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|  |   |
|--|---|
| First name (required)                              | Joshua  |
| Last name (required)                               | Orzech  |
| What do you want to do? (required)                 | Submit a comment  |
| Public hearing item (required - max 75 characters) | Item 7 LOC2021-0020, CPC2021-0759 Bylaws 36P2021, 37D2021, 104D2021 & 105D2 |
| Date of meeting                                    | Jul 26, 2021  |

|   |  |
|---|--|
| Comments - please refrain from providing personal information in this field (maximum 2500 characters) | Due to the character limits of the on-line submission portal, I have included some introductory remarks here but more fulsome comments in the attached submission.   |
|   | Politicians across Canada, including in Calgary, have repeatedly stated, when faced with a tough issue, "This matter is before the courts and I'm not going to comment on the specifics of the proceedings." My question is why is the City of Calgary even entertaining Item 7 - Policy Amendment and Land Use Amendment in Banff Trail (Ward 7) at multiple addresses, LOC2021-0020, CPC2021-0759 Bylaws 36P2021, 37D2021, 104D2021 & 105D2021 when a significant number of Banff Trail homeowners are suing the developer of these properties to stop this development as there is a restrictive covenant in place? |
|   | The City of Calgary is aware of the lawsuit, the City Solicitor has commented repeatedly on the issue, the Mayor and the Ward 7 Councilor have spoken at Council about the issue. So, why, in this case, will City Council not follow the tried-and-true line of politicians and let the court provide their verdict before influencing the proceeding? The action of Council on July 26th will most certainly impact the parties in this dispute.   |
|   | To the substantive aspect of the developer's request, these proposed land use redesignations fail to satisfy the stated requirements for the permissive use of direct control districts. The Applicants have not identified any "unique characteristics, innovative ideas or unusual site constraints" of the proposed developments that require specific  |

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Jul 16, 2021

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regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes.

City Council should reject the land use amendments LOC2021-0020, CPC2021-0759 and Bylaws 36P2021, 37D2021, 104D2021 & 105D2021 on their merits alone but most specifically because City Council is interfering with matters before the courts.

Josh Orzech

Members of City Council,

Due to the character limits of the on-line submission portal, I have included some introductory remarks here but more fulsome comments in the attached submission.

Politicians across Canada, including in Calgary, have repeatedly stated, when faced with a tough issue, "This matter is before the courts and I'm not going to comment on the specifics of the proceedings." My question is why is the City of Calgary even entertaining Item 7 - Policy Amendment and Land Use Amendment in Banff Trail (Ward 7) at multiple addresses, LOC2021-0020, CPC2021-0759 Bylaws 36P2021, 37D2021, 104D2021 & 105D2021 when a significant number of Banff Trail homeowners are suing the developer of these properties to stop this development as there is a restrictive covenant in place?

The City of Calgary is aware of the lawsuit, the City Solicitor has commented repeatedly on the issue, the Mayor and the Ward 7 Councilor have spoken at Council about the issue. So, why, in this case, will City Council not follow the tried-and-true line of politicians and let the court provide their verdict before influencing the proceeding? The action of Council on July 26<sup>th</sup> will most certainly impact the parties in this dispute.

To the substantive aspect of the developer's request, these proposed land use redesignations fail to satisfy the stated requirements for the permissive use of direct control districts. The Applicants have not identified any "unique characteristics, innovative ideas or unusual site constraints" of the proposed developments that require specific regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes.

City Council should reject the land use amendments LOC2021-0020, CPC2021-0759 and Bylaws 36P2021, 37D2021, 104D2021 & 105D2021 on their merits alone but most specifically because City Council is interfering with matters before the courts.

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- ✓ I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Laura Lee

Last name (required) Goetjen

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) Banff Trail – Bylaw number 104D2021 2460,2464,2468 23 Street NW

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters) Please see attached letter - 3 pages



July 18, 2021

To: Office of the City Clerk

The City of Calgary

Re: Banff Trail – Bylaw number 104D2021

Address: 2460, 2464, 2468 - 23<sup>rd</sup> Street NW, Calgary

Plan: 9110GI, Block 5, Lots 15 to 17, from Mixed Use – General (MU-1f3.9h23) District to Direct Contract District to accommodate mixed-use development

I would like to comment on the above proposal.

1 – a 23 meter or 6 storey building is out of character for the neighborhood.

2 – Banff trail was originally 1 storey bungalows, many that have been maintained and upgraded over time, as new owners embrace large yards, reduced density and proximity to Downtown and an elementary (Banff Trail), junior high (Branton Jr High) and High School (William Aberhart High School), the University of Calgary and LRT within walking distance.

