Court of Queen's Bench of Alberta

Citation: Ponoka Right to Farm Society v Ponoka (County), 2020 ABQB 273

Date: 20200420
Docket: 1912 00144
Registry: Wetaskiwin

Between:

Ponoka Right to Farm Society

Applicant

- and -

Ponoka County and Minister of Justice and Attorney General for the Province of Alberta

Respondent

Reasons for Decision
of the
Honourable Mr. Justice James T. Neilson

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[1] The Applicant, Ponoka Right to Farm Society (the "Society"), applies for judicial review of By-law 15-18-ASP (the "By-law"), which was given third and final reading on October 25, 2018. The By-law adopted the Ponoka North-West Area Structure Plan (the "ASP").

[2] The Society is an Alberta society under the *Societies Act*, RSA 2000, c S-14, comprised of farmers, landowners and businesses located in Ponoka County (the "County") and the Town of Ponoka. The Society formed in response to the County's plans to place restrictions on their members' rights to farm.

[3] The Society seeks an order allowing this application for judicial review of the ASP By-law, an order in the nature of *certiorari* quashing the By-law, and an order declaring that the By-law is invalid and set aside.

[4] Although named as a Respondent, the Minister of Justice and Attorney General for the Province of Alberta did not participate in this application.

The Issues in this Application

[5] The Society submits that the County erred on the following grounds when it decided to approve the ASP By-law:

a. The County made a reviewable error in failing to include in the ASP the mandatory content requirements of s 633 of the *Municipal Government Act*, RSA 2000, c M-26 ("*MGA*"). In particular, the County erred in concluding that it had the authority to ignore the content requirements of s 633(2), where the County believed those requirements were not "practical"; and

b. The County made a reviewable error in failing to review the ASP to ensure consistency with the County's Municipal Development Plan ("MDP") as required by s 633(3) of the *MGA*, particularly the provisions protecting the right to farm.

The Standard of Review

[6] Section 539 of the *MGA* provides that "No bylaw or resolution may be challenged on the ground that it is unreasonable".

[7] The *MGA* empowers municipal governments to enact bylaws covering a range of local issues including land use planning. As the Supreme Court of Canada stated in ***Canada (Minster of Citizenship and Immigration) v Vavilov***, 2019 SCC 65 at paragraph 24, the legislature must be presumed to have intended that administrative bodies perform their administrative functions with a minimum of judicial interference, although judicial review may still be available in certain circumstances:

> [24] Parliament and the provincial legislatures are constitutionally empowered to create administrative bodies and to endow them with broad statutory powers: *Dunsmuir*, at para. 27. Where a legislature has created an administrative decision maker for the specific purpose of administering a statutory scheme, it must be presumed that the legislature also intended that decision maker to be able to fulfill its mandate and interpret the law as applicable to all issues that come before it. Where a legislature has not explicitly prescribed that a court is to have a role in reviewing the decisions of that decision maker, it can safely be assumed that the legislature intended the administrative decision maker to function with a minimum of judicial interference. However, because judicial review is protected by s. 96 of the *Constitution Act, 1867*, legislatures cannot shield administrative decision making from curial scrutiny entirely: *Dunsmuir*, at para. 31; *Crevier v. Attorney General of Quebec*, 1981 CanLII 30 (SCC), [1981] 2 S.C.R. 220, at pp. 236-37; *U.E.S., Local 298 v. Bibeault*, 1988 CanLII 30 (SCC), [1988] 2 S.C.R. 1048, at p. 1090. Nevertheless, respect for these institutional design choices made by the legislature requires a reviewing court to adopt a posture of restraint on review.

[8] The Supreme Court in ***Vavilov, supra*** at paragraph 25, reaffirmed the established presumption of reasonableness in review of decisions by administrative bodies. However, there is an exception to the reasonableness standard where a legislature has made specific provision for

the standard of review to be applied with respect to an administrative decision under a specific statute.

[9] In ***Vavilov*** at paragraph 33, the Supreme Court stated that the presumption of reasonableness will be rebutted where a legislature has indicated that a different standard should apply:

> ... The legislature can do so in two ways. First, it may explicitly prescribe through statute what standard courts should apply when reviewing decisions of a particular administrative decision maker. Second, it may direct that derogation from the presumption of reasonableness review is appropriate by providing for a statutory appeal mechanism from an administrative decision maker to a court, thereby signalling the application of appellate standards.

