

Court of Queen's Bench of Alberta

Citation: Argyll Community League (1978) v. Edmonton (City), 2009 ABQB 66

Date:20090202
Docket: 0803 08267
Registry: Edmonton

IN THE MATTER OF
the *Municipal Government Act*, R.S.A. 2000, c. M-26, as amended;

AND IN THE MATTER OF
The City of Edmonton North Saskatchewan River Valley
Area Development Plan Bylaw No. 7188

AND IN THE MATTER OF
a Motion by the Council of the City of Edmonton,
to approve the redevelopment of the
Argyll Velodrome at the existing Argyll Park location.

Between:

Argyll Community League (1978)

Applicant

- and -

The City of Edmonton and The Council of the City of Edmonton

Respondents

**Reasons for Judgment
of the
Honourable Madam Justice D.L Shelley**

Nature of the Application

[1] Argyll Community League (1978) (“the Applicant”) seeks judicial review of a motion (the “Motion”) of the Council of the City of Edmonton (“Council”) that was passed on April 16, 2008, approving the redevelopment of the Argyll Velodrome (“Velodrome”) at its existing Argyll Park location (the “existing location”).

[2] The Applicant seeks an order quashing the Motion on the grounds that Council incorrectly interpreted the Bylaw when it:

- (i) failed to hold a vote deeming the river valley location “essential” pursuant to s. 3.5.1 of the North Saskatchewan River Valley Area Development Plan Bylaw No. 7188 (the “Bylaw”); and
- (ii) failed to have prepared, and to have held a vote approving, a “detailed site location study” detailing costs, and social, environmental and institutional constraints which make a river valley location essential pursuant to s. 3.5.3 of the Bylaw.

[3] The Applicant further challenges the Motion on the ground that the vote contravened s. 48 of the Procedures and Committees Bylaw 12300 (“Procedures Bylaw”), alleging that the instructions to initiate the planning for the location search for the Velodrome came directly from one of the Councillors to employees of the City Manager (the Community Services Department) without a specific direction from Council or a Standing Committee.

Facts

[4] Council passed the Bylaw pursuant to s. 634(b) of the *Municipal Government Act*, (the “MGA”), R.S.A. 2000, c. M-26, to protect the North Saskatchewan river valley and ravine system as part of Edmonton’s valuable open space heritage and to establish principles for future implementation plans and programmes for parks development.

[5] Council also adopted two non-statutory plans that are relevant to the statutory scheme of the Bylaw. They are: the Urban Parks Management Plan (2006-2016) (“UPMP”); and the Recreation Facility Master Plan (2005-2015) (“RFMP”). The UPMP was prepared to guide the future acquisition, design, construction, maintenance and use of city parks, river valley and natural areas. The RFMP, which was approved by Council in 2004, provides strategic direction for major recreation facilities (e.g. arenas, pools, recreation centres, etc).

[6] The Argyll Velodrome Association (“AVA”) has been leasing the Velodrome from the City of Edmonton (the “City”) and operating the facility since 1995. It wants to redevelop the facility and, sometime in early 2005, submitted a project proposal to convert the Velodrome, which is an outdoor facility, to an indoor one.

[7] The Community Services Department prepared a report for Council, routed through the Community Services Committee. It recommended that approval be given for the redevelopment of the Velodrome at the existing location.

[8] In 2006, the City spent \$95,603.00, in 2007 it spent \$104,246.00 and in 2008 it spent \$100,818.00 (of the \$200,000.00 and \$102,000.00 expenditures approved in 2006 and 2008

respectively) for the purpose of funding various studies related to the redevelopment of the Velodrome. These amounts were paid from the City's capital budget.

[9] On April 16, 2008, Council convened a meeting where the report was discussed. By a vote of 7 to 6, Council passed the Motion, which specified "[t]hat approval be given for the redevelopment of the Argyll Velodrome at the existing Argyll Park location". The Applicant seeks judicial review of the Motion on the grounds outlined above.

