

Palaschuk, Jordan

From: Val Teichroeb <val@waddellphillips.ca>
Sent: Wednesday, April 01, 2020 9:59 AM
To: Public Submissions
Cc: Chan, Henry; Seymour, Brendyn; John Phillips; Otto Phillips
Subject: [EXT] FW: Council Hearings
Attachments: 17.10.05 - Aff of J. Stewart (filed).pdf; 17.10.05 - Affidavit of L. Chisholm (filed).pdf; 20.03.15 - SOLE-Declaration.pdf; 20.03.15 - SOLE-Order-Facilities-Closures-Restrictions.pdf; 20.03.17 - SOLE-Order-International-Traveller-Self-Isolation.pdf; 20.03.19 - SOLE-Declaration-Renewal.pdf; 20.03.19 - SOLE-Order-Revocation-of-Facility-Restrictions.pdf; Alberta Fines Quarantine violations; 20.03.31 - Ltr to H. Chan re Council Hearing.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good morning,

The attached correspondence is sent to you on behalf of John Kingman Phillips.

Thanks,
Val



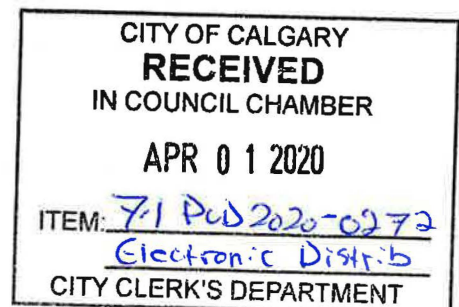
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Form 49
[Rule 13.19]

COURT FILE NUMBER 1601-01681

COURT COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT BRODYLO FARMS LTD. and
MARGARET BRODYLO, by her
litigation representative, LESLIE
CHISHOLM

RESPONDENT CITY OF CALGARY

DOCUMENT **AFFIDAVIT**



ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT WADDELL PHILLIPS PC
Barristers
600, 630 – 6th Avenue SW
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 Attention: John Kingman Phillips
 Reception: (403) 617-9868
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AFFIDAVIT OF JUDY STEWART

Sworn on September 28, 2017

I, JUDY STEWART, of the Town of Cochrane, in the Province of Alberta, SWEAR AND SAY THAT:

1. The Brodylo family consulted with me prior to an open house on September 8, 2015 (the "Open House") that was put on by staff members from the City of Calgary ("City Staff") and developers promoting the proposed Providence Area Structure Plan (the "ASP"). I subsequently attended the Open House and, consequently, I have knowledge of the matters raised in the Applicants' fresh evidence application about the Open House.

PURPOSE OF AFFIDAVIT

2. I understand that this Affidavit will be used as part of an application to have fresh evidence admitted before the Court for judicial review of a Council decision of the City of Calgary ("City Council") which was made on December 7, 2015 to approve the ASP. I further understand that this Affidavit may be used, if permitted by the Court, as evidence in a judicial review hearing.

3. I was asked by counsel for the Applicants, John K. Phillips, to provide my assessment of what occurred at the Open House between Leslie Chisholm (“Leslie”), John Brodylo (“John”), and Reid Brodylo (“Reid”), collectively the Brodylo Family”, and various City Staff members and representatives of the developers.
4. In particular, I was asked whether, at the Open House, the members of the Brodylo Family:
 - a. Were aggressive to City Staff;
 - b. Failed to treat all people at the Open House with respect, honesty and dignity;
 - c. Were impolite, discourteous, or disrespectful to other people at the Open House;
 - d. Displayed disrespectful behavior towards Jolene Laverty and Jill Sonogo or if comments made by the Brodylo Family were “vexatious” and affected Jolene Laverty and Jill Sonogo’s dignity; and
 - e. Acted in a threatening manner.
5. At the time of swearing this Affidavit, I was not provided with the Brodylo Family’s application materials.

PROFESSIONAL BACKGROUND

6. I am a Barrister and Solicitor practicing in Alberta as a member of the Law Society of Alberta. I was called to the bar in 1998. My practice is primarily focused on municipal, environmental and water law and regulation in Alberta.
7. I was a member of Council for the Town of Cochrane, in the Province of Alberta for 9 years, serving as a Councillor for 6 years and Mayor for 3 years.
8. As an active local and regional watershed steward, I am interested, in both a professional and personal capacity, in issues relating to municipal wetland protection and management as integral components of sustainable urban development in the Calgary city-region.
9. I have extensive experience working on multi-stakeholder organizations toward municipal wetland protection and management. I served on the Alberta Water Council as an Alternate Director for many years, and, currently, I am a Director with the Alberta Lake Management Society. I also currently serve as a Director of the Calgary Region Airshed Zone (“CRAZ”) and was a Director of the Bow River Basin Council (“BRBC”) for several years. I am currently the chair of the Policy Committee for both CRAZ and BRBC where we review and report to the Board of Directors on emergent provincial and municipal natural resource management system policies, laws, and regulations - for example, the Alberta Wetland Policy.
10. In 2009, I published an article in the *Alberta Law Review* examining the implications of Section 60 of the *Municipal Government Act* and the impact that this section may have on providing authorization for Alberta municipalities to protect and manage local wetlands. The article emerged from my Master of Laws thesis entitled “Municipal Tools to Protect Wetlands and Riparian Lands in Alberta’s White Zone.”

11. In 2016, I completed my doctorate at the University of Calgary, Faculty of Environmental Design, with a dissertation that examined a reflexive legal framework for bridging organizations in regional-scale environmental governance and management.

THE BRODYLO FAMILY AND BACKGROUND TO THE OPEN HOUSE

12. I was first contacted by Leslie and Reid on or about September 2, 2015.
13. Leslie and Reid wanted to consult with me about issues the Brodylo Family were facing with respect to the ASP and its potential impact on a large wetland on their family farm.
14. I was advised by Leslie and Reid that an Open House was taking place on September 8, 2015 and that if I attended I would have the opportunity to ask questions about the ASP and the impact of future development proposed for the lands surrounding the wetland complex.
15. At the time of the Open House, I was in the process of completing my doctoral dissertation which was focused on issues of municipal governance and management of the environment – including, in particular, wetlands.
16. The Open House provided me with an opportunity to complete consulting work for the Brodylo Family and to further my research for my dissertation about the value that municipalities in the city-region were placing on permanent and naturally occurring wetlands. For example, I was researching whether municipalities in the city-region valued wetlands for the ecosystem goods and services they naturally provided to the benefit of society.

THE OPEN HOUSE

17. I arrived at the Open House earlier than most individuals, including the Brodylo Family.
18. Upon arrival, I signed in at the reception desk I was handed a brochure about the Open House. I spoke with her purposefully, to thank her for the information she had provided to me over the phone about the Open House.
19. From what I saw, the Open House was set up as simply a series of poster board props with a City Staff member, or agent of an ASP developer, standing beside each poster board. The information provided on the poster boards was not particularly sophisticated. It was more of an artistic rendering of planning ideas and an exercise in mapping, making it a sort of “show and tell.”
20. The Open House did not appear to me to be a meaningful effort to consult with landowners and stakeholders who may be affected by land development, as proposed in the ASP.
21. I went to a “wetlands” poster board and asked the City Staff member a number of questions about the City’s plans for protecting the wetland complex in and around the ASP planning area. The female who was standing next to the poster board was unable to answer my specific questions about setbacks and storm drainage management plans - for example, to direct contaminated runoff from the wetlands.

22. She directed me to a “Marcus” from the City’s Water Resources department and she said he had not arrived yet. I completed this conversation before the Brodylo Family arrived at the Open House.
23. I was finally directed to Marcus Paterson (“Marcus”), the “Business Strategist” for the City’s Department of Water Resources. I spoke with him about the ASP and specifically raised the issue of the large, permanent, and naturally occurring wetland on the Brodylo farm. Marcus ultimately stated to me that he did not believe that there should be separate treatment of the Brodylo property from the ASP planning area. I recall that he told me that experts in the water resources department were actually looking at proper management of wetlands on the whole landscape in the southwest aspect of the City, not just the lands included in the ASP planning area.
24. We talked at length about the importance of protecting and managing the large wetland on the Brodylo farm, and keeping storm drainage away from wetlands generally, unless the storm runoff and drainage was pre-treated in a storm drainage collection and treatment facility prior to release into the wetlands. I would like to think that Marcus was not simply humouring me when he made these statements. We had a very interesting and candid conversation and he handed me his business card before we parted.
25. While I was speaking with Marcus, the Brodylo Family arrived. I noticed Leslie was speaking with a woman in the south part of the room near the windows. At no point during this conversation did Leslie appear to be asking “rapid-fire” questions. At no point did Leslie appear to be “threatening” or “agitated”. The two women seemed to be having a quiet two-person conversation, where both individuals were speaking and sharing ideas.
26. When I finished speaking with Marcus, I noticed that John and Reid were speaking with a male at the wetlands poster board, but I did not recognize the man. A female City Staff member was behind the male, who I believe may have been Jolene Laverty. I am not certain if she was the same person I spoke with briefly when I entered the Open House.
27. I walked over to listen in on John’s conversation, because he appeared frustrated with the answers he was getting back from the man at the wetland poster board.
28. John stated that he had lost trust in the City in its handling of the ASP and that he did not trust the City to protect his family’s wetlands during and after development of lands in the ASP planning area. He asked pointed questions about why a major transportation/transit corridor was being planned right adjacent to several wetlands in the complex, and that he could not see anywhere where the City had addressed storm drainage management and the creation of constructed wetlands to collect and treat the massive runoff that, in his opinion, should be directed away from the naturally occurring wetlands and not into them.
29. John asked, rightly in my opinion, questions about whether the City had applied the appropriate criteria for classifying the wetlands under Alberta’s current system, and whether appropriate classification studies had been completed by qualified experts.
30. He also raised the issue of a blocked culvert and how, if he had not personally approached the City, the culvert would still be blocked and would have continued to flood his family’s wetland and continued to destroy the lands’ crop productivity.
31. In my opinion, as a past municipal mayor and councillor, John’s questions were relevant to the materials presented on the ASP poster board about wetlands and answers ought to have been

forthcoming from those representing the City, who were being paid to be there to speak with people who had taken time to attend.

