] The content of the duty of procedural fairness depends on a number of factors, including: the “nature of the decision being made and the process followed in making it”; the “nature of the statutory scheme and the ‘terms of the statute pursuant to which the body operates’”; the “importance of the decision to the individual or individuals affected”; the “legitimate expectations of the person challenging the decision”; and the requirement to “respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances”: *Baker*, at paras. 22-27.

[35] Then, at para. 48, McLachlin C.J.C. describes the bylaw-making process as legislative and notes that the impact of the bylaw had a broad application:

[48] Whether the City acted contrary to legitimate expectations must be decided in the context of the nature of the City’s decision-making power, the statutory scheme and the City’s role in arriving at a decision that is in the interest of the whole city. The statutory scheme empowers the City to prepare and revise development plans (s. 561(1)), adopt development plans as ODPs (s. 562(1)(a)) and revise or amend ODPs, or any part thereof, (s. 562(1)(b)), all without any requirement of a

formal hearing. The decision-making process is not judicial, but legislative. The City Council exercises discretionary power in the public interest. CPR had a special interest because of its ownership of the land affected, but the impact of the by-law was much broader, potentially affecting many other private and public citizens. The City is called on to exercise its power in a responsive way, responding to relevant information, and in a responsible way, ultimately making a decision that it concludes is in the public interest. These considerations may attenuate any duty that might otherwise exist to meet the expectations of interested parties. While the duty of fairness may require the City to take any legitimate expectations into account, it does not necessarily require the City to fulfil them.

[36] The *Canadian Pacific Railway* case is clearly distinguishable from the facts of the case before this court. In *Canadian Pacific Railway*, the decision being reviewed involved a bylaw that impacted and affected not only the applicant, but other private and public citizens, whereas here the decision was limited to one specific condominium conversion application. Also, in *Canadian Pacific Railway*, the focus was on the discretionary legislative process leading up to the passing of a broad-based bylaw, whereas here the question involves examining the procedure followed by City Council in determining whether the statutory criteria set forth in the legislation had been met. Decisions that are more helpful to the court, because they are more on point, include *Markwart v. Prince Albert (City)*, 2006 SKCA 122, 289 Sask. R. 71 and *Mushka v. Candle Lake (Resort Village)*, *supra*.

[37] In *Markwart v. Prince Albert (City)*, the Saskatchewan Court of Appeal quashed a resolution of city council for a breach of its duty of procedural fairness in a case involving a statutory right of appeal to council from a demolition order issued against the property. The Saskatchewan Court of Appeal found that there were two procedural fairness problems with the decision made by city council, one relating to improper disclosure, the second relating to its denial to grant an adjournment.

[38] With respect to the “non-disclosure” argument, the Court of Appeal determined that it was a breach of procedural fairness to not supply relevant information to the applicants in advance of the meeting because the applicants could not properly respond without knowing the case it had to meet. The court stated, at para. 34:

[34] Further, although there may be little doubt the appellants were aware of the issues and the many complaints given the prior extensive meetings, it does not follow they knew the case they had to meet as the earlier complaints had not led to a demolition order. They ought to have received a copy of the report on which the Council decision was based. They did not know what the inspector was going to report to Council. They did not know how the case was going to be presented to Council. The report may or may not have fairly represented the discussions in the prior meetings. The Chambers judge failed to consider the importance of the failure of the City to supply a copy of the report to the applicants prior to the appeal to Council. The appellants could not properly respond without knowing how the case was to be presented to Council.

[39] The Court of Appeal also found that, in the circumstances of that case, the duty of procedural fairness was also breached when city council denied the applicants’ request for an adjournment. The Court of Appeal commented as follows:

[31] I agree the appellants were given the opportunity to be heard. However we do not know whether their case was presented in the best light. In other words, would counsel have argued the case better than the appellant? We do not have an answer to that question and it may or may not have been argued more successfully. Counsel may have been able to persuade the City to consider the option of a compromise or to give the appellants more time. This is obviously speculation, however, the opportunity to have counsel argue the case was denied the appellants and in my view the Chambers judge erred by saying the appellants made a mistake in choosing a counsel who was not available. That was not necessarily the mistake or fault of the appellants. Blame should not have been placed on the shoulders of the appellants for having chosen a counsel who, given the short period of time, was not available.

[40] In *Mushka v. Candle Lake (Resort Village)*, *supra*, a resolution of the

village council approving a stop-work order and directing the removal of a trailer was quashed, because, after application of the *Baker* factors, it was concluded that the applicants ought to have been afforded an opportunity to be heard on the issues. The court stated at para. 53:

[53] ... The failure of the resort village to provide the Mushkas with notice and afford them a proper opportunity to be heard constitutes a violation of the requirements of procedural fairness.