Issues

[10] The issues for determination in this judicial review application are:

- (i) What is the appropriate standard of review?
- (ii) Did Council satisfy the requirements of s. 3.5.1 of the Bylaw (with respect to deeming the river valley location essential)?
- (iii) Does s. 3.5.3 of the Bylaw (requiring the preparation and Council approval of a "detailed site location study") apply in these circumstances?
- (iv) If the answer to (iii) is yes, were these requirements satisfied?
- (v) If the answer to (iv) is no, what is the effect of such failure?
- (vi) Was s. 48 of the Procedures Bylaw contravened and, if so, what is the effect of such contravention on the passage of the motion?
- (vii) If Council complied with ss. 3.5.1 and 3.5.3 of the Bylaw and if s. 48 of the Procedures Bylaw was not contravened, applying the appropriate standard of review, should Council's decision be upheld?

Law

[11] The relevant portions of the MGA, as amended, are:

3 The purposes of a municipality are

...

(b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality, and

...

5 A municipality

(a) has the powers given to it by this and other enactments,

(b) has the duties that are imposed on it by this and other enactments and those that the municipality imposes on itself as a matter of policy, and

. . .

634 A council may

(a) designate an area of the municipality as a redevelopment area for the purpose of any or all of the following:

- (i) preserving or improving land and buildings in the area;
- (ii) rehabilitating buildings in the area;
- (iii) removing buildings from the area;
- (iv) constructing or replacing buildings in the area;
- (v) establishing, improving or relocating roads, public utilities or other services in the area;
- (vi) facilitating any other development in the area,

(b) adopt, by bylaw, an area redevelopment plan ...

635 An area redevelopment plan

(a) must describe

- (i) the objectives of the plan and how they are proposed to be achieved,
- (ii) the proposed land uses for the redevelopment area, . . .

and

(b) may contain any other proposals that the council considers necessary.

636(1) While preparing a statutory plan a municipality must

(a) provide a means for any person who may be affected by it to make suggestions and representations,

(b) notify the public of the plan preparation process and of the means to make suggestions and representations referred to in clause (a),

637 The adoption by a council of a statutory plan does not require the municipality to undertake any of the projects referred to in it.

638 All statutory plans adopted by a municipality must be consistent with each other.

The relevant portions of the Bylaw are:

3.5.1 Development of Major Facilities

It is a policy of this Plan that major public facilities shall not be constructed or expanded unless their location within the River Valley is deemed essential and approved by City Council.

3.5.3 Site Location Study and Environmental Impact Screening Assessment

It is a policy of this Plan that all proposals for the development of a major facility that is publicly owned or is developed on public lands shall be subject to an environmental impact screening assessment as outlined in Schedule D, and a detailed site location study detailing costs, and social, environmental and institutional constraints which make a River Valley location essential must be prepared for Council approval. These studies shall be undertaken prior to Council committing funds for capital expenditure for the development of this proposal.

Section 48(1) of the Procedures Bylaw provides:

Council or a Standing Committee may give instructions to the City Manager, but Councillors must not give direct instructions to the City manager or to the employees of the City Manager without a specific direction from Council or a Standing Committee.

Position of the Parties

(a) The Applicant

[12] The Applicant submits that the standard of review is correctness. It considers that the issues involved concern the interpretation of the Bylaw and of an Area Development Plan. Although the question of the standard of review to be applied to the interpretation of these municipal documents has not been subject to previous judicial interpretation, in the Applicant's view, the existing jurisprudence on the issue of the appropriate standard of review of other types of planning bylaws and the application of the contextual factors specified by the Supreme Court of Canada in *New Brunswick (Board of Management) v. Dunsmuir* ("*Dunsmuir*"), 2008 CarwellNB 124, [2008] S.C.R. 190, 291 D.L.R. (4th) 577, support correctness as the standard of review of Council's interpretation of ss. 3.5.1 and 3.5.3 of the Bylaw. The contextual factors for

consideration include: (1) the existence of a privative clause; (2) the nature of the question (fact, mixed facts and law, or law); (3) whether the decision-maker is interpreting its own statute or a statute closely connected to its function and with which it has particular familiarity; and (4) the expertise of the decision-maker.