32. As a past town councillor and mayor, the man with whom John was speaking struck me as extremely rude and openly hostile to John. The man became increasingly annoyed and vexed without even trying to answer John's questions. The man became extremely defensive, loudly taunting and asking John if he thought City employees were incompetent. Eventually, the man yelled rather loudly at John that he didn't appreciate being told that he was incompetent.
33. I was shocked by the man's behavior, and I began to feel uncomfortable, so I left the Open House. I did not say a word throughout that situation, nor did Reid. Leslie was not anywhere near the wetland poster board when this conversation between John and the man occurred.
34. Throughout the conversation, I did not hear John say anything threatening or appear in any way to be threatening - although he was clearly exasperated by the man's aggressive behavior toward him and John was speaking louder than in his usual voice.
35. From what I did hear, John did not make any personal attacks nor did he make any inappropriate comments that could be misconstrued by a reasonable person as a "threat" or "hostile" action. He did not resort to foul or derogatory language. John simply pushed hard about key questions directly related to the City's treatment of wetlands in and near the ASP.
36. The tenor of the conversation, particularly on the part of the man at the wetland poster board made me physically uncomfortable, such that I wanted to flee immediately.
37. Within a few minutes after I signed out and left the Open House, I was joined by the Brodylo Family and we talked about the wetland and the ASP in general terms.
38. John apologized to me for my having witnessed what he called defensive and inappropriate behavior by the developer's consultant. (I was not aware that the man was not a member of City Staff). I openly wholeheartedly agreed with John from what I had witnessed. John said that the man taunted him to say the City Staff were incompetent. This conversation occurred outside the facility where the Open House was held.

OVERALL IMPRESSIONS

39. My impression of the Open House was that City Staff had adopted a strong "defensive" posture towards the Brodylo Family. City Staff were agitated by John's criticisms of the ASP process. I believe that John's questions, from what I heard, were fair, well-informed on the subject matter, and needed to be addressed by City Staff in a deliberately courteous manner. For example, John might have been invited to visit the City Staff office at a later date to discuss the matter in more depth so that both positions with respect to the wetlands might be fully explored.
40. I believe it is inaccurate (and extremely vexatious) for anyone to say that any member of the Brodylo Family displayed threatening behavior of any kind towards anyone at the Open House.
41. I believe that Leslie and Reid were very respectful throughout the Open House towards anyone they spoke to, and while John was clearly exasperated by the defensive behavior of the man by the wetland poster board, he nevertheless treated the man with respect in the circumstance where none was being

shown to him as a member of the public and an affected landowner. This is particularly true, given the remarkable and noteworthy rudeness shown toward John.

- 42. The man by the wetland poster board who was involved in the conversation with John, in my opinion, breached his obligation to the public to act with courtesy and respect to those who had come to the Open House for the purpose of gathering information from City Staff and the developer's representatives so that they could make informed submissions at subsequent public hearings.
- 43. I do not believe that anything I saw or heard that was said or done by any member of the Brodylo Family was an affront to the dignity of Jolene Laverty or Jill Sonogo. But, what I heard being said to John was an affront to me as a former elected official who understands the role of reasonable and well-informed municipal staff in these settings.
- 44. City Staff, particularly members of the City Planning Department, should be expected to handle detailed and informed questions about how City planning will impact individuals affected by such planning. They should behave reasonably and without feeling attacked when questions are asked of them. What I observed at the Open House was City Staff being wholly unprepared or unwilling to comment on matters that were of key importance to the Brodylo Family.
- 45. City Staff I spoke with, with the exception of Marcus, seemed very defensive and agitated when they were unable to answer questions that I raised about such topics as the wetlands, low impact development technologies, the design of the transit system and constructed wetlands for purposeful storm drainage collection and treatment.
- 46. I was never subsequently contacted by the City to discuss what occurred at the Open House, despite the fact that I was present throughout and despite the fact that I had signed into the event and had stayed there for a considerable time.

PURPOSE OF AFFIDAVIT

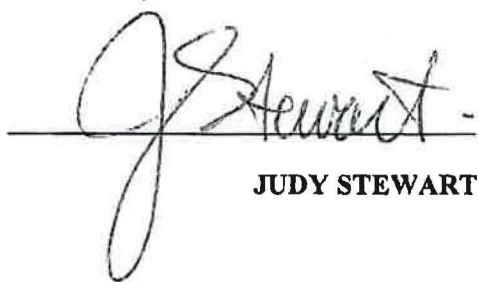
- 47. I swear this Affidavit to the best of my knowledge and recollection in support of the Applicants' application to admit fresh evidence in the Applicants' application for judicial review and potentially as evidence upon judicial review for no improper purpose.

SWORN BEFORE ME at Cochrane, Alberta,
this 28th day of September, 2017.



Commissioner for Oaths in and for the
Province of Alberta

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2019


JUDY STEWART



March 15, 2020
2053 Hrs

ORDER: FACILITY CLOSURES AND RESTRICTIONS

WHEREAS a State of Local Emergency was declared for The City of Calgary on March 15, 2020 to address the COVID19 pandemic

AND WHEREAS the Local Emergency Committee delegated to the Director of the Calgary Emergency Management Agency the authority to exercise any power or function of the Committee for the duration of the state of local emergency, including the authority to issue orders pursuant to Section 24 of the Act.

IT IS HEREBY ORDERED

1. The following facilities shall be closed to the public effective 12:01AM March 16, 2020:
 - a. Recreation Facilities as follows:
 - i. All City owned and operated fitness centres, pools and arenas
 - ii. Gray Family Eau Claire YMCA
 - iii. Glencoe Club
 - iv. Calgary Winter Club
 - v. Remington YMCA at Quarry Park
 - vi. Great Plains Arena
 - vii. Shane Homes YMCA at Rocky Ridge
 - viii. Brookfield YMCA at Seton
 - ix. Westside Recreation Centre
 - x. Melcor YMCA at Crowfoot
 - xi. Shawnessy YMCA
 - xii. Saddletowne YMCA
 - xiii. Cardel Rec South (includes South Fish Creek Rec Association)
 - xiv. Vivo Centre for Healthier Generations
 - xv. Genesis Centre (includes NECCS)
 - xvi. Trico Centre for Family Wellness
 - xvii. Repsol Centre

- b. Calgary Public Libraries

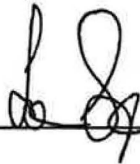
-2-

2. The occupancy of all other facilities shall be restricted to the lesser of 250 persons or 50% of Occupancy Load approved by Calgary Fire Department, excluding:
 - a. Grocery/food stores
 - b. Shopping centres
 - c. Big Box Commercial Retail as contemplated in Land Use Bylaw 1P2007
 - d. Casinos
 - e. Pharmacies
 - f. Airport
 - g. Offices
 - h. Public transit
 - i. Alberta Health Services Facilities, Shelters, Care Centres

3. It is recommended that all businesses encourage as many staff to work from home as possible and take steps to enable such working arrangements on a longer-term basis.

Tom Sampson,
Director, Calgary Emergency Management Agency

Signature: _____

A handwritten signature in black ink, appearing to read 'T. Sampson', is written over a horizontal line.



March 19, 2020
12:23 Hrs

SOLE 15032020/3

ORDER: REVOCATION OF FACILITY RESTRICTIONS

WHEREAS a State of Local Emergency was declared for The City of Calgary on March 15, 2020 to address the COVID19 pandemic;

AND WHEREAS the Local Emergency Committee authorized the Director of the Calgary Emergency Management Agency to exercise any power or function of the Committee for the duration of the state of local emergency, including the authority to issue orders pursuant to Section 24 of the *Emergency Management Act*;

AND WHEREAS on March 15, 2020, an Order was issued under the State of Local Emergency directing the closure of certain facilities to the public and occupancy reduction of other facilities;

AND WHEREAS on March 17, 2020, the Province of Alberta declared a State of Public Health Emergency pursuant to the *Public Health Act* and issued an order directing the closure of certain facilities and restricting occupancy of other facilities, making the March 15, 2020 State of Local Emergency Order redundant.

IT IS HEREBY ORDERED

1. Effective immediately, the Order regarding Facility Closures and Restrictions Authorized by the Director, Calgary Emergency Management Agency on March 15, 2020 is revoked.
2. For Clarity, the State of Local Emergency declared on March 15, 2020 remains in effect.

Authorized: Tom Sampson,
Director, Calgary Emergency Management Agency

Signature: _____

A handwritten signature in black ink, appearing to be "Tom Sampson", written over a horizontal line.

Concurred: Local Emergency Committee

Signature: _____

A handwritten signature in purple ink, appearing to be "Nabeed K. Nanshi", written over a horizontal line.

Nabeed K. Nanshi
Mayor

Signature: _____

A handwritten signature in blue ink, appearing to be "Gian Carlo Currei", written over a horizontal line.

Gian Carlo Currei, CLER. WAED 9
CHAIR, EMC

Form 49
[Rule 13.19]

COURT FILE NUMBER 1601-01681
COURT COURT OF QUEEN'S BENCH OF
ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT BRODYLO FARMS LTD. and MARGARET
BRODYLO by her litigation representative,
LESLIE CHISHOLM
RESPONDENT CITY OF CALGARY
DOCUMENT AFFIDAVIT



ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT WADDELL PHILLIPS PC
Barristers
600, 630 - 6th Avenue SW
Calgary, AB T2P 0S8

Attention: John Kingman Phillips
Reception: (403) 617-9868
Facsimile: (403) 775-4457

AFFIDAVIT OF LESLIE CHISHOLM

Sworn on October 4, 2017

I, LESLIE CHISHOLM, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am one of the powers of attorney of the individual Applicant, Margaret Brodylo, and I am also an officer and director of the corporate Applicant, Brodylo Farms Ltd., (together "the Applicants") and, as such, I have knowledge of the matters herein except where stated to be based upon information, in which case I believe such information to be true.

BACKGROUND

2. In the Originating Application, the Applicants seek judicial review of the December 7, 2015 decision of Council and the Mayor for the City of Calgary ("City Council") approving the Providence Area Structural Plan (the "Providence ASP") without fully assessing the project's impact on the land owned by the Applicants immediately adjacent to it. The Applicants maintain that the Providence ASP failed to comply with statutory requirements under the *Municipal Government Act*, R.S.A. C-M-26 (the "MGA").

