JUDICIAL CENTRE OF CALGARY
FILED
Sep 15, 2026
CLERK OF THE COURT

Court of King's Bench of Alberta

Citation: Patrol Base Inc v Crowsnest Pass (Municipality), 2026 ABKB 653

Date:
Docket: 2401 01521
Registry: Calgary

Between:

Patrol Base Inc.

Applicant

- and -

Municipality of Crowsnest Pass

Respondent

Reasons for Decision
of the
Honourable Justice M.R. Gaston

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[1] The Applicant seeks judicial review and quashing of 3 decisions made by the Respondent.

[2] The impugned decisions include:

1) the adoption of Resolution 17-2023-10-17 (the "Resolution") purporting to sell property described as Plan 0812254, Block 1, Lot 51MR (the "Property") to a third party, Mr Fulkerth;

2) the passing of Bylaw 1168, which purports to remove the municipal reserve ("MR") designation from Property. The Applicant asserts that the Respondent adopted the Resolution and sold the Property, prior to the public hearing concerning Bylaw 1168, contrary to the *Municipal Government Act* RSA 2000, c M-26 (the "*MGA*");

3) finally, the Applicant seeks the quashing of Bylaw 1197 on the basis that procedural fairness requirements at the public hearing were not met. Bylaw 1197 redesignated (re-zoned) the Property to permit the construction of an "urban resort".

Facts

[3] The Property is located in the community of Blairmore, Alberta. The Property was designated as municipal reserve land. As such it was undeveloped land, supporting a mix of trees and grasses. The Applicant's land overlooks the Property.

[4] In 2022, the Property was assessed by the municipality at a value of $20,000.

[5] On September 25, 2023, Mr. Fulkerth submitted an application to the Respondent to purchase the Property for $20,000.

[6] On October 17, 2023, during a regular meeting of council, Mr. Fulkerth's offer was accepted by council via the Resolution. Conditions included in the purchase application were also reflected in the Resolution. In particular, through the Resolution, Council accepted the offer to purchase the Property subject only to Mr. Fulkerth being responsible for:

- "all costs associated with the removal of the MR Designation from" the Property;
- "all costs associated with the redistricting the Parcel from Recreation and Open Space to Non-Urban Commercial Recreation";
- "all costs relating to subdivision of the [Property]";
- "all legal costs associated with this transaction"; and
- certain transaction completion and building commencement timelines.

[7] Notably, the sale of the Property to Mr. Fulkerth was only "conditional" on him paying for costs associated with the purchase and transfer of the Property. Contrary to the submissions of the Respondent, none of the conditions of sale indicated that the sale was subject to the removal of the MR designation from the Property. Rather, the sale was expressly subject to Mr. Fulkerth paying for the costs associated with the removal of the MR designation. No other conditions were attached to the sale of the Property, and no conditions permitting Council to terminate the sale process for any other reason.

[8] No public notice or public hearing proceeded in advance of the Respondent's adoption of the Resolution.

[9] On October 26, 2023, Mr. Fulkerth submitted to the Respondent a Land Use Amendment Application Form seeking a land use amendment to develop micro homes in accordance with the purchase of the Property.

[10] On November 21, 2023, Bylaw 1168 – seeking to remove the Property's Municipal Reserve Designation – was given first reading.

[11] On November 23, Notice of Public Hearing regarding Bylaw 1168 was posted to a fence post on the Property, sent via mailout to homeowners adjacent to the Property and was advertised in the local newspaper.

[12] On December 12, 2023, a Public Hearing regarding Bylaw 1168 was held. Bylaw 1168 was passed at the hearing.

[13] The preamble of Bylaw 1168 acknowledges its purpose as "for the purpose of closing a Municipal Reserve parcel, removing the Municipal Reserve designation and disposing of the closed portion of the Municipal Reserve in accordance with sections 674 and 675 of the Municipal Government Act...".

[14] On February 1, 2024, the Applicant applied for judicial review of the Resolution and Bylaw 1168.