[13] The Applicant submits that the Supreme Court clearly identified two standards of review in *Dunsmuir*: correctness and reasonableness. It argues that the Court emphasised that, when applying the correctness standard in respect of questions of law and jurisdiction, a reviewing court will not show deference to the decision-maker's reasoning process; instead it will undertake its own analysis of the question and decide whether it agrees with the determination of the decision-maker or not. The Applicant states that if the court does not agree with the decision-maker's determination, it will substitute its own view and provide the correct answer to the question.

[14] In an application of the *Dunsmuir* contextual factors, the Applicant notes that the Bylaw contains no privative clause. It contends that the question of what motions Council must consider and pass under the Bylaw (with reference to the construction or expansion of major public facilities in the river valley) involves a question of law and jurisdiction. Additionally, the Applicant argues that whether s. 3.5.1 of the Bylaw requires Council to pass a motion expressly deeming essential a river valley location, and whether s. 3.5.3 of the Bylaw requires Council to pass a motion approving the detailed site location study before deeming the location essential, are questions of law to which the correctness standard applies. The Applicant also submits that Council does not have any particular or special expertise, compared to the courts, in respect of interpretation of the relevant sections of the Bylaw: *Nanaimo (City) v. Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342 at para. 22. It is the Applicant's view that, although the Bylaw is the Council's own "statute", the mandatory requirements of ss. 3.5.1 and 3.5.3 of the Bylaw are impositions that leave no discretion for Council and would attract the correctness standard of review.

[15] The Applicant further argues that, when interpreting the Bylaw, the purposive and contextual approach to statutory interpretation, as endorsed by the Supreme Court, applies: *Love v. Flagstaff (County) Subdivision and Development Appeal Board*, [2002] A.J. No. 1516 (C.A.) at para. 19. The Applicant submits that the issue is, in the context of the Bylaw as a whole and in the context of the statutory scheme, what mandatory and minimum requirements are imposed on Council by the phrases "deemed essential and approved by City Council" and "must be prepared for Council approval" in ss. 3.5.1 and 3.5.3 of the Bylaw.

[16] The Applicant points out that ss. 1.3, 2.2 and 2.6 of the Bylaw deal with its purpose, goals and objectives. It indicates that the purpose of the Bylaw, as it relates to major public facilities, is to limit the development and expansion of such facilities within the river valley so as to preserve its natural environment. It posits that, in aiming to achieve this purpose, the Bylaw places a strict prohibition on these facilities such that only those that are deemed by Council to be absolutely necessary to be in the river valley may be developed and expanded there. It argues that it is also in this light that the Bylaw requires the preparation of a detailed site location study for Council's approval, to detail why a river valley location is essential.

[17] It is the Applicant's position that the Bylaw's objective of limiting the development and expansion of major public facilities in the river valley is achieved through the "plan of action" found in ss. 3.5.1 and 3.5.3 of the Bylaw, requiring Council to follow certain specified stringent mandatory requirements before such developments can proceed.

[18] The Applicant argues that, to satisfy the requirements of s. 3.5.1 of the Bylaw, Council must consider and pass a motion expressly deeming the river valley location essential. It contends that, although it is obviously within the discretion of Council to deem essential the location of a major public facility within the river valley, Council would not satisfy the requirements of s. 3.5.1 of the Bylaw by simply taking a vote approving a redevelopment at the existing location. It submits that, where Council has failed to comply with the mandatory procedural requirements of ss. 3.5.1 and 3.5.3 of the Bylaw, it is without jurisdiction to further consider or deal with the construction of the Velodrome under the Bylaw.

[19] It is further submitted that s. 3.5.3 of the Bylaw (requiring the preparation of a "detailed site location study") applies in these circumstances because its harmonious reading with s. 3.5.1 of the Bylaw illustrates that it is this detailed site location study that is intended to provide Council with the basis upon which it can appropriately exercise its discretion to deem a river valley location essential for a particular major facility.