PURPOSE OF MOTION

3. On this Application, the Applicants seek:

- a. An Order permitting the Applicants to adduce in evidence certain correspondence between City of Calgary ("City") staff members and City Council, dated December 3-4, and 9, 2015, as further particularized below as Exhibits "B", "C", "D", and "E", on judicial review;
- b. An Order requiring the Respondent to produce fresh copies to the Applicants of correspondence between City staff members and City Council, dated December 3-4, and 9, 2015, as further particularized below as Exhibits "B", "C", "D", and "E", within 7 days of the date of the Order;
- c. An Order requiring that the correspondence provided in Exhibit "D" of this Affidavit be treated as part of the Certified Record of Proceedings;
- d. An Order permitting the Applicants to adduce in evidence the Affidavit of Judy Stewart, sworn September 28, 2017, at the Applicants' judicial review hearing as supporting evidence that representations made to City Council by City staff members in a December 4, 2015 memorandum were based on unsubstantiated or inaccurate information;
- e. An Order requiring the City to disclose to the Applicants the names and positions of all persons who were present on December 7, 2015 at the *in camera* meeting of City Council, referenced at 10.5 of the Meeting Minutes in the Certified Record of Proceedings, within 7 days of the date of the Order; and
- f. An Order allowing the Applicants leave to amend their Originating Application to include, *inter alia*, bias, appearance of bias, and inappropriate interference with a decision-maker amongst the grounds for judicial review.

FRESH EVIDENCE

The Freedom of Information Disclosures

4. On January 13, 2017, the City Clerk's Election and Information Services department at the City of Calgary (the "City") provided the Applicants with partial electronic disclosure of documents (the "Disclosures") that were requested by them pursuant to a freedom of information request under the *Freedom of Information and Protection of Privacy*. Attached hereto and marked as **Exhibit "A"** is a copy of correspondence from Meghan Maloley of the City to John Brodylo dated January 13, 2017 responding to the Applicants' request for records.
5. Upon review of the Disclosures, I recognized that certain documents within the Disclosures would briefly "flash" fully visible while I was scrolling down the page and were very faintly visible otherwise. When I opened the Disclosures in Adobe PDF software, I was able to make the faintly visible pages more clear and to view and print the documents. The Disclosures were visible within Adobe PDF software and I did not require any other software or a PDF manipulating program to view these documents.

6. On September 8, 2017, following a discussion with my lawyers, the content and subject matter of which the Applicants assert are strictly and properly solicitor-client privileged, I recognized that the documents I viewed were important to this judicial review application and that they should be entered into evidence.
7. I am providing these documents in this Affidavit and each is discussed below.

Document 1 – The Briefing Request

8. Attached hereto and marked as **Exhibit "B"** is a copy of email correspondence provided in the Disclosures from Jill Sonogo to Denise Jakal and Lesia Luciuk of the City of Calgary and from Jamal Ramjohn to Jill Sonogo and Denise Jakal dated December 3-4, 2015.
9. In the email chain, Jill Sonogo advises that Councillor Colley-Urquhart wished to move for an "*in camera*" hearing at the beginning of the Council meeting on Monday, December 7, 2015 and that she wanted to get a briefing note to Council. The email states that Ms. Colley-Urquhart wished to discuss the "Brodylo family concerns and behavior" with Council at the *in camera* hearing.
10. Ms. Sonogo and Mr. Ramjohn were actively involved throughout the Providence ASP process and, prior to the December 7, 2015 hearing, actively and publicly advocated for the Providence ASP to be approved by City Council.
11. Both Ms. Sonogo and Mr. Ramjohn were familiar with me and other members of the Brodylo family. They were openly hostile to our concerns about our wetland as well as our concerns about the process and substance of the Providence ASP. They were particularly concerned that our involvement in the Providence ASP threatened to slow the process down.
12. In the first part of the email chain provided at Exhibit "B" (the December 3, 2015 correspondence at 7:07 pm), I note, specifically, that, with respect to the legal analysis of the Applicants' objections about and opposition to the Providence ASP process, Ms. Sonogo, who is a non-lawyer, advised Denise Jakal and Lesia Luciuk that "hint: they are not valid."
13. The reasonable conclusion to draw from this is that, in contacting City lawyers, Ms. Sonogo was not looking for any kind of legal advice; rather, she sought a memorandum from City lawyers that would predispose City Council to approve the Providence ASP over the Applicants' objections and opposition.
14. On December 4, 2015 at 9:05 am, Jamal Ramjohn, in an email to Ms. Jakal, requested that Ms. Sonogo put together a draft briefing document. He requested that Ms. Sonogo draft a short history of the "open house" and that she specifically mention the earlier notice of motion raised by the Applicants that was defeated. He also explicitly requested that Ms. Sonogo include in her draft administration's position on the "appropriateness of engagement and impact of ASP on their lands."
15. At 12:21 pm on December 4, 2015, Mr. Ramjohn emailed the draft briefing note that appears to have been completed by Ms. Sonogo to Denise Jakal. He requested that she "have a read and add anything [she'd] like." He reiterated that the briefing note needed to be sent out by the afternoon, leaving Ms. Jakal a very short period of time to respond.

16. Mr. Ramjohn's request to Ms. Jakal on December 4, 2015 at 12:21 pm was not to obtain legal advice but rather to have Ms. Jakal simply add to what was already a *fait accompli*.

Document 2 – The Draft Council Briefing Document

17. Attached hereto and marked as **Exhibit "C"** is a chain of emails dated December 4, 2015 between Jill Sonogo, Jamal Ramjohn, Mayor Nasheed Nenshi, Councillor Dianne Colley-Urquhart and Ashley Parks.
18. Significantly, the email exchange, at 9:56 am, suggests that Ms. Sonogo was working on a briefing note, as per the request in Mr. Ramjohn's email exchange with her at 9:05 am. The exchange at 10:18 am, suggests that Ms. Sonogo completed a draft of a document for her supervisor, Mr. Ramjohn, to review. I presume that this is the draft, possibly with Mr. Ramjohn's edits, which was sent to Ms. Jakal at 12:21 pm by Mr. Ramjohn.

Document 3 – The Briefing Memorandum

19. Attached hereto and marked as **Exhibit "D"** is a copy of an email provided in the Disclosures from Denise Jakal to City Councillors and the Mayor's Office dated December 4, 2015, together with an attached memorandum, incorrectly dated May 16, 2016, from Denise Jakal and Jamal Ramjohn to all members of City Council (the "Memorandum").
20. The email states that Councillor Colley-Urquhart requested that City Council be provided with a briefing note from Law and that she believed the Memorandum was self-explanatory.
21. The Memorandum was, ostensibly, co-authored by a lawyer (Ms. Jakal) and a non-lawyer (Mr. Ramjohn). It provides factual assertions (without supporting evidence or documentation) and strong conclusions to be reached on the basis of these unsupported factual assertions.
22. The Memorandum includes highly inflammatory and factually inaccurate comments about my family.
23. Significantly, the Memorandum alleges a breach of the Respectful Workplace Policy at an open house on September 8, 2015 (inaccurately stated in the Memorandum as September 9, 2015), at which Ms. Sonogo and Mr. Ramjohn were both present.
24. Ms. Sonogo was an individual who was involved in filing a complaint against my family with the City's corporate security after the open house. She alleged to the City's corporate security that she was upset that her professional competence was questioned at the open house (a fact which further demonstrates Ms. Sonogo's adverse position to my family and its interests).
25. It is my understanding that Judy Stewart, who was present at the September 8, 2015 open house, is filing an Affidavit with the Court attesting to the inaccuracy of the representations made to City Council about the occurrences at the open house.

26. The Memorandum advises, for no reason relevant to the decision to be made by City Council, that my family was "known to Corporate Security" and that we "will be watched closely at the Public Hearing" even though it is readily conceded that we were never deemed to be a danger. The purpose of this statement was to disparage our reputation and standing before City Council and to make it difficult for our family to obtain a fair hearing about the impact of the Providence ASP on our wetland.
27. It is impossible to tell what sections of the Memorandum were written by Mr. Ramjohn (or, more likely, ghost written by Ms. Sonogo) and what sections were written by Ms. Jakal.
28. The Memorandum, at times verbatim, repeats what Ms. Sonogo directed for inclusion in the "legal briefing" in her December 3, 2015 email at 7:07 pm. The following are but a few simple examples of just how closely the Memorandum follows Ms. Sonogo's language:
- a. Memorandum – "The Brodylo family was notified of the ASP and no violation of the Municipal Government Act has occurred."
 - Ms. Sonogo's email – "The Brodylo family... were notified of the ASP and no violation of the requirements of the Municipal Government Act has occurred."
 - b. Memorandum - "The approval of the ASP will have absolutely no effect on the Brodylo wetland..."
 - Ms. Sonogo's email – "Approval of the ASP will have absolutely no effect on their wetland..."
 - c. Memorandum – "Planning staff have engaged the Brodylo family to a higher degree than any adjacent landowner previously involved in an ASP process..."
 - Ms. Sonogo's email – "We have engaged with [the Brodylo family] to a much greater extent than we ever have with a landowner adjacent to an ASP area."
 - d. Memorandum - "All necessary studies have been undertaken for the ASP and all City policies have been followed."
 - Ms. Sonogo's email – "The requisite studies have been done" and "all Citywide policies regarding environmental protection are being followed."
29. Given that Ms. Sonogo revealed in her email correspondence with Mr. Ramjohn that she was preparing a "draft" of a memorandum the morning of December 4, 2015, that Ms. Sonogo was asked by City lawyers to provide information about "corporate security concerns" (about which City lawyers had no information), and given how closely the Memorandum follows the language of Ms. Sonogo's December 3, 2015 email, I believe that Ms. Sonogo likely drafted all or most of the Memorandum.
30. The Memorandum clearly reveals little, if anything, in the nature of meaningful legal advice – particularly given that Ms. Sonogo and Mr. Ramjohn had already, in substance, drafted the full Memorandum as of 12:21 pm on December 4, 2015 (it was sent to City Council at 3:39 pm on December 4, 2015).