3 – redevelopment has included attached duplexes, which have been until recently, been a maximum of 2 storeys. Some are now 3 stories, but there are very few in the neighborhood.

4 – This location is 1 block off of Crowchild Trail and 24<sup>th</sup> Avenue NW. It is a very busy intersection with lots of traffic turning onto 24<sup>th</sup> Avenue NW from Crowchild Trail. This traffic flow is often backed up and this development will result in significant increase in congestion and parking issues, with an additional 96 units (I believe this is the proposal) development.

5 – There are 3 lots that are proposed in this redevelopment. Only 1 fronts onto 24<sup>th</sup> Avenue NW (and also 23<sup>rd</sup> Street NW). The other 2 lots face only onto 23<sup>rd</sup> Street and are totally out of character for this neighborhood.

6 – Parking – although the developers would like to indicate that most of the tenants will not require parking (75% + 10% visitor), all traffic will have to merge onto 24<sup>th</sup> Avenue NW, which is highly congested at any point in time. The parking requirement is reduced by 25%, if the building is within 600 meters of the LRT. This location is North of the Banff Trail LRT. The rental/ownership draw for this building is actually the University of Calgary. The tenants would not use the Banff Trail LRT, (as most go to the University – walking or driving) and as such, should not be allowed an exemption for parking, based on their proximity to the Banff Trail LRT.

I know this from personal experience as a landlord since 2007, from this location. Everyone rents and owns here due to the proximity to the University of Calgary and do not utilize the Banff Trail LRT.

7 – Alternative to parking – as a rental owner, across the alley from the proposed development (since 2007) I can tell you that tenants that don't have cars, actually have an increase in parking and traffic

concerns. Uber, Amazon, grocery and food deliveries, etc. result in an increase in traffic flow. With the pandemic, the acceptance of utilizing delivery service and the low costs, has resulted in an increase in vehicular traffic. An individual who has a vehicle, usually heads out once every few days to run errands. When an individual does not have a vehicle, they are comfortable with having food, Amazon and Uber services every day. This trend (based on my observations of my current tenants), has not changed, since the Covid-19 restrictions have been lifted, by the City of Calgary. This is the new norm.

This newly identified increased traffic, has to come into play when approving such a large development.

This location is already extremely busy, as the 22a Street and 23 Street alley is extra long and has significant traffic due to infill development, with rear double garages.

There are potentially 116 cars, that could utilize the 22a Street – 23 Street alley to access 24<sup>th</sup> Avenue NW, on a daily basis. It is reasonable to expect these vehicles to exit, via 24<sup>th</sup> Avenue to Crowchild Trail. There is no access to Crowchild Trail, to the south, from Banff Trail.

22a Street - up to 60 cars- 2459 – frat house – could have 6-8 parking spots, 2457 – 4 parking spots, 2451 – 2 parking spots, 2449 – 2 parking spots, 2447 – 4 parking spots, 2443 – 4 parking spots, 2439 – 4 parking spots, 2435 – 2 parking spots, 2433 – 2 parking spots, 2431 – 4 parking spots, 2427 – 2 parking spots, 2425 – 2 parking spots, 2423 – 2 parking spots, 2421 – 2 parking spots, 2419 – 4 parking spots, 2415 – 4 parking spots, 2411 – 2 parking spots, 2411b – 2 parking spots 2407 – 4 parking spots, 2312 – 22<sup>nd</sup> Avenue – 4 parking spots

23<sup>rd</sup> Street – up to 56 cars – 2456 – 4 parking spots, 2452 – 4 parking spots, 2448 – 4 parking spots, 2446 – 2 parking spots, 2444 – 2 parking spots, 2440 – 4 parking spots, 2438 – 2 parking spots, 2436 – 2 parking spots, 2432 – 4 parking spots, 2428 – 4 parking spots, 2424 – 4 parking spots, 2422 – 2 parking spots, 2420 – 2 parking spots, 2416 – 2 parking spots, 2414 – 2 parking spots, 2412 – 2 parking spots, 2410 – 2 parking spots, 2408 – 4 parking spots, 2404 – 4 parking spots.

I understand that this building is to be 96 units. It will significantly negatively increase the traffic flow and congestion on this corner and alley, and for other residences in the neighborhood.