[15] On July 9, Bylaw 1197 – to rezone the Property from "Recreation and Open Space RO-1" to "Urban Tourism Accommodation and Recreation" to permit Mr. Fulkerth's proposed development – was given first reading.

[16] On July 10, 2024, Notice of Public Hearing regarding Bylaw 1197 was posted on the Respondent's website, distributed to nearby landowners via regular mail and published in the local newspaper on July 31 and August 7, 2024.

[17] On August 27, 2024, the Hearing regarding Bylaw 1197 was held and following the Hearing, the Bylaw passed.

[18] On October 25, 2024, the Applicant applied for judicial review of Bylaw 1197.

Issues

[19] The issues on this judicial review include:

1) Whether the Respondent breached the Applicant's right to procedural fairness in the process it followed in adopting the Resolution;
2) Whether the Respondent breached the Applicant's right to procedural fairness when it passed Bylaw 1168 to remove the MR designation from the Property; and
3) Whether the Respondent breached the Applicant's right to procedural fairness in the conduct of the public hearing in respect of Bylaw 1197.

Analysis

[20] When issues of procedural fairness are raised, the question is whether the procedure chosen was fair given all the circumstances: ***Borgel v Paintearth (Subdivision and Development Appeal Board)***, 2020 ABCA 192 at para 11 citing ***Baker v Canada (Minister of Citizenship and Immigration)***, [1999] 2 SCR 817 at para 21.

[21] Specifically, regarding the decisions of municipalities:

> The requirement of procedural fairness and the legislative scheme governing a municipality may require that the municipality comply with certain procedural requirements, such as notice or voting requirements. If a municipality fails to abide by these procedures, a decision or bylaw may be invalid.
>
> The correctness standard applies when determining whether a decision maker complied with the duty of procedural fairness...: ***Young v Red Deer County***, 2022 ABQB 13 ("***Young***") at para 34 citing ***Bergman v Innisfree (Village)***, 2020 ABQB 661 at paras 125-126.

[22] The parties agree that the Applicant was owed procedural fairness.

[23] The degree of procedural fairness owed is determined by an examination of the factors set out in ***Baker*** in a given set of circumstances and include:

a) The nature of the decision being challenged and the process followed in making that decision

b) The nature of the applicable statutory scheme and the terms of the governing statute;

c) The importance of the decision to the person affected by it;

d) The legitimate expectations of the person challenging the decision; and

e) The extent of deference to be accorded to the procedures chosen by the decision maker: ***Airport Self Storage and RV Centre Ltd v Leduc (City)***, 2008 ABQB 12.

[24] Underlying these factors is "the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker": ***Baker*** at para 22.

[25] A breach of procedural fairness will generally render a decision invalid and a new hearing will be ordered: ***Cardinal v Director of Kent Institution***, [1985] 2 SCR 643 at para 23. But in cases dealing with the adoption of Bylaws by municipalities, the Alberta Court of Appeal has held that absent an express statutory statement, procedural errors should not vitiate a proceeding "unless a real possibility of prejudice can be shown or unless the procedure followed is so devoid of the appearance of fairness that the administration of justice would be brought into disrepute": ***Keefe*** at para 29 citing ***Bridgeland Riverside Community Association v Calgary,*** 1982 ABCA 138 at para 28.

a) Resolution

[26] The Applicant argues that the Resolution was adopted with no procedural fairness afforded to the Applicant. The Respondent held no public hearing or provide any advertising of the proposed sale of the Property before adopting the Resolution, contrary to s 674(1) of the *MGA*:

> 674(1) Subject to subsection (1.1), before any of the following occurs, a public hearing must be held in accordance with section 216.4 and advertised in accordance with section 606:
>
> (a) the sale, lease or other disposal of
>
> (i) municipal reserve ...

[27] Accordingly, the Applicant argues that the Respondent breached these requirements of the *MGA*, rendering the Resolution *ultra vires* and demonstrating a clear breach of the Applicant's right to be heard, even if the Applicant was owed only the lowest level of procedural fairness.