Document 4 – The “Wetland Killer” Meme

31. Attached hereto and marked as Exhibit “E” is a true copy of an email provided in the Disclosures, dated December 9, 2015, from Ms. Sonogo to several City staff members, including Jolene Laverty and Mr. Ramjohn, and potentially to outside parties (I do not know the identity of each individual listed in the email).
32. Attached to the email is a meme, apparently made by Breanne Harder (another City staff member) which included a photograph of Ms. Sonogo with “WETLAND KILLER” in bold lettering at the top and “ASP STILL APPROVED” at the bottom (the “Meme”).
33. At the bottom of the email, Ms. Sonogo thanks the individuals listed in the email for their “hard work on the plan” and that she looked forward to seeing them at “our Celebration / Lessons Learned session next week!”
34. Ms. Sonogo also states that she “didn’t have [her] poker face on during the discussion about the wetland” suggesting that Ms. Sonogo was only “pretending” to care about the wetland issues and simply wanted the Providence ASP approved.
35. The email and attached Meme demonstrates that:
 - a. City staff were well informed of Ms. Sonogo’s adverse interest towards my family and our concerns about the state of our wetland;
 - b. City staff, and particularly Mr. Ramjohn and Ms. Laverty, shared Ms. Sonogo’s adverse position towards my family;
 - c. City staff believed that the approval of the ASP over my family’s objections was a “personal victory” for Jill Sonogo; and
 - d. Ms. Sonogo, Mr. Ramjohn and the other City staff members did not take the wetland protection concerns we raised seriously.
36. Ms. Sonogo sent the Meme to the various recipients on December 9, 2015, only two days after our hearing.

Use at the Hearing

37. At the hearing of our motion before City Council on December 7, 2015, City Council adjourned for an *in camera* discussion of a “legal briefing” immediately before our lawyer, John K. Phillips, made submissions, on our behalf, in opposition to the proposed Providence ASP.
38. A motion was made by Councillor Colley-Urquhart that City Council “Receive the Legal Briefing...” This motion was adopted and Council proceeded to convene *in camera* at 10:09 am. All of this is clearly shown at 10.5 of the Meeting Minutes from the hearing, which is provided in the Certified Record of Proceedings. For ease of the Court’s reference, I am providing a copy of the relevant portion of the Meeting Minutes as Exhibit “F” to this Affidavit.

39. For the above reasons, I believe that the Memorandum prepared by Ms. Jakal and Mr. Ramjohn (and likely Ms. Sonogo), which was sent to City Council on December 4, 2015, was subsequently reviewed by City Council *immediately* before City Council heard and rendered a decision on our motion before them.
40. The minutes from the hearing reveal that Council adopted to "keep the In Camera discussions confidential pursuant only to Section 27(1) of the *Freedom of Information and Protection of Privacy Act*" thereby claiming that the *in camera* discussions concerned matters that were not to be subject to public disclosure only because they were solicitor-client privileged.
41. The context, and City Council's inappropriate claim to privilege of the Memorandum under Section 27(1) of the *Freedom of Information and Protection of Privacy Act*, suggest that City Council, other than Ms. Colley-Urquhart and possibly the Mayor, were not aware that the key findings of the Memorandum were the opinions and conclusions of a non-lawyer.
42. City Council was also likely not advised that Ms. Sonogo was, as suggested by the above evidence, the chief author of the Memorandum and that Ms. Sonogo (and Mr. Ramjohn) were adverse in interest to the Brodylo family.

Individuals Present at the In Camera Session

43. The Applicants do not know if only City Council and the Mayor met for the *in camera* session or whether other parties were also present.
44. Prior to the *in camera* session commencing, however, I saw several individuals that I did not recognize as City Council members or the Mayor proceed with Councillor Colley-Urquhart into the vicinity of the *in camera* meeting.
45. The City has not disclosed the identities of all persons present at the *in camera* session wherein the December 4, 2015 Memorandum was reviewed.

Lack of Disclosure of the Memorandum

46. The contents, or even a summary, of the December 4, 2015 Memorandum were neither revealed to me nor to any of the other Applicants before we made submissions before City Council.
47. The Memorandum was not included in the Certified Record provided by the Respondents.
48. It does not appear that the City considered even providing a "redacted" version of the Memorandum to the Applicants at any point prior to the hearing.
49. The other Applicants and I were misled that the Memorandum reviewed by City Council was a true "legal briefing" providing proper legal advice to City Council about specific legal issues raised on our motion.
50. The Applicants were never informed that the Memorandum was co-authored by an adversely interested party who was a non-lawyer (Jamal Ramjohn and likely Jill Sonogo)

and that the purpose of the Memorandum was explicitly to undermine our submissions and reputation before City Council.

51. We were never advised that there were matters raised in the Memorandum that had nothing to do with legal advice.
52. At our hearing before City Council on December 7, 2015, the Applicants were never given an opportunity to address the specific allegations made against them in the Memorandum, to challenge the factual assertions made about the consultation process, or to address the allegation that "all efforts have been taken to ensure that any development within the ASP area will not negatively affect the wetland."
53. We were not given the opportunity to challenge what, if any, evidence supported the specific allegations and conclusions made in the Memorandum.

Conclusions

54. For these reasons, we believe that, from the start, we were never given a fair hearing before City Council.
55. City staff members that were hostile, and adverse in interest, to the Applicants were actively involved in the preparation and drafting of the Memorandum and used the Memorandum as an opportunity to attack our position, through the guise of a confidential "legal briefing".
56. The Memorandum was never subjected to open and public challenge; rather, the Memorandum was deliberately kept hidden.
57. I believe that the use of the Memorandum by City staff, City lawyers, and Councillor Dianne Colley-Urquhart was highly improper and can only be rectified by a Court on judicial review.

ORDER REQUESTED

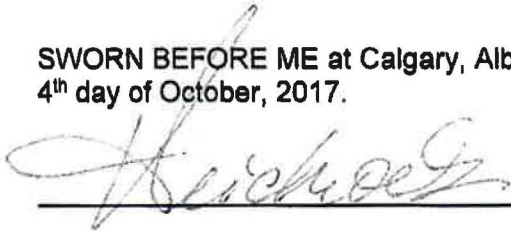
58. Consequently, together with the other Applicants, I respectfully request that this Honourable Court provide an Order:
 - (a) granting leave to put the documents provided at Exhibit "B", Exhibit "C", and Exhibit "D" of this Affidavit into evidence before the Court on judicial review;
 - (b) requiring the Respondent to produce fresh copies of the documents provided at Exhibits "B", "C", "D", and "E" of this Affidavit from its records, and without redactions, to the Applicants within 7 days;
 - (c) requiring inclusion of the document provided at Exhibit "D" in the Certified Record;
 - (d) granting leave to put the Affidavit of Judy Stewart, sworn September 28, 2017, into evidence on judicial review;
 - (e) providing the names and positions of all persons who were in attendance at the *in camera* meeting of City Council on December 7, 2015; and

(f) permitting the Applicants to amend their Originating Application to raise additional grounds for judicial review.


PURPOSE OF AFFIDAVIT

59. I swear this Affidavit for the purpose of this Application and judicial review of the decision of the Respondent to approve the Providence ASP and for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta, this
4th day of October, 2017.



Commissioner for Oaths in and for the Province
of Alberta



LESLIE CHISHOLM

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2019



THE CITY OF
CALGARY

**CITY CLERK'S
ELECTION AND INFORMATION SERVICES #8**

2017 January 13

John Brodylo
40 Chapala Heath SE
Calgary, AB T2X 3P9

Dear John Brodylo:

RE: Final Response to Request for Access to Information
FOIP Request No.: 2016-G-0169

ISC: Confidential

This is Exhibit "A" referred to
in the Affidavit of

LESLIE CHISHOLM

Sworn before me this 4th day

of OCTOBER A.D., 2017

V. Teichroeb
A Commissioner for Oaths in and for Alberta

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2019

This is in response to your request for access to information of The City of Calgary in accordance with the *Freedom of Information and Protection of Privacy Act (The Act)*.

Please find enclosed a CD containing records responsive to your request. This office will not provide additional copies of these records.

Some of the records requested contain information that is exempted from disclosure under *The Act*. Within these records we have severed records and withheld some records in accordance with the following applicable sections:

- Section 17 – Disclosure harmful to personal privacy
- Section 17(4)(g) - Name of individual with other personal information or that would reveal other personal information.
- Section 24(1)(a) - Advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council
- Section 24(1)(b)(i) - Consultations and deliberations involving officers or employees of a public body.
- Section 25(1)(b) - Disclosure harmful to economic and other interests of a public body.
- Non-responsive - Records that are non-responsive to the request.

Additionally, the records outlined below, are not disclosed under this FOIP Request because they are exempt in their entirety from disclosure under *The Act*.

<u>Record Number or Range</u>	<u>Applicable Section(s)</u>
City of Calgary FOIP Pages: 00001382-00001384	s.4(1)(l)(v) – The Act does not apply to a record made from information in the Land Titles Office.
00001488-00001490	s.4(1)(l)(iii) - The Act does not apply to a record made from information in the Office of the Registrar of Corporations.
City of Calgary FOIP Pages: 0000197-0000198, 0000725-0000736, 0000835	s.24(1)(a) & s.24(1)(b)(l) – Advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council <i>and</i> advice from Officials <i>and</i> consultations and deliberations involving officers or employees of a public body.
City of Calgary FOIP Pages: 0000316, 0000436-0000446, 0000998	s.24(1)(b)(l) – Advice from Officials – consultations or deliberations involving officers or employees of a public body.
City of Calgary FOIP Pages: 0000274, 0000369, 0000371-0000373, 0000375-0000376, 0000380	s.27(1)(a) & s.24(1)(b)(l) – Privileged information <i>and</i> advice from Officials – consultations or deliberations involving officers or employees of a public body.
City of Calgary FOIP Pages: 0000303, 00001319, 00001320, 00001344, 00001395, 00001396- 00001411, 00001414, 00001415- 00001425, 00001430-00001448, 00001454-00001462, 00001497- 00001499, 00001501, 00001502, 00001623, 00001624, 00001744, 00001799, 00001800, 00001844- 00001848, 00001851, 00001855, 00001856, 00001872-00001882, 00001886, 00001889-00001897, 00001919	s.27(1)(a) – Privileged information.
City of Calgary FOIP Pages: 00001412, 00001413, 00001426- 00001429, 00001449, 00001450, 00001453, 00001470, 00001471, 00001494, 00001718-00001738, 00001740-00001743, 00001746-	s.27(1)(c) – Information in correspondence between an agent or a lawyer of a public body.