8 – The current developer is only concerned with making a profit at the expense of the Banff Trail community, and specifically its neighbors. I have never met the developer, and as a landlord, I am appalled at his/her lack of attention to tenants that he/she rents these units to. The City of Calgary police are in regular attendance at these properties. The SWAT team has been there no less than twice (full combat gear, rifles, etc) in response to weapons offences (a shooting) and drug use and drug trafficking. The fire department has been called and attended to unattended bonfires, as well. The owners/tenants have been served with bylaw infraction notices for garbage and drug paraphernal in the alley. There has been a significant increase in homeless people and crime (break and entries), individuals sleeping and passed out in the alley since these properties have been purchased by the developer. The developer is not a part of the community, and shows no regard for the neighbors and the community as a whole. He/she is driven by profit, and not by the best interests of the community.

This is not an application, by an owner, that is looking to improve Banff Trail. It is an application to take advantage of the City of Calgary re-densification policy, to the detriment of the Banff Trail community and its members.

Please, decrease the number of units and the number of storeys of this development. Please ensure that parking is available on-site to meet the needs of the residences, so as to not interfere with the current neighbors in the community.

Respectively,

Laura Lee Goetjen (owner - 2457 22a Street NW, Calgary)

403-978-3008

[Lauralee.goetjen@telus.net](mailto:Lauralee.goetjen@telus.net)

Mailing address: 3324 Constable Place NW. T2L 0L1 Calgary

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|   |   |
|---|---|
| First name (required)   | Pat   |
| Last name (required)  | Oscienny  |
| What do you want to do? (required)  | Submit a comment  |
| Public hearing item (required - max 75 characters)  | Banff Trail Bylaw 105D2021  |
| Date of meeting   | Jul 26, 2021  |
| Comments - please refrain from providing personal information in this field (maximum 2500 characters) | Object to the re-designation of land located at 2103 and 2107 - 24th Ave NW (Plan 9110GI) from mixed use to DC. |



July 8,2021

Attention:

Katarzyna Martin - City Clerk,

Office of the City Clerk

The City of Calgary, 700 Macleod Trail SE. P.O.

P.O. Box 2100

Postal Station M, Calgary Alberta, T2P 2M5

Reference:

Banff Trail

Bylaw 105D2021

2103, and 2107 -24<sup>th</sup> Ave NW

We are owners of 2104, and 2106 - 23<sup>rd</sup> AVE NW.

We are backing onto the proposed land use change.

Objections

- The proposed development does not encourage a sense of community or opportunities for family's residing in this inner city community,
- Currently, there are covenants in place that address the size of developments for in the Banff Trail area, and as such, this development does not abide by the provincial covenant,
- Change in zoning on 2 lots from 2-4 units to 61 units, this is not a modest development or modest increase in density,
- Corner lot 4-8 units row housing is appropriate for this development, increases opportunity for families to take up residence in the area,
- Based on unit size, we were told this was a family orientated development for the community, majority are 1 bedroom units or less, not family friendly,
- This development does not fit into the community setting based on its external façade and design for an inner city development, a more welcoming development has been recently built at 5<sup>th</sup> Ave and 7<sup>th</sup> St SW Sunnyside (pictures attached), and another project, the Savoy a development at 19<sup>th</sup> street and Kensington Rd NW,
- Proposed development design is industrial looking and the design fits into the downtown core versus in a developed residential neighborhood.
- Setback required on 3<sup>rd</sup> and 4<sup>th</sup> levels against the alley, so the 4 story massive wall is intrusive on the existing homes across the alley,

- Garbage (current 2 units to proposed 61), garbage management,
- Alley improvements with all additional vehicles utilizing the alley,
- Elm trees on city property (east side of the proposed project) provide a canopy for shade and welcoming green entrance to the community, and are part of the environmental street scape, preservation, where the city perseveres all healthy trees in community developments, existing curbside trees no longer exist on the developer brochure,
- Non glare glass on the units facing the alley, sunlight reflecting off the building glass and glaring into the backyards,
- Slight lines addressed to 24<sup>th</sup> Avenue and 20<sup>th</sup> street NW,
- Congestion at the above intersection, access onto 24<sup>th</sup> Ave., because of line up at 19<sup>th</sup> street NW and 24<sup>th</sup> Ave NW, and short cutting on 20<sup>th</sup> street both ways
- Venting through top of the building to reduce odour's being released at or near ground level
- Due to constant poor alley water drainage issues due to water, and ice melt water (currently surface flooding of yards), water from this massive sized planned project should all be directed east and north onto 20<sup>th</sup> street or 24<sup>th</sup> avenue drainage away from the alley.