[41] In this case, I find that City Council was exercising a specific statutory power in relation to an application for approval of a condominium conversion of a particular property. Notwithstanding the discretionary elements contained within s. 10 of the CPA, the nature of the decisions made by City Council relating to the condominium conversion, acting in its capacity as the local authority, is closer to a *quasi-judicial* function than it is to the legislative function often exercised by City Council when passing bylaws. A similar conclusion was reached for similar reasons in *Wiswell v. Winnipeg (Greater)*, [1965] S.C.R. 512. In that case it was held that council was essentially resolving a dispute between the owner and residents of the building. The council was not exercising a broad discretion, but on the contrary, was applying a limited and particular set of considerations specified in the statutes. Also, the comments of Lord Denning in *R. v. Gaming Board for Great Britain*, [1970] 2 Q.B. 417 (Eng. C.A.) are particularly apt where he stated:

... The statute says in terms that in determining whether to grant a certificate, the board “shall have regard only” to the matters specified. It follows, I think, that the Board have a duty to act fairly. They must give the applicant an opportunity of satisfying them of the matters specified in the subsection. ...

[42] After carefully considering the facts and taking into account the *Baker* factors, including, but not limited to the nature of the decision being made, the nature of

the statutory scheme, the absence of an appeal procedure and the legitimate expectations of P.J.D., (especially given the protocol that P.J.D. was expected to follow), I conclude that the procedural protections that ought to have been afforded P.J.D. are closer to the *quasi-judicial* model than the legislative model.

ii) *Duty of Disclosure*

[43] Disclosure is a basic element of the common law principles of natural justice. Examples are manifest and include: *Markwart v. Prince Albert (City)*, *supra*; *Knapman v. Board of Health*, [1954] 3 D.L.R. 760 (Ont. H. Ct.); and *Thompson v. Chiropractors' Association of Saskatchewan* (1996), 139 Sask. R. 93 (Q.B.), where Gerein J. quoted from *Hill v. University College of Cape Breton* (1991), 1 Admin. L.R. (2^d) 103 (N.S.T.D.) at 118 to the following effect at para. 4:

[4] It is fundamental to the principles of natural justice that a person whose interests are being decided by a tribunal must be apprised of the case against him and must be given the opportunity to respond to that case. A person cannot respond unless he knows the extent of the case which is being made against him.

[44] It is noteworthy that in *Henderson v. Saskatoon (City)*, 2008 SKQB 135, 318 Sask. R. 9, which is the only judicial decision in this province dealing with s. 10 of *The Condominium Property Act, 1993*, S.S. 1993, c. C-26.1, disclosure was not an issue. Dovell J., noted at para. 11 of her decision:

[11] All information relied upon by City Council in making its decision, including reports prepared by the City's administrative staff, and Viking's submission were disclosed to the tenants of the Milroy on or about January 10, 2008.

[45] In this case, members of City Council had on their desks at the commencement of the meeting two letters from tenants. No reference was made to the letters until one of the councillors addressed questions to one of P.J.D.'s representatives following the presentation by the representatives. The city councillor asked about the statements made in one of the letters alleging threats of rent increases and the landlord's intention to remove all tenants from the property on 30 days notice. No mention was made by that councillor of any other content in the letters. The letters were not disclosed, even at this late stage. After a number of other questions to the representatives, the mayor thanked them and concluded their appearance. Immediately thereafter the letters were formally entered into the record, but they were still not disclosed to P.J.D. It is significant that several councillors referred to the letters and expressed comments such as "great concern" and thereafter referred to the allegations that the tenants were "bullied" and "threatened".

[46] No explanation was offered as to why it was that P.J.D. was required to follow the City Council protocol of meticulous full disclosure prior to the meeting, while the authors of the impugned letters were not held to the same standard. Yet it is undeniable that the decision of City Council was heavily influenced by the content contained in the undisclosed letters. It is also uncontroverted that P.J.D. did not have knowledge of the letters, or their content, prior to the meeting and was effectively prevented from responding to the accusations contained in the letters.

[47] In the context of the issue that was before City Council, it was, in my view, of paramount importance that the letters be disclosed to P.J.D. so that it could respond if it so chose. Without disclosure of the full contents of the letters, there was no opportunity to respond to the allegations or address their relevance and significance in the context of

the issue before City Council. This is, in my view, a clear breach of the duty of fairness.

D) Issue No. 2 - Alternatively, was the decision of City Council unreasonable such that it ought to be set aside by this court?

[48] Given my conclusion with respect to the duty of fairness, it is not necessary to review the issue of reasonableness.

V Conclusion

[49] For the reasons above, the application for judicial review is allowed and the relevant resolutions of City Council are hereby quashed and set aside. The matter is remitted back to City Council for adjudication in accordance with the law.

[50] P.J.D. is entitled to costs, and I so order.

J.
M.D. POPESCU