[20] In the Applicant's view, Council's interpretation of the phrase "deemed essential and approved by City Council" in s. 3.5.1, and the phrase "must be prepared and approved by Council" in s. 3.5.3 violates the presumption against tautology, because the interpretation ignores certain mandatory requirements in the Bylaw. The Applicant contends that I should avoid an interpretation that would render any portion of the legislation meaningless, pointless or redundant: Sullivan, R., *Driedger on the Construction of Statutes*, 4th ed. (Toronto: Butterworth, 2002) at pp. 158-159. It is the Applicant's submission that Council should not be allowed to ignore these mandatory requirements of the Bylaw as to do so would undermine the purpose of the Bylaw which was passed by Council after conducting the mandatory public consultation process required under the MGA.

[21] With regard to the Procedures Bylaw, the Applicant argues that s. 48(1) was contravened, pointing to evidence that the instruction to initiate planning for the Velodrome redevelopment came directly from a Councillor to employees of the City Manager without a specific direction from Council or a Standing Committee. The Applicant submits that the legal effect of this failure to comply with the Procedures Bylaw is that the Respondents' actions on the Velodrome redevelopment, including the vote taken on the Motion, were taken without jurisdiction and are of no force and effect.

(b) The Respondents

[22] The Respondents submit that generally the standard of review on jurisdiction and questions of law is correctness. They submit that with respect to the issues of whether Council complied with s. 3.5.1 and s. 3.5.3 of the Bylaw and the legal interpretation of these sections the

appropriate standard of review is correctness. On the application of the various standards they cite the Supreme Court decision in *Law Society (New Brunswick) v. Ryan*, 2003 SCC 20, [2003] 1 S.C.R. 247 at paras. 50 - 56.

[23] However, the Respondents characterize the vote passed by Council, in relation to the redevelopment of the Velodrome at the existing location, as *intra vires* a municipal council. The Respondents take the position that existing jurisprudence supports their position that the standard of review for *intra vires* decisions of a municipal council is patent unreasonableness: *Nanaimo (City) v. Rascal Trucking Ltd.*, (*supra*) at paras. 35 - 38; MGA, s. 539. They contend that this standard remains, notwithstanding the Supreme Court decision in *Dunsmuir* to eliminate it.

[24] In answering the question whether Council properly interpreted s. 3.5.1 of the Bylaw, the Respondents argue that it is of significance that the report that went to Council specifically referenced s. 3.5.1 and it is in evidence that the Motion which the Applicant seeks to quash was passed after lengthy deliberations during which the requirement, to deem the location essential, was explicitly considered.

[25] It is argued by the Respondents that the Applicant's position that s. 3.5.1 requires Council to explicitly deem the location of the Velodrome within the River Valley to be essential is a very narrow and restrictive interpretation which is contrary to the broad and purposive approach that the courts have taken when construing municipal powers: *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485.

[26] The Respondents submit that, considering the extensive debate about the redevelopment of the Velodrome and the many discussions about the requirement that the location be deemed essential, there can be no serious contention that Council did not turn its collective mind to its obligation to deem the location essential prior to approving the redevelopment. In their view, when Council approved the redevelopment, it also implicitly deemed the location essential and thereby satisfied the purpose and intent of s. 3.5.1 of the Bylaw.

[27] In respect of whether s. 3.5.3 of the Bylaw (which requires the preparation of a "detailed site location study") applies in these circumstances, the Respondents argue that the requirement for a detailed site location study is specifically tied to when Council commits capital for the development of a major facility because s. 3.5.3 explicitly states that these studies must be undertaken prior to Council committing capital funds for a proposal. They posit that s. 3.5.3 will not come into play until Council commits funds for the Velodrome. The Respondents point out that s. 3.5.1, dealing with the issue of deeming the location essential, makes no mention of the requirement for any such studies prior to Council deeming locations essential, and approving them.

[28] The Respondents submit that Council has not been asked to commit, nor has it committed, any capital funding for redevelopment of the Velodrome. This position was argued in the Brief of the Respondents filed October 22nd, 2008 and supplemented by a letter from the City's Law Branch dated November 14, 2008. Although funds have been approved and spent

from the City's capital budget, the expenditures related to studies and not to construction activities.