Sincerely,

Pat Oscienny

Lynn Oscienny

Fernando Moreno Merlo

Virginia Prado Peralta















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First name (required) Christopher

Last name (required) Brovald

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) LOC2021-0019 and LOC2021-0020

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters)

I find it concerning that community members are being asked to re-submit comments regarding planning issues. Please find attached a letter submitted in March for LOC2021-0019 and LOC2021-0020. I am strongly opposed to these proposed land use redesignations. They clearly fail to satisfy the stated requirements for the permissive use of direct control districts.

March 12, 2021

City of Calgary  
P.O. Box 2100, Stn. M  
Calgary, Alberta, Canada T2P 2M5

**RE: LOC2021-0019 and LOC2021-0020, Attention: Ms. Madeline Krizan - File Manager**

---

Dear Ms. Krizan,

Please accept these comments as our opposition to the applications for land use re-designations in the community of Banff Trail, identified as LOC2021-0019 and LOC2021-0020 (the “**Applications**”), made by Civicworks on behalf of the owners of the lands subject to such applications (the “**Applicants**”).

With respect to these Applications, it appears the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.

For reference, as you are no doubt aware, provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control districts are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

“s.20(1) “Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts” and

s.20(2) “Direct Control Districts must not be used:

- (a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or
- (b) to regulate matters that are regulated by subdivision or development permit approval conditions.”

In respect of subsection 20(1), these proposed land use redesignations fail to satisfy the stated requirements for the permissive use of direct control districts. The Applicants have not identified any “unique characteristics, innovative ideas or unusual site constraints” of the proposed developments that require specific regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes. Many developments similar to the proposed developments have been constructed under RC-G and MU-1 designations respectively without any need to prohibit other uses. There is no bona fide rationale advanced by the Applicants to explain how or why the advancement of the proposed developments requires that these prohibited uses be implemented through direct control districts. Thus, having failed in every regard to satisfy s.20(1), these Applications should be denied.

In respect of subsection 20(2), the existing land use designations for the subject lands (being those implemented by the City in accordance with the Banff Trail ARP after significant public consultation and review) can be used to achieve the same result for the proposed developments regardless of whether the Applications are approved. In fact, the Applicants recently circulated postcard mailers to the community to reassure neighbors and other stakeholders that the proposed land use re-designations are unrelated to the proposed development plans for the lands, which have been approved by the City of Calgary, and which proposed developments “remain unchanged”, and such re-designations are only being sought to “provide an additional layer of certainty” and to “reinforce existing City Counsel approvals”. Providing additional certainty and reinforcing existing approvals are not valid reasons under the City of Calgary Land Use Bylaw to approve the Applications, and specifically, utilizing the land use re-designation process to designate these properties as direct control districts would directly contradict s.20(2)(a) of same. Again, it then follows

that having made these Applications with a purpose contrary to the requirements of s.20(2), these Applications should be denied.

Given the seemingly meritless nature of the Applications, it begs the question as to what purpose a re-designation of these lands to direct control districts achieves, and how this benefits the Applicants.

As the City is aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the Applicants, regarding the enforceability of the Banff Trail restrictive covenant ("RC"), which is registered against, among others, the lands subject to the Applications. Such RC prohibits the construction of more than two dwelling houses on each parcel of land subject to the RC. The lawful constraints of the RC on planning and development in certain parts of Banff Trail are undoubtedly well known to the City, being that a City solicitor wrote a letter of support for the benefit of, among others, the Applicants, in support of their court application seeking the discharge of such RC, and the City has filed a brief further affirming such support and advocating for the discharge of the RC.

Accordingly, while these Applications should fail on their merits, they must also necessarily be understood in context of such ongoing litigation, including the City's demonstrated preference in support of the Applicants with respect to the active litigation in the Court of Queen's Bench of Alberta regarding the application to discharge the RC.

Understood in that context, if approved, these Applications appear to serve a singular self-serving purpose: to attempt to create an artificial land use conflict for the Applicants, for the direct benefit of such Applicants in the ongoing litigation regarding the RC. Such conflict, if successfully constructed, will result in the Applicants owning lands that cannot be developed both in compliance with the proposed City land use re-designation and with the requirements of the RC. Bona fide conflicts of this nature have been identified in prior Alberta court cases as a factor to consider in whether to order a discharge of restrictive covenants in the nature of the Banff Trail RC.