00001749, 00001852, 00001853, 00001854, 00001901-00001903, 00001916-00001918, 00001923	
City of Calgary FOIP Pages: 0000335	s.27(1)(a) & s.24(1)(a) – Privileged information <i>and</i> advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council <i>and</i> Advice from Officials
City of Calgary FOIP Pages: 0000315, 0000383-0000384, 0000490, 00001321, 00001325-00001329, 00001898-00001900	s.27(1)(a) & s.24(1)(b)(i) – Privileged information <i>and</i> advice from Officials – consultations or deliberations involving officers of a public body.
City of Calgary FOIP Pages: 00001495, 00001496, 00001500, 00001859-00001862	s.27(1)(a) & s.27(1)(c) - Privileged information <i>and</i> information in correspondence between an agent or a lawyer of a public body.
City of Calgary FOIP Pages: 0000323, 0000848, 00001219-00001221, 00001348-00001351, 00001354-00001360, 00001379, 00001380, 00001503- 00001514, 00001611-00001616	s.27(1)(a) & s.24(1)(a) & s.24(1)(b)(i) - Privileged information <i>and</i> advice, proposals, recommendations, analyses or policy options developed by or for a public body or a member of the Executive Council <i>and</i> advice from Officials <i>and</i> consultations and deliberations involving officers of a public body.
City of Calgary FOIP Pages: 00001385, 00001386, 00001472- 00001479, 00001486, 00001487, 00001491-00001493, 00001617- 00001622, 00001632-00001638, 00001642, 00001643, 00001750- 00001798, 00001801-00001843, 00001849, 00001850, 00001863- 00001868, 00001883-00001885, 00001887, 00001888, 00001904- 00001913, 00001920-00001922, 00001924-00001968	s.27(1)(a) & s.27(1)(b) - Privileged information <i>and</i> information prepared by or for an agent or lawyer of a public body.
City of Calgary FOIP Pages: 00001914, 00001915	s.27(1)(a) & s.27(1)(b) & s.27(1)(c) - Privileged information <i>and</i> information prepared by or for an agent or lawyer of a public body <i>and</i> information in correspondence between an agent or a lawyer of a public body.
City of Calgary FOIP Pages: 0000509-0000563, 00001388-00001394,	s.29(1) – Information that is or will be available to the public.

00001713-00001717, 00001978-00002226	
<p>City of Calgary FOIP Pages: 0000288-0000291, 0000312-0000314, 0000370, 0000374, 0000395, 0000432, 0000482, 0000491, 0000608, 0000618, 0000620, 0000678-0000680, 0000683- 0000684, 0000686, 0000687, 0000688, 0000690, 0000691, 0000692, 0000694, 0000695, 0000815, 0000817, 0000850, 0000923, 0000944, 0000975, 0000982, 00001026, 00001172, 00001296, 00001381, 00001485, 00001569, 00001570, 00001640, 00001641, 00001644, 00001645, 00001739</p>	<p>Non-Responsive – Records that are non-responsive to the request.</p>
<p>City of Calgary FOIP Pages: 0000299-0000302, 0000361, 0000362, 0000385, 0000386, 0000408, 0000423- 0000431, 0000434, 0000435, 0000452, 0000455, 0000458, 0000459, 0000474- 0000477, 0000481, 0000484, 0000488, 0000489, 0000503, 0000504, 0000507, 0000508, 0000567-0000572, 0000582, 0000590, 0000599-0000605, 0000611- 0000615, 0000642, 0000673-0000675, 0000685, 0000689, 0000693, 0000700, 0000701-0000703, 0000708, 0000713, 0000714, 0000716-0000718, 0000812, 0000816, 0000823, 0000824, 0000829- 0000831, 0000836, 0000837, 0000840, 0000841, 0000846, 0000849, 0000851, 0000852, 0000855-0000857, 0000862, 0000887, 0000894, 0000896-0000900, 0000902, 0000903-0000909, 0000921, 0000928, 0000936, 0000942, 0000950, 0000951, 0000954-0000958, 0000968, 0000969, 0000971-0000974, 0000981, 0000985, 0000987, 0000988, 0000989, 0000995, 0000996, 0000997, 0000999- 00001003, 00001005, 00001006, 00001008-10001015, 00001017- 00001019, 00001021-00001023, 00001028, 00001030-00001171, 00001174-00001190, 00001197, 00001198, 00001200-00001217, 00001224-00001290, 00001309-</p>	<p>Duplicates – Records that are duplicates of other pages.</p>

00001315, 00001345-00001347, 00001353, 00001361, 00001571- 00001573, 00001575-00001610, 00001646-00001712, 00001745, 00001857, 00001858, 00001869- 00001871, 00001969-00001976	
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Outlined below are the pages that are publicly available with their location and source:

- City of Calgary FOIP pages 0000509-0000563: Letter and supporting documents delivered to the City Clerk's Office from Phillips and Gill LLP (their file number: 40215).
- City of Calgary FOIP pages 00001388-00001394: Statement of Claim documents from court file number 1601-01193 (Court of Queen's Bench of Alberta)
- City of Calgary FOIP pages 00001713-00001717: Originating application documents from court file number 1601-01681 (Court of Queen's Bench of Alberta)
- City of Calgary FOIP pages 00001978-00001979: Certified Record of Proceedings from court file number 1601-01681
- City of Calgary FOIP pages 00001980-00002226: City of Calgary Council Minutes held 2015 December 7 including the Proposed Providence Area Structure Plan. These documents can be found online by searching the City's Electronic Legislative Management System (ELMS). The address is: <http://agendaminutes.calgary.ca/sirepub/meetresults.aspx>

Section 65 of the *Freedom of Information and Protection of Privacy Act* provides that an applicant may make a written request to the Office of Information and Privacy Commissioner of Alberta (OIPC) to review this decision. You have 60 days from the date of this notice to request a review. A request for review is sent to:

Office of the Information & Privacy Commissioner of Alberta
410, 9925 – 109 Street
Edmonton, Alberta, T5K 2J8

The *Request for Review* form is available under the Resources tab on the Commissioner's website www.oipc.ab.ca or you can call 1-888-878-4044 to request a copy.

 Section 67(1) of *The Act* requires the OIPC to provide a copy of a request for review to The City and other parties who may be affected by the review. Please ensure that the request does not contain information that you do not wish to share.

If you have questions, please write to me at The City of Calgary #8, P.O. Box 2100,
Station 'M', Calgary, AB T2P 2M5, call me at 403-476-4112, or email to:
meghan.maloley@calgary.ca

Sincerely,



Meghan Maloley

BEC/mm

Enclosures: (1 CD)

30665

Ritchie, Janus

From: Jakal, Denise
Sent: Friday, December 04, 2015 8:44 AM
To: Sonogo, Jill V.; Luciuk, Lesia
Cc: Lockwood, Scott; Ramjohn, Jamal
Subject: RE: Providence Development SW Calgary Hearing Monday

I'll need some time to read through this but the one thing I don't think I can answer is the security piece. Can you put together a summary of what happened, who you talked to in Corporate Security and what was advised. I will run it past Owen Keyes.

From: Sonogo, Jill V.
Sent: Thursday, December 03, 2015 7:07 PM
To: Jakal, Denise; Luciuk, Lesia
Cc: Lockwood, Scott; Ramjohn, Jamal
Subject: FW: Providence Development SW Calgary Hearing Monday
Importance: High

Hi Denise and Lesia,

Remember that family with the land adjacent to the Providence ASP area? Back in July, Councillor Colley-Urquhart took forward the Notice of Motion to consider adding their land in but the motion was defeated.

Well, they have now submitted to Council a 50-page document opposing the ASP (see attachment), and the document includes a letter from the landowner that was signed by a Commission of Oaths (not sure how this is helpful) and also a letter from their lawyer. Their submission is attached here. s.27(1)(a) & s.24(1)(a) & s.24(1)(b)(i)

They also sent the email below to all of Council and to 5 media outlets. This afternoon, I spoke with Councillor Colley-Urquhart and she requested that the Law department send a briefing note to all of Council by tomorrow afternoon outlining the following:

- An analysis of the validity of the claims the lawyer makes in his submission (hint: they are not valid);
- Some sort of advice as to how their issues can be dealt with at Council; and
- A summary of the security concerns that resulted from that open house event where City staff were threatened and how they are being addressed for the Public Hearing on Monday.

I realize this is very last minute but we are kind of stuck. I can help coordinate the briefing note if you like. The points I would hit are:

- There has been meaningful engagement and consultation with the Brodylo family. We have engaged with them to a much greater extent than we ever have with a landowner adjacent to an ASP area.
- The Brodylo family, and other adjacent landowners, were notified of the ASP and no violation of the requirements of the Municipal Government Act has occurred.
- Approval of the ASP will have absolutely no effect on their wetland and all Citywide policies regarding environmental protection are being followed.
- The requisite studies have been done and the wetland has been taken into account to the extent necessary at this level of planning.
- The Brodylo family broke The City's Respectful Workplace Policy and threatened City staff at an Open House.

Councillor Colley-Urquhart also shared with me today that she would like to make a motion at the beginning of the Council meeting on Monday to move in-camera to discuss the Brodylo family concerns and behaviour.

Can you please let me know how we can best get this briefing note out to Council by tomorrow afternoon?

This is Exhibit "B" referred to in the Affidavit of

LESLIE CHISHOLM

Sworn before me this 4th day

of OCTOBER A.D., 2017

[Signature]

A Commissioner for Oaths in and for Alberta

V. TEICHROEB
A Commissioner for Oaths for the Province of Alberta
My Appointment Expires on January 31, 2017

193

Ramjohn, Jamal

From: Ramjohn, Jamal
Sent: Friday, December 04, 2015 12:21 PM
To: Ramjohn, Jamal; Jakal, Denise
Cc: Sonogo, Jill V.; Luciuk, Lesia; Lockwood, Scott
Subject: RE: Providence Development SW Calgary Hearing Monday
Attachments: Brodylo - Council briefing note.docx

Denise:

Attached is a draft of the Briefing Note for Council. Can you have a read and add anything you'd like?

Need to send out this aft.

Best,

Jamal.

From: Ramjohn, Jamal
Sent: Friday, December 04, 2015 9:05 AM
To: Jakal, Denise
Cc: Sonogo, Jill V.; Luciuk, Lesia; Lockwood, Scott; Ramjohn, Jamal
Subject: Re: Providence Development SW Calgary Hearing Monday

Thanks Denise.