[29] It is the Respondents's submission that a number of evaluations of the site have been conducted that together constitute the detailed site location study. These are:

- (a) 2005 Community Resident Survey Report (November 2005) - (to assess use of the facility by the community and assess reaction to a proposed enhancement of the facility);
- (b) 2005 Stakeholder Survey Report (November 2005) - (to assess use of the facility by stakeholders and assess reaction to a proposed enhancement of the facility);
- (c) Argyll Velodrome Site Assessment (March 2006) - (the site assessment compares nine possible sites for the redeveloped Velodrome);
- (d) Argyll Velodrome Site Assessment (undated) - (the site assessment compares three possible sites for the redeveloped Velodrome);
- (e) Geotechnical Evaluation Re-Development of the Existing Argyll Velodrome (August 2006);
- (f) Argyll Velodrome Redevelopment & Argyll Park Master Plan Parking and Transpiration Impact Assessment Final Report (September 10, 2007);
- (g) Argyll Velodrome Association Indoor Velodrome Development Business Case (undated).

[30] With regard to the Procedures Bylaw, a councillor made a comment in the course of the Council meeting of April 16, 2008, to the effect he discussed the Velodrome redevelopment project with a group of people in March 2005 and "handed it off" to Community Services. The Respondents submit that this comment did not amount to an instruction in the context of s. 48(1) of the Procedures Bylaw. They argue that, given that the appropriate meaning of "instruction" is "a direction, an order", the councillor's comments fell short of directing or ordering City employees to take a particular course of action in relation to the Velodrome.

[31] The Respondents take the position that s. 48(1) of the Procedures Bylaw should not be construed in such a way as to prohibit Councillors from bringing initiatives proposed by their constituents directly to the attention of appropriate City departments so that the departments can evaluate them and decide whether they warrant the attention of Council: *Duemler v. Edmonton (City of)*, 2007 ABQB 575, appeal dismissed by the Alberta Court of Appeal, 2009 ABCA 19.

Analysis

Standard of Review

[32] Generally, the primary task of the Court on judicial review applications is to select the appropriate standard of review and apply it to the decision that is the subject of the review.

[33] In *Dunsmuir*, the SCC established that there are now two standards of review: correctness and reasonableness. *Dunsmuir* confirmed that an exhaustive review is not required in every case to determine the proper standard of review where existing jurisprudence has already made that determination. The SCC held that, where existing jurisprudence is not helpful, a contextual analysis should be applied, involving the application of a number of factors, including the presence or absence of a privative clause, the purpose of the tribunal, the nature of the question at issue and the expertise of the tribunal.

[34] The parties provided no existing cases dealing with the applicable standard or standards of review to be applied to the specific questions on this application. Applying the first of the four factors, the absence of a privative clause suggests that little or no deference is owed to Council's decision.

[35] In relation to the second factor, the Respondents emphasize that the subject matter of the Motion is *intra vires* Council. I agree that the passing of such Motion, and the subject matter it covers, is within Council's mandate and that Council passes motions and makes decisions of this type on a regular basis. These functions are clearly within Council's purposes. The Applicant does not suggest otherwise. I agree that considerable deference is owed to decisions of Council in relation to decisions properly made within its statutory area of authority and the decision is within its area of expertise.

[36] What is of particular relevance in deciding the appropriate standard or standards of review to be applied by me in this application is the nature of the questions at issue. As the subject matter of the Motion is within Council's jurisdiction and planning of major municipal facilities falls within its area of expertise, a properly made decision to deem a river valley location essential is owed considerable deference. With respect to the consideration and weighing of relevant information to arrive at such a decision, the standard of review is reasonableness. However, what is primarily at issue in this application is the interpretation of bylaws: whether the initiation of the process contravened the Procedures Bylaw and, if so, the effect of such contravention; whether Council satisfied the requirements of the Bylaw and complied with all preconditions to the passage of the Motion; and whether the wording of the Motion was sufficient to effectively deem the location essential in this case. These are largely questions of law, involving questions of procedure and process which go to the proper exercise of jurisdiction. I agree with the Applicant that, in relation to the interpretation of legislation, the Courts have far greater expertise than members of Council. This application is not primarily about whether Council made a reasonable decision on the basis of the materials before it. The issue is whether Council made an effective decision in relation to redevelopment at the existing location. Based on the characterization of these primary issues and the relative expertise of this Court and Council, little deference is owed to the decision. The applicable standard of review for those issues is correctness.