[28] The Respondent argues that the Resolution was not a "sale" or "disposal" of the Property, but rather a "conditional sale". It argues that the lands were not disposed of until after the 2024 passing of Bylaw 1197. It acknowledges that municipal reserve land cannot be privately owned, and therefore there could only be a binding sale after the MR designation was removed.

[29] Further, it argues that "Council could have defeated" the offer "at any time until the MR bylaw was passed and re-zoning permitted" and that the Resolution does not reflect Council's decision to sell the Property. It even argues that the Applicant "could have made an offer to purchase the [Property] at any time, just like Mr. Fulkerth".

[30] The language of the Resolution contradicts the Respondent's position. Mr. Fulkerth's "offer was accepted". Contrary to the Respondent's argument, Council was not in a position following the adoption of the Resolution to accept any other offers regarding the Property. Nor ought they have expected any, given there was no public notice or advertising regarding its intention to sell the Property.

[31] Furthermore, the Resolution contained no "conditions" in the control of Council at all. On the face of the Resolution, the only conditions that might have interfered with the completion of the sale were if the purchaser did not pay the costs outlined or complete development stages on time.

[32] The Resolution adopted by Council did not include any conditions making the sale subject to, for instance, the outcome of a public hearing regarding the sale, the outcome of a public hearing regarding the removal of the MR designation, or subject to Council receiving input from the public for consideration.

[33] The Resolution was not a "conditional sale" such that s 674 of the *MGA* does not apply. The Resolutions reflects Council's agreement to sell the Property and is a sale of a municipal reserve.

[34] Adopting the Resolution prior to any public hearing or advertising was more than just technical non-compliance with the *MGA*. It reflects a breach of both the public hearing and notice requirement regarding the sale of the Property.

[35] With a view to the ***Baker*** factors and purpose of the participatory rights which underlie them, even if the Applicant was owed only a low level of procedural fairness, Council's adoption of the Resolution to sell the Property absent any true condition reflecting the requirements for the hearing and consideration of public input, contrary to the requirements of the *MGA*, denied the Applicant of its right to be heard. It was a breach of the Respondent's duty of procedural fairness and the Applicant's expectations and right to be heard before the sale.

[36] The Resolution is therefore invalid and is quashed for a failure to comply with the procedural requirements of the *MGA* and lack of procedural fairness.

b) Bylaw 1168

[37] The Applicant argues that passing the Resolution prior to any public hearing or notice of public hearing created a procedure that predetermined the outcome of the public hearing eventually held to pass Bylaw 1168, removing the municipal reserve designation from the Property.

[38] A public hearing is intended to allow "impacted citizens to be meaningfully heard in the public consultation process preceding enactment of a bylaw": ***Canadian Natural Resources***

Limited v Elizabeth Metis Settlement, 2020 ABQB 210 ("***Elizabeth***") at para 111, citing ***Keefe v Clifton Corporation***, 2005 ABCA 144 ("***Keefe***") at para 17. It "provides the decision-makers with the benefit of public examination and discussion of the issues concerning the adoption or rejection of the proposed bylaw to ensure the best decision is made, to increase public acceptance, and to dispel any perception of arbitrariness or bias": ***Young*** at para 76

[39] Such public discourse "preceding enactment of a bylaw is fundamental to the legality and legitimacy of the legislative process": ***Elizabeth*** at para 111. It is intended to be a "meaningful examination and discussion of the issues material to Council's decision": ***Young*** at para 76, citing ***Pitt Polder Preservation Society v Pitt Meadows (District)***, 2000 BCCA 415.

[40] At the time of the public hearing that resulted in the passing of Bylaw 1168, council had already sold the land to Mr. Fulkerth. That sale required Bylaw 1168 to pass. If Bylaw 1168 did not pass, Council would be unable to transfer the Property to Mr. Fulkerth, which it had already agreed to sell to him provided he pay the costs associated with the transfer.