Jill, thanks for coordinating this. I am in the office at 1pm for our meeting with Cllr Demong and I can review with you after that. Can you put a draft together with the points below? One page max with bulleted points. Note a very short history including the Open House issue and NOM that was defeated. Include Administration's position on appropriateness of engagement and impact of ASP on their lands.

Send to Denise and she can add legal aspects and speak to the 50 pager in brief.

Sent from my iPad

On Dec 4, 2015, at 8:44 AM, Jakal, Denise <Denise.Jakal@calgary.ca> wrote:

I'll need some time to read through this but the one thing I don't think I can answer is the security piece. Can you put together a summary of what happened, who you talked to in Corporate Security and what was advised. I will run it past Owen Keyes.

From: Sonogo, Jill V.
Sent: Thursday, December 03, 2015 7:07 PM
To: Jakal, Denise; Luciuk, Lesia
Cc: Lockwood, Scott; Ramjohn, Jamal
Subject: FW: Providence Development SW Calgary Hearing Monday
Importance: High

Hi Denise and Lesia,

Parks, Ashley

From: Sonogo, Jill V.
Sent: Friday, December 04, 2015 4:20 PM
To: Parks, Ashley
Subject: FW: Providence
Attachments: Brodylo - Council briefing note.docx

This is Exhibit "C" referred to
in the Affidavit of

LESLIE CHISHOLM

Sworn before me this... day
of OCTOBER A.D., 2017

[Signature]
A Commissioner for Oaths in and for Alberta

From: Sonogo, Jill V.
Sent: Friday, December 04, 2015 10:18 AM
To: Ramjohn, Jamal
Subject: RE: Providence

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2017

s.17(1)

Draft is attached for your review.

From: Ramjohn, Jamal
Sent: Friday, December 04, 2015 10:16 AM
To: Sonogo, Jill V.
Subject: RE: Providence

Language. ☺

Soooo, I thought *Non-Responsive* I swooped in to see if you needed help. ☺

From: Sonogo, Jill V.
Sent: Friday, December 04, 2015 10:05 AM
To: Ramjohn, Jamal
Subject: FW: Providence

Holy fuck. She copied the mayor.

From: Colley-Urquhart, Diane
Sent: Friday, December 04, 2015 10:03 AM
To: Sonogo, Jill V.
Cc: Mayor Nenshi
Subject: Re: Providence

s.24(1)(a)

Dicu
Sent from my diPhone
www.councillordiane.ca
www.calgary.ca/ward13
@BlgRedyyc

On Dec 4, 2015, at 9:56 AM, Sonogo, Jill V. <Jill.Sonogo@calgary.ca> wrote:

Hey, just FYI I am putting together the briefing note this morning.
s.24(1)(b)

s.24(1)(b)

Did you see this s.17(1) story in the news?

<http://www.metronews.ca/news/calgary/2015/12/03/farmer-protesting-proposed-providence-development.html>

Jill

Jill Sonogo
Planner, North Area
Local Area Planning & Implementation
The City of Calgary
Telephone: 403.268.2266
Mobile: 403.968.5056

Cole, Andrea

From: Jakal, Denise
Sent: Friday, December 04, 2015 3:39 PM
To: Councillors; Mayor's Office
Cc: Stanley, Rollin; Cole, Glenda; Fielding, Jeff; Sonogo, Jill V.; Ramjohn, Jaimal; Lockwood, Scott; Key, Owen
Subject: briefing note re Providence ASP (item 10.5)




Brodylo - Council
briefing not..

Hello all: Cllr Colley-Urquhart requested that Law send a briefing note to Council on this matter given some concerns that have been raised. I believe the briefing note is self-explanatory but should have questions or concerns please contact me.

Denise Jakal, M.A., LLB.
Barrister and Solicitor
Manager, Planning and Environment
Legal Services Division, Law
The City of Calgary | Mail code: #8053
T 403.268.6471 | F 403.268.4634 | calgary.ca
Floor 12, Municipal Building - F2, 800 Macleod Tr. S.E.
P.O. Box 2100, Station M, Calgary, AB Canada T2P 2M5

s.27(1)(a) & s.27(1)(b)

THIS DOCUMENT AND ITS CONTENTS ARE SUBJECT TO SOLICITOR CLIENT PRIVILEGE OR LITIGATION PRIVILEGE AND ARE EXEMPTED INFORMATION UNDER SECTION 27(1) OF THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT. NEITHER THIS DOCUMENT NOR ITS CONTENTS MAY BE DISCLOSED IN WHOLE OR IN PART, BY EXCERPT, PARAPHRASE OR SUMMARY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CITY SOLICITOR.

This is Exhibit "D" referred to
in the Affidavit of
LESLIE CHISHOLM
Sworn before me this 4th day
of OCTOBER A.D., 2017

A Commissioner for Oaths in and for Alberta

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2019



Memo

DATE: 2018 May 16
TO: All members of City Council
From: Denise Jakal and Jamal Ramjohn
RE: Providence Area Structure Plan – Brodylo Family

Background

The Providence Area Structure Plan (ASP) will come before Council on 2015 December 07. A family who owns land outside the plan area ("Brodylo family") has submitted to Council a 50-page package outlining opposition to the plan.

Within this package the Brodylo family makes assertions regarding:

- Their participation in the planning process;
- Perceived effects on their wetland;
- The City's role in adding their land into the ASP; and
- The accuracy and completion of studies required for the ASP.

The family has also contacted the media (2015 December 09) regarding their opposition to the plan.

Consultation with the Brodylo Family *s.27(1)(a) & s.27(1)(b)*

City Planning staff were first contacted by the Brodylo family in 2015 February. Between 2015 February and 2015 September, staff met with the family and/or representatives six (6) times and corresponded with them over 30 times.

The family's initial concern was their land not being included in the ASP. Staff consistently communicated the process to the family as to how their land could be added into the ASP and on 2015 July 27, Councillor Colley-Urquhart brought forward to Council a Notice of Motion to consider adding the land into the ASP. The motion was defeated at Council.

Corporate Security

Since then, the actions of the Brodylo family have become increasingly aggressive. On 2015 September 09, the family attended a public open house for the Providence ASP and were aggressive to City staff. An investigation was undertaken by The City's Corporate Security and who determined that the family broke Respectful Workplace Policy by making threats to City staff. The family was specifically notified of the Respectful Workplace Policy and have been advised that they will be asked to leave the council meeting if they are not in compliance with it. The family is now known to Corporate Security and will be watched closely at the Public Hearing. Corporate Security advises that they believe that adequate security is currently in place for Monday's meeting but extra security will be provided if required.

Preliminary Response to Lawyer's Submission:

Importantly, Council should note the following:

- The Brodylo family was notified of the ASP and no violation of the Municipal Government Act has occurred (The MGA requires that in preparing an ASP, the City must provide a means for a person affected to make suggestions and representations and notify the public of those means);
- The approval of the ASP will have absolutely no effect on the Brodylo wetland and all efforts have been taken to ensure that any development within the ASP area will not negatively affect the wetland (The MGA makes clear

- that the adoption of an ASP does not require a municipality to undertake any projects referred to in it and an ASP can best be described as setting out aspirational goals that will be amended as more detailed planning is done);
- Planning staff have engaged the Brodylo family to a higher degree than any adjacent landowner previously involved in an ASP process and have provided more than ample opportunity to participate;
 - The City has made every effort to assist the Brodylo family in their effort to be included in the ASP; and
 - All necessary studies have been undertaken for the ASP and all City policies have been followed.

Recommendations for the Public Hearing

In addition to the consultation with administration as mandated by the MGA, the Brodylo family will have the opportunity to make submissions at the public hearing. In that regard, there is no special direction that can be offered to council outside of normal practice.

If council has concerns about the adequacy of public consultation, whether or not the ASP is consistent with the MDP or whether the studies upon which administration is relying are adequate, those questions should be asked of administration and the public in council chambers.

We trust this assists.

Denise Jakal, Manager, Planning and Environment, Law

Jamal Ramjohn, Coordinator, Local Area Planning and Implementation. ^{s.27(1)(a) & s.27(1)(b)}

THIS DOCUMENT AND ITS CONTENTS ARE SUBJECT TO SOLICITOR CLIENT PRIVILEGE OR LITIGATION PRIVILEGE AND ARE EXEMPTED INFORMATION UNDER SECTION 27(1) OF THE FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT. NEITHER THIS DOCUMENT NOR ITS CONTENTS MAY BE DISCLOSED IN WHOLE OR IN PART, BY EXCERPT, PARAPHRASE OR SUMMARY WITHOUT THE EXPRESS WRITTEN CONSENT OF THE CITY SOLICITOR.

Martin, Terry Lyn

From: Lavery, Jolene
Sent: Wednesday, December 09, 2015 1:05 PM
To: Veenstra, Valerie J.
Subject: FW: Providence ASP
Attachments: IMG_2445.PNG; ATT00001.txt

:)

-----Original Message-----

From: Sonogo, Jill V.
Sent: Wednesday, December 09, 2015 12:55 PM
To: Shaw, Travis T.; Lavery, Jolene; Saunders, Patrick; Churchman, Pat; Fellows, Kari; LaFreniere, Dennis; Wiwjorra, Lothar; Hbeichi, Sarah; Weleschuk, Austin J.; Sheldrake, Matthew; Parks, Ashley; Majcherkiewicz, Filip M.; Lisowski, Jakub; Kurji, Asif; Cook, Derek
Cc: Duff, Jennifer E.; Ramjohn, Jamal
Subject: Providence ASP


Good afternoon everyone,

Just wanted to let you know that after a lengthy discussion and some opposition to the plan from the Bamford and Brodylo families, the Providence ASP was approved by Council last night with no amendments.

In other news, Breanne Harder made the attached meme. I guess I didn't ~~show~~ my poker face on during the discussion about the wetland.

Thanks so much everyone for your hard work on the plan and I look forward to seeing you at our Celebration/Lessons Learned session next week!