Did Council Satisfy the Requirements of s. 3.5.1 of the Bylaw
(With Respect to Deeming the River Valley Location Essential)?

[37] In 1983, Council had directed the City administration to prepare a revised North Saskatchewan River Valley Area Redevelopment Plan in order to protect the North Saskatchewan river valley and ravine system and to establish principles for future plans and programs for park development in these areas of the city. Statutorily directed public hearings were held to solicit input from the public and a finalized plan was then approved and implemented through the passage of the Bylaw in 1985. The subsequent passage of the UPMP and the RFMP were complementary to the Bylaw and furthered the purposes and strategies outlined in the Bylaw. All three affirmed the long-standing desire of the City to preserve the River Valley through careful planning and control of development within it.

[38] Section 3.5.1 clearly states that major public facilities (such as the Velodrome) shall not be constructed or expanded in the river valley unless a location within the river valley is deemed essential and approved by Council. The Motion refers to Council having given “approval” for the redevelopment of the Velodrome at the existing location. I cannot accept the Respondents’ argument that the Motion should be construed as including the deeming by Council of the existing location as essential for the redevelopment of the Velodrome. If “approved” was intended to encompass “deemed essential” then there would have been no need to refer in the Bylaw to the deeming of the location as essential. Approval alone would have sufficed. Apart from the obvious rule of construction which would be ignored if the Respondents’ argument was accepted, the expression used in s. 3.5.1 clearly contemplates two separate actions: one, the deeming of the location as essential; and second, the approval. Furthermore, the wording and logic suggest that, for Council to approve construction or expansion of a major facility in the river valley, it would first have to deem the river valley location essential. Presumably, it could deem the location essential and then, for other reasons (eg. monetary), choose not to approve the proposed facility’s construction.

[39] The Respondents submit that I ought to infer that, by approving the Motion, the members of Council who voted in favour were implicitly deeming the existing location to be essential for the redevelopment of the Velodrome. There is no doubt that this aspect of the Bylaw was discussed at the meeting. The meaning of “essential” was also the subject of some discussion. There was mention of “preferred”, “suitable” and “potential” sites. Council received advice from legal counsel during the course of the discussion. Counsel confirmed that the reason the matter was before Council was because the Bylaw required Council to deem the location essential in order to approve the redevelopment project. The record shows that this advice and much of the discussion occurred between approximately 9:45 a.m. and noon. The record also shows that not all Council members involved in voting on the Motion were present during that time. At least one joined the meeting when it reconvened at 3:12 that afternoon. The vote was 7 to 6. Even if I were inclined to accept the Respondents’ argument that, given the discussion at the meeting, the Motion ought to be construed in the manner suggested because the discussion should have alerted the Councillors to the fact that approving the redevelopment would require them to deem the existing location essential, I am not satisfied that all members who voted on the Motion

could have had that appreciation since not all of them were present during key aspects of that discussion.

[40] In light of the wording of s. 3.5.1 and the purposes and policies set out in the Bylaw, the deeming of the existing location to be essential is an extremely important requirement of the Bylaw. I have concluded that such a step should not be presumed or inferred. A plain reading of the Motion would not lead anyone to realize that Council had deemed the existing location to be essential. Any informed member of the public, aware of the requirements of the Bylaw and concerned about the construction of a large replacement facility at the existing location, would not be satisfied, on reading the Motion, that Council had taken the necessary step of deeming the existing location to be essential by voting in favour of that Motion. That same member of the public should not have to read a 97-page transcript of the proceedings of the Council Meeting in order to determine whether this step might be read into the Motion. Nor am I satisfied that this same member of the public, after reading the 97-page transcript, would be certain that all members of Council who voted on the Motion were aware of all of the discussion leading up to it, understood the meaning of “essential” within the context of the Bylaw, and knew that in voting for the Motion they were deeming the existing location essential. In any event, I am not satisfied that any such inference should be drawn. I conclude that the Motion, even when read in conjunction with the 97-page transcript of the proceedings, does not address an essential precondition to the approval of the redevelopment of the Velodrome at the existing location – namely, the deeming of that location to be essential.