[10] In this case, a bylaw may not be challenged on the ground that it is unreasonable, pursuant to section 539 of the *MGA*.

[11] There is another exception to the presumption of reasonableness, where a court may apply a standard of correctness. This may be done, however, only in certain limited circumstances, namely constitutional questions, general questions of central importance to the legal system as a whole, and questions regarding the jurisdictional boundaries between two or more administrative bodies: ***Vavilov, supra*** at paragraph 53. None of those circumstances apply in this case. The standard of correctness is not engaged here.

[12] The Court must determine, then, the standard of review to be applied. In the case of judicial review of municipal bylaws in this province, this court has previously stated that the standard of review must be one of "patent unreasonableness": ***Koebisch v Rocky View County***, 2019 ABQB 508 per Eamon J at paragraphs 60-65:

> [60] When the Legislature enacted the present Act in 1994, administrative law drew a distinction between patent unreasonableness and unreasonableness. Also, patent unreasonableness served two functions. It functioned as one of three review standards, the others being reasonableness and correctness (*Nor-Chris* at para 64). It also was a jurisdictional ground for review (*U.E.S., Local 298 v Bibeault*, [1988] 2 SCR 1048, 1988 CanLII 30 at para 113, 116, 121, 122; *Canada (Director of Investigation and Research) v Southam Inc*, [1997] 1 SCR 748, 1997 CanLII 385 at para 55; *Dunsmuir* at paras 35-37).
>
> [61] In either context, patent unreasonableness, in comparison to unreasonableness, focussed on the magnitude and immediacy of the defect (*Dunsmuir* at paras 40-42; *Law Society of New Brunswick v Ryan*, 2003 SCC 20 (CanLII), [2003] 1 SCR 247 at para 52). The patent unreasonableness standard historically applied to decisions of municipal councils (*Nanaimo (City) v Rascal Trucking Ltd*, [2000] 1 SCR 342, 2000 SCC 13 at para 37), where courts have traditionally refused to overturn municipal bylaws unless they were found to be "aberrant", "overwhelming", or if "no reasonable body" could have adopted them (*Catalyst* at paras 20-21; *Nor-Chris* at paras 68-70).
>
> [62] The Act recognizes unreasonableness and patent unreasonableness as discrete grounds for challenges to a council's actions. The Legislature barred unreasonableness as ground for challenge in section 539. In contrast, it recognized

> patent unreasonableness as a ground of appeal to Queen's Bench from a limited class of council resolutions in section 548(1)(b). Appeals and reviews are similar procedures for review in Queen's Bench.
>
> [63] I agree with *Bergman* that the Legislature intended that section 539 exclude review on the ground of unreasonableness. That interpretation conforms to the plain language of section 539, is consistent with the decision of the Court of Appeal in *ARW Development Corporation v Beaumont (Town)*, 2011 ABCA 382 at para 30, and is required under *Khosa*. However, it does not insulate a decision from review for patent unreasonableness. In view of the language in section 548 of the Act, and the historical role of patent unreasonableness as a jurisdictional ground of review, it would take stronger language to insulate a decision from review on the ground it is patently unreasonable.
>
> [64] This result is also supported by the dicta of the Supreme Court of Canada in *Rascal Trucking*, where the Court cited section 539 as an example of legislative intent to shield municipalities from a challenge on unreasonableness alone and contrasted that to the review standard of patent unreasonableness.
>
> [65] When searching for a patently unreasonable decision, one needs to apply the patent unreasonableness review standard. I agree with Graesser J in *Nor-Chris* (at para 69) that the standard is captured by para 20 of *Catalyst*: "... courts have refused to overturn municipal bylaws unless they were found to be "aberrant", "overwhelming", or if "no reasonable body" could have adopted them". The requirement that no reasonable council could have passed the bylaw speaks to the requirements of the immediacy and obviousness of the defect.

[13] On the one hand, then, under the *MGA*, judicial review of a municipal bylaw will not lie on the grounds that it was unreasonable. On the other hand, the limited circumstances requiring a standard of correctness do not apply in this case. Here, the court will apply patent unreasonableness as the standard of review. The ASP By-law can only be overturned if the court finds that "no reasonable body" could have adopted it. Any such defect must be "patent", i.e. immediate and obvious.