Jill

This is Exhibit "E" referred to
in the Affidavit of
LESLIE CHISHOLM
Sworn before me this 4th day
of OCTOBER A.D., 2017

A Commissioner for Oaths in and for Alberta

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2019

WETLAND KILLER



s17(1)

ASP STILL APPROVED

This is Exhibit "F" referred to
in the Affidavit of

LESLIE CHESTNUT

Sworn before me this 4th day

of OCTOBER 10, 5 A.M., 2017

(Legal Briefing)

A Commissioner for Oaths in and for Alberta

LLANEOS- PROVIDENCE AREA STRUCTURE PLAN, PROVIDENCE
(WARD 13), WEST OF PROPOSED SOUTHWEST RING ROAD AND
NORTH OF SPRUCE MEADOWS TRAIL SW, BYLAW 48P2015,
CPC2015-220

The public portion of this Report will be dealt with under the Calgary Planning Commission Section contained in today's Agenda.

V. TEICHROEB
A Commissioner for Oaths
for the Province of Alberta
My Appointment Expires on
January 31, 2017

IN CAMERA, Moved by Councillor Woolley, Seconded by Councillor Sutherland, that, in accordance with Section 197 of the *Municipal Government Act* and Section 27(1) of the *Freedom of Information and Protection of Privacy Act*, Council now move into the Committee of the Whole, In Camera, at 10:09 a.m., in the Council Lounge, to discuss a confidential matter with respect to Report CPC2015-220.

CARRIED

The Committee of the Whole recessed In Camera and reconvened in the Council Chamber at 10:20 a.m. with Mayor Nenshi in the Chair.

RISE AND REPORT, Moved by Councillor Colley-Urquhart, that the Committee of the Whole rise and report to Council.

CARRIED

ADOPT, Moved by Councillor Colley-Urquhart, Seconded by Councillor Jones, that with respect to Report CPC2015-220, the following be adopted:

That Council:

1. Receive the Legal Briefing with respect to Report CPC2015-220; and
2. Keep the In Camera discussions confidential pursuant to Section 27(1) of the *Freedom of Information and Protection of Privacy Act*.

CARRIED

6. CONSENT AGENDA

This item was dealt with following the conclusion on the Public Hearing.

6.2 ROADS ZERO BASED REVIEW UPDATE: 2015 UPDATE REPORT, TT2015-0792

6.3 RESIDENTIAL STREET DESIGN POLICY - 3 YEAR UPDATE, TT2015-0686



March 17, 2020
1600 Hrs

SOLE 15032020/2

ORDER: INTERNATIONAL TRAVELLER SELF-ISOLATION REQUIREMENT

WHEREAS a State of Local Emergency was declared for The City of Calgary on March 15, 2020 to address the COVID-19 pandemic.

AND WHEREAS the Local Emergency Committee authorized the Director of the Calgary Emergency Management Agency to exercise any power or function of the Committee for the duration of the state of local emergency, including the authority to issue orders pursuant to Section 24 of the Act.

AND WHEREAS the Chief Medical Officer of Health for the Province of Alberta has urged all international travellers to self-isolate upon their return to Alberta.

AND WHEREAS at the present time Calgary is one of only two Western Canadian cities where international air travellers are permitted to arrive.

IT IS HEREBY ORDERED:

1. Any individual who (a) has travelled internationally, regardless of the mode of transportation used, (b) has arrived in Calgary on or after March 17, 2020 and (c) for whom Calgary is their final destination; shall take all reasonable steps to self-isolate for 14 days following their arrival in Canada effective immediately.

This restriction does not apply to international travellers who do not leave the premises of the Calgary International Airport or who are merely stopping over in Calgary on route to their final destination, and is subject to reasonable exceptions, including visits to medical doctors, hospitals and pharmacies.

**Authorized: Tom Sampson,
Director, Calgary Emergency Management Agency**

Signature: _____

Concurred: Local Emergency Committee

Signature: _____

Naheed K. Nenshi,
Mayor

Signature: _____

Gary Carlo Corra, COUNCILLOR
CHIEF, EMERGENCY MANAGEMENT COMMITTEE

Palaschuk, Jordan

From: Leslie Chisholm <lbrodylo@telus.net>
Sent: Thursday, March 26, 2020 10:05 AM
To: Otto Phillips; John Phillips; Val Teichroeb
Cc: Brodylo, Reid; jbrodylo@questerre.com
Subject: Alberta Fines Quarantine violations

From the internet:

<https://www.660citynews.com/2020/03/25/premier-jason-kenney-announces-further-measures-to-help-prevent-further-covid-19-spread/>

The new enforcement rules from the Alberta government follow a mandatory 14-day isolation period set out by the federal government for those returning to Canada.

Fines for those disobeying self-isolation orders could receive a fine of up to \$1,000.

Alberta courts now also have the power to hand out fines of up to \$100,000 for first offenders and up to \$500,000 for a subsequent offence for more serious violations.

Though, Tyler Shandro confirmed the larger fines are aimed more at businesses and those who could disobey self-isolation and social distancing rules at a larger scale.

These new fines are expected to come into effect in the coming days.

This comes as Alberta's total number of cases rises to 419, a 61 case increase from Tuesday.

As per the Government of Alberta, those who are at risk of receiving a fine include:

- Any person who has travelled outside of Canada and failed to self-isolate for 14 days from their return
- Any person who exhibits COVID-19 symptoms and fails to self-isolate for a minimum of 10 days from the start of their symptoms
- Any person who has been identified as a close contact of a person(s) with COVID-19 and fails to go into mandatory self-isolation for 14 days from the date of last having been exposed to COVID-19
- Mass gatherings that have over 50 people

Some further limitations handed down on Wednesday include:

- Access to public recreational facilities, private entertainment facilities, bars and nightclubs is prohibited.
- Visitation to long-term care and other continuing care facilities is limited to essential visitors only.

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March 15, 2020
20:51 Hrs

DECLARATION OF A STATE OF LOCAL EMERGENCY

WHEREAS a local emergency exists in the city of Calgary due to the pandemic spread of COVID-19;

THEREFORE pursuant to Section 21 of the *Emergency Management Act* (R.S.A. 2000 c. E-6.8) and Section 4 of The City of Calgary *Bylaw 25M2002*, the Local Emergency Committee declares that a state of local emergency exists within the entirety of The City of Calgary boundaries;

AND FURTHER the Local Emergency Committee hereby authorizes the Director of the Calgary Emergency Management Agency the authority to exercise any power or function of the Committee for the duration of the state of local emergency, including the authority to issue orders pursuant to Section 24 of the Act.

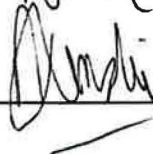
LOCAL EMERGENCY COMMITTEE

Mayor

Print name:

Nabeel K. Nanghi

Signature:

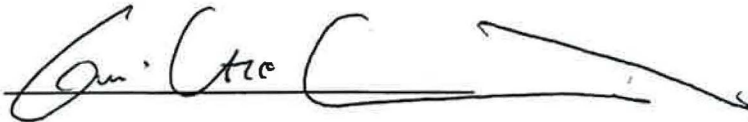


Councillor

Print name:

GIAN CARLO CERRA

Signature:





March 19, 2020
14:30 Hrs

RENEWAL: DECLARATION OF STATE OF LOCAL EMERGENCY

WHEREAS on March 15, 2020, a local emergency existed in the city of Calgary due to the pandemic spread of COVID-19;

WHEREAS pursuant to Section 21 of the *Emergency Management Act* (R.S.A. 2000 c. E-6.8) and Section 4 of The City of Calgary *Bylaw 25M2002*, on March 15, 2020, the Local Emergency Committee declared a state of local emergency within the entirety of The City of Calgary;

WHEREAS pursuant to section 22(4) of the *Emergency Management Act*, a declaration of a state of local emergency lapses 7 days after its making by the local authority unless it is earlier cancelled by the Minister or terminated by the local authority or unless it is renewed by the local authority;

WHEREAS the local emergency continues to exist, as the pandemic spread of COVID-19 continues and the confirmed number of cases in Calgary is increasing;

THEREFORE pursuant to Sections 21 and 22 of the *Emergency Management Act* (R.S.A. 2000 c. E-6.8) and Section 4 of The City of Calgary *Bylaw 25M2002*, the Local Emergency Committee declares that the State of Local Emergency is renewed;

AND FURTHER the authority conferred to the Director of the Calgary Emergency Management Agency under the March 15, 2020 Declaration of State of Local Emergency will continue for the duration of the state of local emergency;

AND FURTHER the Orders issued under the March 15, 2020 Declaration of State of Local Emergency that were in effect immediately prior to declaring this renewal will continue in force.

LOCAL EMERGENCY COMMITTEE

Mayor

Signature:

Handwritten signature of the Mayor in blue ink, written over a horizontal line.

Councillor

Signature:

Handwritten signature of the Councillor in blue ink, written over a horizontal line.



WADDELL PHILLIPS

March 31, 2020

Our File No. 40215
Your File No. L7772

BY EMAIL – henry.chan@calgary.ca

URGENT

Law and Legislative Services
The City of Calgary
800 Macleod Trail SE
12th Floor
Calgary, AB T2G 2M3

Attention: Henry Chan

Dear Mr. Chan:

RE: April 1 and April 27, 2020 City Hearings

On March 25, 2020, our office received an email from Brendyn Seymour of the City of Calgary advising that the Committee on Planning and Urban Development (the "PUD") is proceeding to approve the Providence ASP on April 1, 2020 and then proceeding to bring this to a City Council hearing on April 27, 2020. The correspondence we received makes clear that approval of the ASP by the PUD is a "done deal" and that any overtures about "public participation" are made to pretend that procedural fairness is being provided.

This letter serves notice that the City's move to proceed with (re)approval of the Providence Area Structure Plan is a complete breach of all procedural fairness owed not only to the Brodylo family but also to all other landowners and members of the public who may be impacted. Most significantly, the City is acting in extreme bad faith by moving to approve a highly contentious Area Structure Plan during the COVID-19 pandemic. In my more than 30 years of legal practice, this is the absolute worst breach of procedural fairness that I have ever seen.

john@waddellphillips.ca

Reply to: 630 – 6th Avenue S.W. | Suite 425 | Calgary AB, T2P 0S8 | ph 403-617-9868 | fx 403-775-4457
36 Toronto St | Suite 1120 | Toronto ON, M5C 2C5 | ph 647-220-7420 | fx 416-477-1657
waddellphillips.ca



THE CITY'S HOSTILITY TO THE BRODYLO FAMILY

The Brodylo family has been mistreated from the very beginning of the Providence ASP approval process. A map of the Providence ASP area shows that they were arbitrarily excluded from the ASP study area – likely in an effort to use their land for water retention and to prevent them from having knowledge of, or participating in, development planning. They were forced to bring a judicial review proceeding in the Court of Queen's Bench when the City attempted to proceed to approve the original Providence ASP without a Master Drainage Plan (MDP). They succeeded on this judicial review application and Providence was quashed. Notably, only after the ASP was quashed, did the Brodylos obtain a draft copy of the MDP for their review (but without underlying technical data or information).