As all interested parties should be aware, such a bona fide conflict does not exist today. Under the current land use designations for these subject lands (which, to reiterate, were recently re-designated at the initiation of the City in accordance with the Banff Trail ARP), there are permissive and compatible potential developments that would concurrently comply with such existing land use designations and the RC. While such compatible developments may not be the Applicants' preferred choice, they are nevertheless permissive and compliant. Consequently, a bona fide land use conflict does not currently exist. It would appear that the Applicants also recognize this lack of a bona fide conflict, otherwise these Applications would not be before the City for approval.

Thus, to put more bluntly, the Applications propose to arbitrarily and unreasonably prohibit use of the Applicant's lands for single detached homes, side-by-side homes, and duplex homes, with no apparent valid planning purpose for such prohibition, and with absolutely no identifiable rationale to demonstrate compliance with s.20 of the Land Use Bylaw. Instead, the sole purpose of the Applications appears to be the creation of a fiction of impossibility for the Applicants to comply with both the sought-after land use re-designation and with the RC in their own development efforts. Undoubtably, if successful in achieving these re-designations, the Applicants will then attempt to point to this conflict, transparently self-inflicted as it may be, as evidence that the RC must be ordered discharged by the courts. Such a situation, if supported by the City through approval of the Applications, can only be viewed as an absurd abuse of the land re-designation process in the context of reasonable and appropriate planning policy, and one that would surely generate concern of bias in respect of the City's approval process in light of the City's documented preference and support for the Applicants in the aforementioned RC litigation.

It must also be noted that there is, of course, no certainty that the courts will rule in favour of the Applicants and order the discharge of the RC. Even if the Applications are approved, the RC may very well be determined to remain lawful and enforceable by the courts. In such circumstance, the outcome for such subject lands from a planning perspective would be, to put it lightly, sub-optimal – no uses permitted by the direct control district land use re-designations would be permitted under the RC, and vice-versa. Such lands and the existing structures thereon would effectively be undevelopable, pending a reversal of these

proposed land use re-designations to those currently in force under the Banff ARP, and under which there are permissive and compatible uses. That sort of flip-flopping on appropriate land use designation cannot and should not be supported as appropriate planning policy.

Further, given this uncertainty in the outcome of the RC litigation, it also cannot be the case that the mere existence of the RC creates “unique characteristics” or “unusual site constraints” for purposes of satisfying s.20(1) of the Land Use Bylaw, if that rationale is advanced by the Applicants. Given the City’s existing approvals for the Applicants’ proposed developments, it will be the courts, and not the City, who ultimately determine whether such proposed developments may proceed, based on the outcome of the RC litigation. If the Applications are approved by the City based on submissions that the existence of the RC forms a “unique characteristic” or “unusual site constraint” that satisfies s.20(1), yet the RC survives litigation and is determined to remain lawful and enforceable, it cannot then follow that the Applications were ever actually compliant with s.20. A re-designation of these subject lands to direct control districts in such circumstances would have served no further benefit in advancing the proposed developments than the existing designations of RC-G and MU-1, ultimately failing to satisfy s.20(1) and directly contravening s.20(2). Instead, approval of the Applications in such circumstances would have been a purely speculative effort to sway the court to discharge the RC and to thus eliminate the “unique characteristic” or “unusual site constraint”. Such a speculative intervention in litigation to the anticipated benefit of the Applicants (and, arguably, the City), with no other compelling purpose for the re-designation, and no certainty of outcome, is clearly not valid or appropriate use of direct control districts pursuant to s.20. Accordingly, the City should firmly reject any suggestion that the existence of the RC should be considered as part of the approval process for the Applications.

In summation, the City of Calgary must not allow the land use redesignation process to be abused for such frivolous purposes, solely in a transparent attempt to advance the private litigation interests of the Applicants by creating a self-inflicted land use conflict between the proposed land use re-designations and the existing RC, and for no other valid planning or development purpose. For the City to recommend an approval for these Applications in light of the foregoing would have the appearance of an arbitrary, unfair, inequitable, and biased exercise of the land use re-designation process set out under the Land Use Bylaw, especially in light of the City’s noted written support and intervention on behalf of the Applicants in the ongoing litigation regarding discharge of the RC. We would instead expect that these Applications will be reviewed solely on their merits (or lack thereof), absent consideration of the impact of the RC on the proposed developments, and based solely on the criteria for land use re-designation to direct control districts under the Land Use Bylaw. In that respect, it must be concluded that these Applications wholly fail to satisfy the specific requirements for the re-designation of lands to direct control districts, and such Applications should thus be soundly rejected.