Does Section 3.5.3 of the Bylaw (Requiring the Preparation of Council Approval of a “Detailed Site Location Study”) Apply in These Circumstances? If so, Were the Requirements of the Section Satisfied?

[41] Part of the Respondents’ submission is that the evaluation studies that have been conducted, and which are detailed in Paragraph 29 of this Judgment, should be taken together to constitute the detailed site location study referred to in s. 3.5.3 of the Bylaw. The Applicant disputes this argument on the basis that none of the individual reports address the issue of “essentialness” of the proposed location. The Respondents concede that, if collectively these individual studies constitute the detailed site location study contemplated in s. 3.5.3, such a study has not yet been approved by Council. However, the Respondents argue that the time has not yet come for the preparation or approval of a detailed site location study in relation to the redevelopment of the Velodrome. The Respondents argue that the second sentence of s. 3.5.3, which specifies that these studies shall be undertaken prior to Council committing funds for capital expenditures for the development of a proposal, qualifies the first sentence of the section, which specifies that all proposals for the development of a major facility that is developed on public lands shall be subject to an environmental impact screening assessment and that a detailed site location study (detailing costs, and social, environment and institutional constraints which make a river valley location essential) must be prepared for Council approval.

[42] The Respondents argue that s. 3.5.3 is divorced from s. 3.5.1 such that Council may deem a river valley location essential and approve the construction or expansion of a major public facility within the river valley without having reviewed or approved the detailed site location

study referred to in s. 3.5.3. They submit that the requirement of the detailed site location study does not arise until Council commits funds for capital expenditures in relation to the related development. I reject this argument. Such developments do not necessarily involve capital expenditures by the City. If I accept the Respondents' argument that the need for the study does not arise until Council commits capital funding, the interpretation suggested by the Respondents would render the first sentence inapplicable to projects that are wholly funded from sources other than City coffers. But the first sentence of s. 3.5.3 clearly requires the environmental impact screening assessment and detailed site location study for all proposals for the development of a major facility such as the Velodrome on public lands within the river valley (such as the existing location). The Respondents conceded as much at the hearing of the application but were unable to confirm where in the process these requirements would arise if a request for City funding was never forthcoming from the developer.

[43] Furthermore, Council is required to deem a river valley location essential in the case of all major public facilities constructed or expanded within the river valley. To suggest, as the Respondents do, that this step can be completed prior to the preparation and approval of the environmental impact screening assessment and detailed site location studies flies in the face of reason and logic. What other purpose could be intended for the assessment and study, the latter being specifically required to address why a river valley location is essential for a specific project, if it is not so that Council has the benefit of these investigations and analyses in advance of making its decision? It is inconsistent with the wording of the Bylaw, and its underlying objective, purpose and philosophy, to suggest that Council can deem a river valley location essential and approve the development of a major facility at that location without the assessment and study, and then subsequently receive an assessment and study which suggests that the development at such a location is neither essential nor advisable. The only interpretation of s. 3.5.3 is to read it in conjunction with s. 3.5.1 and to view the preparation and approval of the environmental assessment and the site location study as preconditions to Council's decision to deem the location essential and approve the development.

[44] I therefore conclude that the requirements of s. 3.5.3 were preconditions to the exercise of Council's discretionary power to deem the existing location essential to the redevelopment of the Velodrome. The requirements of s. 3.5.1 were not complied with prior to the passage of the Motion. While some studies were prepared and presented to Council in connection with the passage of the Motion, these cannot be, even collectively, considered compliance with the requirements of s. 3.5.3.

[45] Having reached the above conclusion, it is not necessary for me to decide whether Council's approval in 2006 and 2007, followed by the expenditures in 2006, 2007 and 2008, of funds from the City's capital budget triggered the application of s. 3.5.3 as a commitment of funds for capital expenditures, the triggering event suggested by the Respondents. The Respondents argued that the mere fact that the funds were allocated and spent from the City's capital budget did not mean there was a commitment of funds for capital expenditures within the meaning of s. 3.5.3. As this point arose following the hearing of the application, was not argued before me, was raised and responded to by letters following the application, and it is not necessary for me to decide it, given by decision on the proper interpretation of s. 3.5.3 and its

application in this case, I decline to decide whether the budgetary commitments and expenditures fall within the meaning of the second sentence of s. 3.5.3 of the Bylaw.