[41] With reference to the ***Baker*** factors as a whole, the legitimate expectations of all members of the public, and particularly adjacent landowners including the Applicant, were that a public hearing would afford a meaningful opportunity to understand and respond to the proposed land use amendment. They reasonably and properly expected that their concerns would be heard and considered by the decision maker. The public hearing fell far short of meeting these expectations, and even at a low level of procedural fairness, the public hearing that resulted in the passing of Bylaw 1168 denied the Applicant and other members of the public their right to procedural fairness.

[42] The public hearing to remove the municipal reserve designation from the Property was held after council had already sold the property. It could not reasonably allow for consideration of any submissions by the public at the hearing because council was required to pass Bylaw 1168 to comply with the sale it had already undertaken. There could be no meaningful discussion regarding the redesignation of the Property at the public hearing because council had already committed itself to a predetermined outcome of the removal of the municipal reserve designation on the Property when it earlier sold the Property. As acknowledged by the Respondent, as a private individual, the purchaser could not own the Property if the municipal reserve designation was not removed by the passing of Bylaw 1168.

[43] Selling the property prior to the holding of the public hearing to remove its municipal reserve designation resulted in a sham of the public hearing, a required step under the *MGA*, which could not reasonably afford any members of the public an opportunity to have any concerns meaningfully heard or considered. Bylaw 1168 must be quashed for breach of procedural fairness.

c) Bylaw 1197

[44] The Applicant argues that the public hearing held in respect of Bylaw 1197 breached its right to procedural fairness in four ways. Its written submissions include claims that:

1) the Applicant was prevented from providing council with submissions on material information relevant to certain issues while Mr. Fulkerth and administration were permitted to speak to those same issues;

2) administration, not council, refused the Applicant's request for an adjournment;

3) administration, not council, refused the Applicant's request to appear remotely; and

4) after closing the public hearing, Council reopened the hearing to allow Mr. Fulkerth the opportunity to present his development thorough extraneous evidence not disclosed to the public, including through new video evidence.

[45] Given my determination that the Resolution and Bylaw 1168 are quashed, it is unnecessary for me to determine whether the hearing for Bylaw 1197 met the requirements of procedural fairness. In the sequence of how matters proceeded, the foundation for Bylaw 1197 is void, and Bylaw 1197 will require reconsideration.

[46] However, I do find that certain conduct of the public hearing that resulted in the passing of Bylaw 1197 was a breach of procedural fairness that invalidates the decision to pass Bylaw 1197 and would necessitate a new hearing.

[47] The Respondent has wide discretion over the procedure to be followed at public hearings: *MGA*, s 230(3).

[48] Council established Bylaw No 1041, 2020 (the "Procedural Bylaw") which sets the process the public could expect at the hearing – administration would commence with its introduction and a brief overview of the item: Procedural Bylaw, s 24.1(b). Members of the public would then proceed to speak to the item: Procedural Bylaw s 24.1(c). Councillors may ask any speaker questions after they have spoken: Procedural Bylaw, s 24.1(d). Once all speakers have spoken, any councillor may ask Administration questions: Procedural Bylaw, s 24.1(d).

[49] The only limitations on submissions contained in the Procedural Bylaw is to limit persons to speak to "matters within the jurisdiction of council": Procedural Bylaw, s 21.2(b).

[50] The Applicant complains that members of the public at the hearing were directed by the mayor to limit their submissions to only the question of rezoning and not to speak to the underlying development proposal prompting the rezoning application. It also complains that the meeting was closed and then reopened to permit Mr. Fulkerth to make submissions which largely focused on the benefits of his proposed development, following which administration was afforded an opportunity to make submissions to Council regarding the proposed development.

[51] In my view, reopening the meeting mere minutes after it was closed to allow Mr. Fulkerth to speak was within the discretion of the Respondent and was not a breach of procedural fairness.