The Governing Legislation

(a) The Municipal Government Act

[14] Section 617 of the *MGA* sets out the purpose of Part 17, which contains provisions for municipal planning and development:

> Purpose of this Part
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> 617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> > (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

[15] Section 632(1) of the *MGA* provides that: "Every council of a municipality must by bylaw adopt a municipal development plan."

[16] Section 633 of the *MGA* provides for area structure plans as follows:

> Area structure plan
>
> 633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.
>
> (2) An area structure plan
>
> (a) must describe
>
> (i) the sequence of development proposed for the area,
>
> (ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,
>
> (iii) the density of population proposed for the area either generally or with respect to specific parts of the area,
>
> and
>
> (iv) the general location of major transportation routes and public utilities,
>
> and
>
> (b) may contain any other matters, including matters relating to reserves, as the council considers necessary.
>
> (3) An area structure plan must be consistent with
>
> (a) any intermunicipal development plan in respect of land that is identified in both the area structure plan and the intermunicipal development plan, and
>
> (b) any municipal development plan.

[17] The section 618.1 of the MGA provides that Part 17 respecting development permits does not apply to a "confined feeding operation":

> Exemption
>
> 618.1 This Part and the regulations and bylaws under this Part respecting development permits do not apply to a confined feeding operation or manure storage facility within the meaning of the Agricultural Operation Practices Act if the confined feeding operation or manure storage facility is the subject of an approval, registration or authorization under Part 2 of the Agricultural Operation Practices Act.

(b) The Agricultural Operation Practices Act

[18] Section 1(b.6) of the *Agricultural Operation Practices Act*, RSA 2000 c A-7 (*AOPA*), defines "confined feeing operation" as follows:

> 1(b.6) "confined feeding operation" means fenced or enclosed land or buildings where livestock are confined for the purpose of growing, sustaining, finishing or breeding by means other than grazing and any other building or structure directly related to that purpose but does not include residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks or exhibition grounds.

[19] In Part II of the *AOPA*, "Livestock and Manure", section 13(1) provides the requirement for approval and registration of a confined feeding operation as follows:

> 13(1) No person shall commence construction or expansion of a confined feeding operation for which an approval or registration is required pursuant to the regulations unless that person holds an approval or registration.
>
> (2) A person who holds an approval or registration must comply with and operate in accordance with the terms and conditions of the approval or registration.

[20] Section 20 of the *AOPA*, dealing with considerations for approvals, provides as follows:

> 20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer
>
> (a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application.

[21] In addition, the Natural Resources Conservation Board, in reviewing a decision of an approval officer, must have regard to, but is not bound by, the municipal development plan: section 25(4)(g) of the *AOPA*.

The Essential Elements of the ASP

[22] The ASP was prepared by Robert Riddett, Registered Professional Planner, Alberta and NWT.

[23] The purpose of the ASP is set out in s 1:

> This Area Structure Plan addresses a problem of conflicting land uses in part of Ponoka County lying northwest of the Town of Ponoka, where increasing the number of confined feeding operations (CFOs) may be incompatible with other existing and future land uses.

[24] The study area covers about 88,000 acres bounded by Highway 2, Highway 53, Highway 792, and Highway 611.

[25] The plan cites certain provincial policies under the *Agricultural Operation Practices Act* and the County's MDP protecting persons operating agricultural operations from nuisance lawsuits.

[26] The plan also cites provisions of the County's MDP. The section on development priorities provides:

> The future of Ponoka County lies with a strong farm economy, and council will do whatever is necessary to support farming as an industry and as a way of life. Other land uses will be allowed only if they're compatible with farming and a clean environment.

[27] Policy 4 of the MDP provides:

> There is a strong demand for rural residential parcels, and the County is willing to meet this demand provided that it does not damage agriculture or the environment, or impede the logical and economic growth of urban areas.

[28] Policy 4.1 goes on to provide:

> In order to reduce conflicts with agriculture, and to minimize the cost of maintaining roads and other municipal services, council believes it is better to concentrate most multi-lot subdivisions in a few well-defined areas, leaving the rest of the County primarily agricultural."

[29] The study area is home to 26 CFOs having approvals or registrations under the AOPA.

[30] Policy 2.1 of the MDP provides:

> The County encourages CFOs as a way of adding value to grain crops, and providing more employment and income per acre of land. However, the environment and the rights of neighbours must be protected.