What is the Effect of any Non-compliance With the Requirements of
Either or Both of Sections 3.5.1 and 3.5.3?

[46] I agree with the Applicant that the Motion was not effective to deem the existing location essential for the redevelopment of the Velodrome on the basis that mandatory procedural requirements were not complied with. While Council has considerable discretion in deciding whether to deem a particular river valley location essential for the purposes of a major facility development or expansion, a purported decision will be ineffective if mandatory procedural requirements are not satisfied. Here, no effective decision was made to deem the existing location essential and, therefore, any approval for the redevelopment is also ineffective until the preconditions have been satisfied and a properly worded Motion passed.

Was Section 48 of the Procedures Bylaw Contravened and, if so,
What is the Effect of Such Contravention on the Passage of the Motion?

[47] The procedural defects found by me are capable of being cured and therefore, although this application can be disposed of on the basis already outlined above, I will decide the issue of the alleged contravention of the Procedures Bylaw so that it need not be revisited again in connection with this particular development. I do not find that s. 48 of the Procedures Bylaw was contravened by virtue of a decision of a Councillor to refer a group of constituents to representatives of the applicable City Department following a discussion of a proposal of concern to those constituents.

[48] A similar although not identical issue was raised and dealt with in *Duemler*. In that case a decision by Council was challenged on the basis that the origin of the proposal originated from a group of citizens, rather than Council's own initiative. Justice Graesser observed "the reality of political office is that elected officials should respond in some fashion to the requests of the persons they have been elected to represent." He went on to observe that the purpose of the statutory provision at issue in that application would not reasonably be met "if on receipt of a request from a ratepayer or group of ratepayers for a local improvement, the City would have to respond 'sorry, you brought up the subject. Now that you have raised it, you will have to provide us with a sufficient petition before we can consider the matter'." Although here we are dealing with the actions of an individual Councillor and s. 48 of the Procedures Bylaw, the same rationale can be applied to the actions of the Councillor in this case. A group of constituents interested in the Velodrome came to meet with their Councillor, the type of activity which Councillors must engage in on a very frequent basis in relation to all manner of issues and initiatives. The Councillor determined what Department was responsible for their particular issue and referred the group to that Department. The only evidence here is that the Councillor, in his words, "handed off" the group to the Community Services Department after being advised of their area of concern. I agree with the Applicant that this falls far short of the type of individual action sought to be curtailed pursuant to s. 48(1) of the Procedures Bylaw. Referring a group of concerned citizens to an appropriate Department does not amount to giving instructions to the

City Manager or an employee. There is no evidence that the Councillor took any steps following his referral to the appropriate group, nor any evidence that he gave any instructions to an employee or the City Manager requiring any specific course of conduct on their part. I therefore conclude that there was no contravention of s. 48 of the Procedures Bylaw.

If Council Complied With Section 3.5.1 and 3.5.3 of the Bylaw and
if Section 48 of the Procedures Bylaw was not Contravened, Applying
the Appropriate Standard of Review, Should Council's Decision be Upheld?

[49] Having concluded that Council did not comply with ss. 3.5.1 and 3.5.3 of the Bylaw and that the Motion was not effective to deem the existing location essential for the redevelopment of the Velodrome, this issue need not and cannot be decided by me. It is only once an effective Motion has been passed in compliance with the applicable statutory and Bylaw provisions and procedures that a decision can be reviewed for its reasonableness.

Disposition

[50] For the reasons given above, the Motion is declared void and without force or effect.

[51] If the parties are unable to agree on costs they are to bring that issue before me within 30 days of the issuance of this Judgment.

Heard on the 30th day of October, 2008. Further submissions received from the Respondents by letter dated November 14, 2008 and from the Applicant by letter dated November 21, 2008.

Dated at the City of Edmonton, Alberta this 30th day of January, 2009.

D.L Shelley
J.C.Q.B.A.

Appearances:

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The City of Edmonton
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