The City's hostility to the Brodylo family includes overt acts by City planning members, particularly Jill Sonogo, to defame and undermine the Brodylo family members to ensure that City Council would be unwilling to fairly hear their submissions when Providence first came for approval before City Council. I am including with this letter copies of documents my clients obtained by FOIPP, and which were provided in an Application Record and Affidavits of Leslie Chisholm and Judy Stewart filed in the Court of Queen's Bench as part of the Brodylos' successful judicial review proceeding of Providence.

THE CITY'S BAD FAITH DECISION TO PROCEED WITH ASP APPROVAL

From 2014 to 2020, the City appears to have had no urgency to have a proper MDP finalized for the Providence ASP. Now, for reasons that only the City (and the private development interests funding and directing Providence) knows, the Providence ASP is being rammed through, with a deeply flawed MDP, at a time when City business and the business of virtually every other industry has ground to a halt. The City is proceeding in the face of an independent third party review of the MDP that states that the MDP is seriously flawed and in desperate need of better and further studies.

It appears that the City believes that this is the most opportune time to get Providence approved as it will ensure that the Brodylos, and anyone else who may challenge Providence, will have an extremely difficult time getting proper submissions before Council and on the record. The City has taken an extremely hostile stance towards the Brodylos since they first raised issues with Providence in 2015 and this move to complete

the approval of Providence during the COVID-19 pandemic is the climax of a long line of bad faith actions by the City.

THE COVID-19 CRISIS

On March 15, 2020, the City of Calgary, pursuant to the *Emergency Management Act*, RSA 2000, c E-6.8, declared a state of emergency for the entirety of the City of Calgary's boundaries due to the pandemic spread of COVID-19. Subsequently, on March 19, 2020 the City renewed the state of emergency declaration, noting that the pandemic spread of COVID-19 continues and that the total number of cases in Calgary was increasing. As of this morning, Alberta had 690 confirmed cases, 422 of which were in Calgary. 8 Albertans have already died. I understand that, per capita, Alberta has amongst the highest number of cases of COVID-19 reported in the country to date.

On March 17, 2020, Premier Jason Kenney declared a public health emergency under the *Public Health Act*, RSA 2000, c P-37 due to the COVID-19 situation. The Province of Alberta has since required the closure of schools, day care facilities, and now all non-essential services in an effort to combat the spread of COVID-19. The Provincial Government is demanding that all persons who do not have urgent reasons to be out of the house remain at home so as to not endanger themselves or others. As of today's date, the Province is in the process of implementing significant fines and penalties for those people who carelessly endanger the lives of others. All mass gatherings are now restricted and subject to fines

Prime Minister Trudeau has long called for Canadians to stay home to the furthest extent possible. The Federal Government has now imposed mandatory quarantine rules on travellers returning to Canada, including heavy fines and jail time for those Canadians who refuse to do so. This includes a mandatory period of 14 days of isolation under the *Quarantine Act*, SC 2005, c 20.

As of March 29, 2020, Canada has 7,319 confirmed cases of COVID-19 and 82 deaths. Within the next several weeks, this number is expected to rise exponentially. Given the large number of Albertans who have tested positive, we can fairly safely presume that a good number of Albertans are soon going to be very sick – and that many more will die as a result of this contagion.



I am attaching with this letter some of the City's own bylaws and emergency orders covering COVID-19.

NOTICE OF BRODYLOS' DIFFICULTIES PARTICIPATING IN THE HEARINGS AND CONSULTING WITH COUNSEL AND EXPERTS

The COVID-19 crisis creates significant difficulties for my clients. In particular, John Brodylo, a key member of the Brodylo family, recently returned from international travel. He is subject to a government-ordered quarantine which will take him past the April 1, 2020 PUD hearing. He cannot physically meet with the other members of the Brodylo family to review and share documents, nor can he attend City hall to review any of the Providence ASP documentation that may not be publicly available.

The other members of the Brodylo family cannot access the physical resources of City hall during this time. Even if City would permit them to attend its premises to review documentation and records stored there, doing so would be dangerous to their health and the health of their family members. One member of the family, Leslie Chisholm has medical conditions which make her particularly vulnerable to the virus. In addition, one of the Brodylos' immediate family members has symptoms potentially consistent with COVID-19 and there is a risk that this individual will be sick, potentially significantly so, during the month of April.

The family, furthermore, will be unable physically to review documentation and information with their lawyers and consultants. They will be unable to attend portions of the family farm due to the stay-at-home recommendations (and a quarantine order) incumbent upon them. This means that they cannot complete physical reviews of the property and confirm whether particular data and information relied upon by the City and its consultants is accurate.

Following the City's provision of the finalized MDP in February 2020 to the Brodylo family, they have commenced investigations to determine if the studies provided within it (to the extent that they were disclosed - more on that below), are accurate. The City's third party consultant (Urban Systems) raised significant questions about the accuracy of the MDP and the Brodylo family consulted with its own expert (Gord Johnson) to review the MDP in February.



Part of Mr. Johnson and the Brodylos' review of the MDP involves physical inspection and measures of a number of different portions of the Brodylo land to verify the accuracy of information and assumptions relied upon within the MDP. They had anticipated obtaining this information in March to April of 2020 as the snow melts; however, the COVID-19 pandemic has complicated this and has prevented their expert (and the family members) from physically attending the property – given the recommendations of the Province and City to remain at home, and John's quarantine order.

CITY'S INCONSISTENT ACTIONS

We further note that our clients requested the City's cooperation in moving forward with civil litigation related to many of these same matters during the COVID-19 pandemic – including by way of teleconference or videoconference questioning. The City lawyer responsible for handling the Brodylos' civil claim for damages advised that the City was in a state of lockdown and was only able to handle essential business. I was advised that the City would not be moving their litigation forward until the COVID-19 crisis subsided. The City appears to want to create further delays for the Brodylos' civil litigation while, at the same time, forcing through MDP and ASP approvals. COVID-19 is an excuse when convenient and yet easily overcome when the City wishes to secure its own ends.

NOTICE OF LACK OF DOCUMENT PRODUCTION

Over and above these issues, the Brodylo family does not have access to all the documentation in the City's power or control related to the (new) Providence ASP. In particular, beyond what is provided in the MDP itself, the Brodylos do not have a copy of many of the studies or surveys, including technical information, underlying the MDP. This information has persistently been requested by the Brodylo family and our office. The City has, in turn, ignored these requests or advised that the information will only be made available once everything is "finalized".

Virtually every submission we have made to the City to date hits upon this point. Nevertheless, the City continues to refuse to provide this information. It is not facilitating an open and transparent process. As the MDP is now finalized, and the ASP as well it appears, the Brodylos should immediately have access to all information that provides the basis for the MDP and ASP – including all technical data relied upon. They should also have access to all correspondence between EXP, Urban Systems, and the City related to



the creation and review of the MDP and the ASP. The Brodylos, and City Council for that matter, are entitled to know the wide-range of problems that were identified with the ASP and MDP and to understand what is at stake if the MDP and ASP are flawed.

Even if the City now were to provide this information, and even if there was no COVID-19 outbreak, the Brodylo family would need significant time, potentially many months, to study and review the technical information, data, and consultations underlying the MDP and ASP. They note that the City has taken 6 years to produce the MDP. It is now asking the Brodylos to make submissions on that very document (without having any access to the underlying data and documentation not in the MDP itself) within less than a month.

The City knows that with the tight timeline for ASP approval, the Brodylo family cannot complete a full study of the ASP and the MDP data and prepare meaningful submissions to City Council. Add to this the COVID-19 pandemic and any participatory rights they may be alleged to have are no more than perfunctory.

We further note that the City's handling of John Brodylos' request under the *Freedom of Information and Protection of Privacy Act*, RSA 2000, c F-25, over almost 5 years (FOIPP File No. 005278) is completely inconsistent with a transparent and open public process. A large area planning decision is the quintessential public interest decision requiring consultation and participation and information to be provided to all stakeholders (and the public at large). The City has frustrated John's efforts to obtain some of the most significant documentation involved under extremely flimsy grounds. It is remarkable that a planning decision would require so many redactions to keep documents hidden from public access.

THE BRODYLOS' RIGHT OF MEANINGFUL PARTICIPATION IN THE CITY PROCESS

Meaningful participation is the legal requirement incumbent upon the City to meet the Brodylos' procedural fairness rights in this process. With this letter, the City is put on notice that the proposed plan to proceed with the *pro forma* approval of the ASP does not afford the necessary participatory rights that the Brodylo family has under the *Municipal Government Act*, RSA 2000, c M-26 and under basic principles of Canadian administrative law and constitutional law.



We note that many of these very procedural fairness issues were raised at the Brodylo family's previous judicial review application. Justice Sullivan, as he found in Brodylo family's favour on substantive grounds, did not make any findings on the procedural fairness matters as they were moot. The Brodylos intend to bring all of these matters before the Court once again, if the City is intent on pursuing its current path. The context of COVID-19 and the ongoing failure of the City to provide access to all relevant information to the Brodylo family accentuates the procedural fairness breaches beyond what was initially raised on judicial review of the first Providence ASP.

NOTICE OF FUTURE JUDICIAL REVIEW IF PROCEDURAL FAIRNESS IS NOT PROVIDED

If the City does not change course and respect the rights of the Brodylo family to meaningful participation in this process, including by providing access to all relevant information and providing a more reasonable date for the public approval hearing, the Brodylo family will commence a judicial review application and seek to have the Providence ASP quashed (again).

Please ensure that this letter is brought to City Council's attention and to the attention of the PUD. It should constitute part of the Certified Tribunal Record in the event that the City's ill-conceived and grotesquely unfair "public" hearings proceed in April 2020.

Yours truly,
Waddell Phillips Professional Corporation

John Kingman Phillips
JKP/JOP/vt
Attachments

c: Brendyn Semour