[31] The plan states that: "Within the study area, the issue is that there are so many CFOs and so many residences that any increase could lead to conflict. The purpose of this plan is to propose policies to minimize that conflict."

[32] The plan then considered multi-lot residential development and single lot residential development.

[33] County polices, as expressed in the MDP, make it clear that multi-lot residential subdivisions are unlikely to be approved in the study area, except perhaps small subdivisions overlooking the Battle River valley.

[34] On the other hand, it is anticipated that there will be further single lot residential development. The highest density of residences is in Township 43, Range 26, east of the Battle River, where there are 75 residences. There are another 10 vacant residential lots which are also

likely to have residences in the foreseeable future. In addition, proximity to Ponoka makes it likely that there will be more "first parcels out", in that Ponoka County normally allows one residential lot to be subdivided out of any quarter-section, provided this does not conflict with the existing agricultural operations in the area (MDP Policy 3.1).

[35] The plan considered three possible courses of action. The first was to do nothing. The second would be to allow CFOs operating in accordance with AOPA rules, where it would be welcome in this agricultural area. Conflicts with other land uses would be minimized by keeping non-farm land uses out of the area. This could be done through amendments to the MDP and land use bylaw, notably by restricting "first parcel out" subdivisions.

[36] The third strategy, recommended in the plan, recognized that proximity to the Town of Ponoka and Highway 2 created a high demand for non-farm residences in this area. There were already so many non-farm land uses, that restricting their growth would not reduce the potential conflict with CFOs. Most of the municipality is open to new CFOs, so limiting their growth in this area will not seriously harm the growth of the industry.

[37] The plan therefore recommended as follows:

> Based on present concentrations of CFOs and third party residences, no new CFOs should be allowed in the highly developed area west of Highway 2, north of Highway 53, east of the Battle River, and south of the line 1-2 miles south of Menaik Road. This area, covering slightly over 20,000 acres, was shown on Map 5 appended to the plan.

[38] Furthermore, multi-lot subdivisions would not be approved in this exclusion zone, except possibly small clusters of view lots overlooking the Battle River.

[39] With respect to CFOs, the recommendation was as follows:

> Under this strategy, all existing CFOs can continue, and can expand under AOPA rules. A number of large operations which are not yet recognized by the NRCB can also continue, resume operations if they have temporarily ceased, and expand under AOPA rules. Additionally, smaller intensive animal operations existing on the date this ASP is adopted, and which are not now defined as CFOs, will be allowed to expand and become CFOs subject only to AOPA rules.
>
> These existing and expanded CFOs will be protected by the County's land use bylaw, which does not allow new third party residences which are situated closer to a confined feeding operation, intensive livestock operation, or manure storage facility than the minimum distance separation established in AOPA, or would materially interfere in an existing agricultural operation or its proposed expansion [Land use bylaw, section 617].

[40] Finally, the plan considered consistency with s 633 of the *MGA*:

> The *Municipal Government Act* requires area structure plans to set out the expected population density and major transportation routes in the plan area. This makes sense in an urban setting, where schools and parks must be provided, road alignments pre-planned, and underground utilities sized to meet expected needs. It is not practical in an agricultural area. Densities are set by the County's policies on subdivision, there is an existing road system, and farms and residences will

> have individual wells and sewer systems. Similarly, no sequence of development is proposed; this will be governed by the actions of owners operating in a free market.

The Proceedings Before the County Leading to the Adoption of the ASP

[41] The following steps and deliberations before County council led to the adoption of the Bylaw and ASP:

a) On July 17, 2018, the ASP Bylaw was given first reading.

b) On August 13, 2018, the County held two non-statutory public meetings about the ASP with about 150 people in attendance.

c) On September 25, 2018, Karen Pierik, on behalf of the Society, addressed council about the ASP.

d) On October 2, 2018, the County held a statutory public hearing on the ASP and the MDP, with about 150 people in attendance.

e) On October 8, 2018, second reading of the ASP Bylaw was deferred.

f) On October 25, 2018, the ASP Bylaw was given second and third reading, and passed, four in favour, one opposed.

g) Also, on October 25, 2018, County Council gave first, second and third reading to By-law 14-18A, unanimously passed, which enacted changes to the municipal development plan originally adopted by By-law 6-08-MDP. Policy 2.3 was amended to read, in part, as follows:

> > No new CFO shall be established in the following areas....
> >
> > Land designated as a CFO exclusion zone in an area structure plan which has been adopted by bylaw.
>
> These areas are shown in map 2, attached to the By-law.