[52] Permitting administration to make submissions at the end of the hearing, not in response to any questions from Council, but to make new submissions to council, contrary to the Procedural Bylaw and the expectations of the public, contravened the reasonable expectations of the public. Had the sequencing of the meeting been addressed at the outset to advise that administration would make their submissions last, any procedural fairness concerns in this regard might have been obviated.

[53] But taking into account the ***Baker*** factors, including the discretion afforded to the Respondent and the low level of procedural fairness owed, I am of the view that on its own, hearing submissions from administration at the end of the hearing, contrary to the Procedural Bylaw and the reasonable expectations of the public, does not amount to a breach of procedural fairness sufficient to invalidate the passing of Bylaw 1197.

[54] More significant, in my view, is that the Certified Record of Proceedings ("CROP") shows that the mayor repeatedly advised members of the public to limit their submissions to rezoning. They were directed to avoid speaking about the proposed development underlying the rezoning directly at issue. While the Respondent points to one public member having spoken to the proposed development, it is clear that the public members in attendance were cautioned to not speak about concerns or issues with the proposed development.

[55] Of course, Council knew the details of the proposed development that was being contemplated by Mr. Fulkerth. The rezoning proposal specifically identified construction of an "urban resort" on the Property. The development being considered was squarely within the reasons underlying the very rezoning consideration prompting the public hearing and Bylaw 1197.

[56] The CROP also shows administration noting that it was difficult to speak about the Property and rezoning without also discussing the proposed development for which the rezoning was being considered. The administration acknowledged that the purpose of the rezoning application was for the owner to apply for a development permit.

[57] After limiting public members from speaking about the proposed development for which the rezoning was proposed, Mr. Fulkerth, the owner of the property, and administration were permitted to speak about the merits and purported benefits of the proposed development.

[58] Section 216(4) of the *MGA* requires council to hear any person claiming to be affected by the proposed bylaw. Public input in this context is a substantive right. There was no basis for the Respondent to limit public submissions to the issue of rezoning and refuse to hear any submissions on the proposed development. By permitting both Mr. Fulkerth and administration to make submissions regarding the proposed development at the end of the meeting in direct contrast to the public having earlier been directed to speak only to rezoning and not to development concerns is unfair and undermines the legitimacy of the entire public hearing process.

[59] Again, with reference to ***Baker***, and the purpose of public hearings as further described in ***Elizabeth*** and ***Young***, the basic requirements of procedural fairness include the appearance of fairness, a meaningful opportunity for examination and discussion of material issues, and the dispelling of the appearance of bias. These requirements were not met when members of the public at the hearing were admonished from making submissions on matters about which administration and the Property owner were permitted to speak. In these circumstances, the Applicant and members of the public at the hearing were denied the opportunity to be fairly and meaningfully heard and have their submissions on the underlying development and the "urban resort" land use permitted by Bylaw 1197 considered.

[60] Advising the public of restrictions on submissions and then permitting Mr. Fulkerth and administration to speak at length about the very matters the public were prevented from referencing, particularly in all of the circumstances of this case beginning with the Resolution, demonstrates a real possibility of prejudice to the Applicant: ***Keefe*** at para 29.

[61] When considering such conduct, particularly in the context of the earlier Resolution and the procedure leading to the passing of Bylaw 1168, the cumulative effect of the conduct and sequencing of process (sale without notice or hearing, followed by a public hearing on Bylaw 1168 founded on a predetermined outcome, and then a limit on public submissions that was not

applied to Mr. Fulkerth and administration) resulted in a process, including the Bylaw 1197 public hearing, that was "so devoid of the appearance of fairness that the administration of justice [is] brought into disrepute": ***Keefe*** at para 29.

[62] In conclusion, the Resolution, Bylaw 1168 and Bylaw 1197 are quashed, and these matters are remitted to the Respondent for rehearing.

Heard on the 16th day of September, 2025.
Dated at the City of Calgary, Alberta this 15th day of September, 2026.

M.R. Gaston
J.C.K.B.A.

Appearances:

R. Harrison
for the Applicant

A. Burden and G. Szelewicki
for the Respondent