[42] In addition to the representations that were made at public meetings and Council meetings, Council received over 40 letters and emails from individuals. Approximately half these letters were in support of the proposed ASP By-law, and approximately half were opposed.

[43] The Society wrote to Council on July 31, 2018, requesting an extension of time to review the proposed ASP By-law in detail.

[44] On September 24, 2018, the Society wrote to Paul McLauchlin, Reeve of Ponoka County. This letter states in part as follows:

> We are a rapidly expanding group of over 300 members who are concerned about the proposed changes the County has planned. Many Ponoka County residents are stunned with the arbitrary county rules about where we can and can’t farm.
>
> The implications of these plans will cause serious long-term harm to the farming community. The County needs to develop land use policies that are fair and protect the right to farm. Modern farming and other land uses can coexist if everyone accepts and realizes that some level of impact is needed to support the

> critical process of food production. The county's Area Structure Plans (ASP's) and Municipal Development Plan (MDP) needs to reflect this instead of creating exclusion zones that are anti agriculture.
>
> After consultation and thorough review of the proposed ASPs and MDP amendments, it has come to our attention that these plans seem to specifically target confined feeding operations (CFO's). In fact, these plans focus more limiting confined feeding operations than legitimate land use planning.
>
> The County retained a retired planner, Robert Riddett, to prepare the controversial ASP reports. This letter serves as a formal request for the instructions the County gave to Mr. Riddett regarding preparations and edits to the plan documents.

[45] The County minutes for the public hearing on October 2, 2018 listed three people who spoke in favour of the ASP By-law and sixteen who spoke against, including Karen Pierik representing the Society. The concerns recorded in those minutes include the following:

a) "There is no more population congestion in this plan area than there is everywhere else in the county."

b) " ASP would affect the next generation's ability to be in close proximity to existing operations."

c) "Without the ability to expand onto adjacent land, it will affect their ability to remain viable."

d) "They have been negatively affected by the new free trade agreement and minimum wage hike. Their only recourse is to expand."

[46] The Society wrote a letter to the County dated October 5, 2018 following the October 2, 2018 public hearings expressing criticisms, including the arbitrariness of the Exclusion Zone; the County not following sound planning principles; the County's considerations were not based on existing densities of CFOs and residence or soil class; and that the land generally was more suitable for agriculture.

[47] On October 24, 2018, the Society wrote to the Reeve and Councillors of Ponoka County, raising specific concerns about matters raised and opinions expressed at the County Council meeting on October 9, 2018. Objection was raised to comments from a Councillor that the NRCB does not consider neighbours' concerns, that Councillors say supply management is a problem and bad government policy, and that the NRCB told councillors to impose an exclusion zone.

[48] In the Certified Record of Proceedings filed in relation to this application for judicial review, the Society did not set out concerns to Council which addressed specifically section 633 of the *MGA*.

Analysis

A. Reviewable error, section 633(2) *MGA*

[49] The Society takes the position that the County, in passing the ASP By-law, made a reviewable error in failing to consider the mandatory content requirements of section 633(2) of the *MGA*, that this was patently unreasonable, and that the By-law must be quashed.

[50] The society focuses on paragraph 9 of the ASP, "consistency with section 633 of the *MGA*", as follows:

> The *Municipal Government Act* requires area structure plans to set out the expected population density and major transportation routes in the plan area. This make sense in an urban setting, where schools and parks must be provided, road alignments, pre-planned and underground utilities sized to meet expected needs. *It is not practical in an agricultural area.* Densities are set by the county's policies on subdivision, there is an existing road system, and farms and residences will have individual wells and sewer systems. Similarly, no sequence of development is proposed; this will be governed by the actions of owners operating in a free market. [emphasis added]

[51] However, in assessing and interpreting the ASP By-law as a whole, this must be done, first of all, in the context of the statutory purpose of regulations and bylaws that are passed under Part 17 of the MGA, as expressed in section 617:

> Purpose of this Part
>
> 617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
>
> (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
>
> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

[52] In addition, one must consider whether it contains "a framework for the subdivision and development of an area of land": section 633(1) of the MGA.

[53] Thirdly, this must be done within the context of the purpose of the ASP as set out in its section 1:

> This area structure plan adresses a problem of conflicting land uses in part of Ponoka County lying north west of the Town of Ponoka, where increasing the number of confined feeding operations (CMOs) may be incompatible with other existing and future land uses.

[54] It is true that the plan does not address, point by point, the four elements that an area structure plan "must describe" pursuant to section 633(2) of the *MGA*. However, the ASP does indicate that the area of land within the proposed Exclusion Zone has already been developed, in

that it encompasses existing farm operations and individual residences. This is distinguished, for example, from an area structure plan that would apply to proposed development of bare land within a municipality. The *MGA* does not prescribe a certain form that the municipality must follow in considering and adopting an area structure plan. However, in assessing the plan document as a whole, and notwithstanding the wording cited above in paragraph 50 of these Reasons for Decision, I find in fact that the four elements in section 633(2) were taken into consideration in formulating the ASP.

i. The sequence of development proposed for the area.

[55] The ASP By-law anticipated that lands closer to the Town of Ponoka will have increased residential development. Lands further from the Town are better suited for CFO development.

[56] The By-law limits new CFOs within the defined Exclusion Zone portion of the study area. All existing CFOs may continue and expand with provincial approval.

[57] Multi-lot acreage subdivisions are limited, except in a small area that overlooks the Battle River valley.

[58] The By-law anticipates that "first parcel out" residential use will likely occur on the vacant lots in the highest density of residences in Township 43, Range 26, east of the Battle River.

[59] Therefore, in considering "subsequent subdivision and development within the Exclusion Zone", the ASP addresses two aspects of sequencing, namely the limitations now put in place on CFOs, and anticipated subdivision of property for residential use.

[60] I note that the restrictions on CFOs in the Exclusion Zone do not apply to three other types of agricultural operations permitted under Land Use By-law 7-08-LU, section 102, namely Extensive Agriculture, Intensive Agricultural Operations, and Intensive Livestock Operation.

ii. The land uses proposed for the area, either generally or with respect to specific parts of the area.

[61] As stated, the land uses proposed are for residential development but restrict further CFO development within the Exclusion Zone. No restrictions are proposed in relation to the three other types of agricultural activity permitted under the County's Land use By-law.

iii. The density of population proposed for the area either generally or with respect to specific parts of the area

[62] Density of population is described in the ASP By-law, noting that residential development will be influenced by CLI soils ratings. In addition, low density single lot residential development is limited to an area with an already high density of single lot residential development. Also, minimum distance separations between CFOs and third-party residences will govern residential growth. Lastly, the densities will be governed by subdivision policies.

[63] The density of population will depend on future residential development. The County would have to consider further development on a case by case basis in its permitting processes.

iv. The general location of major transportation routes and public utilities.

[64] The Exclusion Zone already encompasses existing highways and local roads, and no further transportation corridors are proposed. Also, each property must provide for its own water

and sewage disposal. Therefore, no major transportation routes or public utilities need to be described as they already exist.

[65] In the context of the overall purpose of the ASP, the County received submissions, for and against, in relation to the proposed ASP By-law. As an issue of land use planning, it had to take into account the actual and potential conflict between CFOs and residential development. The purpose of the ASP, in establishing the Exclusion Zone, was to minimize that conflict. The County may not infringe "on the rights of individuals for any public interest except to the extent that it is necessary for the overall greater public interest": section 617 MGA. Ultimately, however, the County was called upon to make a policy decision between conflicting land use interests, and to pass an ASP with the intention of minimizing that conflict. The ASP By-law is not "patently unreasonable".

B. Reviewable Error: Section 633(3) *MGA*

[66] The Society asserts that the County failed to review the ASP to ensure consistency with the County's Municipal Development Plan as required by section 633(3) of the *MGA*, particularly the provisions protecting the right to farm.

[67] The MDP states as follows regarding agriculture:

> Agriculture
>
> Agriculture is the backbone of the local economy, and the County will give all necessary support to the industry when making land use decision.
>
> Protection of the Land Base:
>
> The County will support agriculture by securing its land base, and by ensuring that farmers have the right to farm without unnecessary interference.
>
> Policy 1.1
>
> > People who chose to live in rural areas must expect to live with the normal sights and sounds and smells of county life. As a general principle, the County will support any producer who is using generally accepted practices and is threatened with a nuisance law suit.
>
> Policy 1.2
>
> > Rural land capable of producing a good cereal or forage crop will wherever possible be reserved for agricultural use. Land which is cleared and in production, and with a farmland assessment rating of 30% or more, will normally be zoned only for agriculture.
>
> Policy 1.3
>
> > There will be no automatic right to subdivide land which is zoned for agriculture. Every application will be examined for its effect on nearby agricultural operations, and neighbours will be consulted before a decision is made.
>
> Policies Dealing with Operations Under Provincial Jurisdiction:

Policy 2.1

> The county encourages CFOs as a way of adding value to grain crops, and providing more employment and income per acre of land. However, the environment and the rights of neighbours must be protected.

[68] In ***Brown v Sturgeon (County)***, 2001 ABQB 920, Wilson, J. explained the statutory relationship between a municipal development plan and an area of structure plan under the Municipal Government Act, at paras 14 and 15:

> [14] The MGA does say that all statutory plans adopted by a municipality must be consistent with each other (s. 638). However as Laux points out:
>
> It should be recognized that an instrument such as the Municipal Development Plan is intended as a broad statement of general objectives rather than as one setting binding rules.
>
> Planning Law and Practice in Alberta, 2nd Ed. Frederick A. Laux, Toronto: Carswell, 1996 at pages 5-18.
>
> [15] This must be so as a MDP is a broadly stated plan outlined before a truly detailed study has been made of the areas in question, and it is the detailed study and consultation that is a part of it that ultimately brings to the fore the land use considered to be most desirable from all perspectives and the methods of achieving them through an ASP. There will be general consistency with flexibility. There should be considerable latitude when considering the consistency of the more detailed plans and bylaws that follow. I agree with the County's position here and the cases it relies upon, including *Hartel Holdings Co. v. Calgary City Council* (1983) 1984 CanLII 137 (SCC), 31 Alta. L.R. (2d) 97, (SCC); *Old St. Boniface Residents Assn. Inc. v. Winnipeg (City)* 1989 CanLII 177 (MB CA), [1989] 4 W.W.R. 708, (Man.CA) affirmed 1990 CanLII 31 (SCC), [1990] 3 S.C.R. 1170 (S.C.C.); *Heritage Trust of Nova Scotia v. Nova Scotia (Utility and Review Board)* (1994) 20 M.P.L.R. (2d) 84 (NSCA), leave to appeal denied at [1994] SCCA No. 142 (SCC).

[69] The MSP supports agriculture as the "backbone of the local economy". However, there are qualifications and possible limitations to agricultural operations as contemplated within the MDP. There is no automatic right to subdivide land which is zoned for agriculture; it must be subject to an application process. Also, CFOs, although under provincial jurisdiction, were encouraged within the County, but "the environment and the rights of neighbours must be protected".

[70] In adopting the ASP By-law, the County, in making a policy decision between further residential development and any new CFOs, took steps to ensure that the ASP By-law was consistent with the MDP, an overall planning document that is subject to amendment over time as required. In particular, on October 25, 2018, the County gave third and final reading to By-law 14-18A, passed unanimously, which enacted changes to the Municipal Development Plan, adopted by By-law 6-08-MSP. In particular, policy 2.3 was amended to read as follows:

> No new CFO shall be established in the following areas...land designated as a CFO exclusion zone in an area structure plan which has been adopted by by-law.

[71] Accordingly, the ASP By-law is consistent with the County's MDP. It does not violate section 633(3)(b) of the MGA. The second issue raised in the judicial review application by the Society therefore fails.

Conclusion

[72] I am unable to conclude that the County's enactment of the ASP By-law, and the amendments to its Municipal Development Plan, were patently unreasonable.

[73] The standard of review that must be applied has not been met in this application, and accordingly, the Society's application is dismissed, with costs payable to the Respondent County under Column 1 of Schedule C to the *Rules of Court*, together with all reasonable disbursements.

Heard on the 20th day of February, 2020.
Dated at the City of Edmonton, Alberta this 20th day of April, 2020.

James T. Neilson
J.C.Q.B.A.

Appearances:

Ian Wilson QC
Wilson Law Office
for the Applicant

Alifeyah Gulamhusein
Brownlee LLP
for the Respondent