**Accordingly, as residents of Banff Trail, we strongly object to the proposed Applications to re-designate the subject lands as direct control districts pursuant to LOC2021-0019 and LOC2021-0020 and recommend that all applicable parties including Calgary Planning Commission and Council vote AGAINST approving these Applications if endorsed by administration.**

Sincerely,

Jori and Christopher Brovald

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- ✓ I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Rolland

Last name (required) Lequier

What do you want to do? (required) Request to speak, Submit a comment

Public hearing item (required - max 75 characters) 2103, 2107 – 24 Avenue NW, Calgary LOC2021-0020

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters) Please see my letter of opposition, attached.

Rolland C. Lequier  
2415 – 20<sup>th</sup> Street NW  
Calgary, Alberta T2R 1M1  
rolland.leq@gmail.com

July 19, 2021

*Via Public Submission to City Clerks*

Council  
City of Calgary

Dear Sir/Madam:

**Re: 2103, 2107 – 24 Avenue NW, Calgary  
LOC2021-0020  
(the “Proposed Redesignation”)**

I am in receipt of the notice related to the proposal for a land use change for the property situated at 2103, 2107 – 24<sup>th</sup> Avenue NW, Calgary (the “Lands”). I own the property immediately south of the proposed development, and as such I am personally and intimately affected by this matter. Please accept this letter as my **objection** to the Proposed Redesignation.

The Applicants herein have proposed a redevelopment of the Lands to construct 53 dwelling units, 9 live work units and retail that will be 16 meters in height. This is in contravention of the Banff Trail Area Redevelopment Plan (the “ARP”) that designate the Lands as Medium Density Low Rise. This designation prescribes a maximum height of 16 meters and does not allow retail. To proceed with the intended development, the Applicants were forced to apply for a redesignation of the Lands to MU-1 to allow a mixed use (the “Original Redesignation”).

During hearings conducted at City Council, residents objected to the application for redesignation, citing among other things that a restrictive covenant exists that precludes the construction of more than 2 dwelling houses on a single lot. City Council dismissed this argument stating that restrictive covenants do not bind City Council and in fact, they are precluded from considering the same. This latter fact is supported by legal advice provided by the City’s Solicitor in an unrelated application for a land use amendment concerning a property situated at 2471 – 23 Street NW (LOC 2018-0238, CPC2019-0753). On that file, at a Combined Meeting of Council on September 19, 2019, the City’s Solicitor states, among other things, at the 6:01:34 mark:

*“I do want Council just to understand, though, our Development Authority is specifically precluded by law from considering those restrictive covenants.” (emphasis added).*

Despite the objections of Banff Trail residents, in February of 2020 the City of Calgary approved the application and redesignated the lands as MU-1 General District. This designation accommodates the Applicants desire to redevelop the property to a mixed use of residential and commercial use, with increased height.

Certain residents (myself included), have commenced an action at the Court of Queen's Bench of Alberta to enforce the terms of the restrictive covenant and halt the intended development of the Lands. The Applicants have a cross action seeking to remove or alter the restrictive covenant to allow them to proceed (the action and cross action are collectively referred to as the "Lawsuit"). The Lawsuit is currently before the Court and the Applicants have agreed to a temporary injunction preventing further development of the Lands pending resolution of the dispute by a Justice.

One of the key arguments made by the Applicants in the Lawsuit is that the restrictive covenant conflicts with the ARP. And, in such areas of conflict, the ARP should be given deference such that the restrictive covenant should be removed or altered to allow the redevelopment to proceed.

Our response to this argument is that there is no conflict. Land use designations contained within the ARP are permissive and not mandatory. Many parcels of land are now designated with higher density classifications, but this does not force all such owners to tear down their single-family homes and build apartment buildings and rowhouses. It is possible to comply with both the terms of the restrictive covenant and the ARP, simply by maintaining the status quo of existing dwellings.

The Applicants have recognized the merits to our response and have thus made a second application for a land use change, being the matter to which this letter of objection is made (the "Proposed Redesignation"). The Applicants are now seeking to redesignate the land as DC (Direct Control). This designation carries with it the ability to create a set of rules regarding allowable use for a specific property. In this way, the Lands will be designated as prohibiting single family and duplex housing, thus putting it in conflict with the restrictive covenant. The Applicants now have support for their argument that in the face of conflict between the restrictive covenant and the ARP, the ARP shall prevail.

With that background in mind, my objection to this application is based upon Section 20 of the City of Calgary Land Use Bylaw 1P2007. At subsection 20 (1) it states:

*"20 (1) Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts."*

The fact of the matter is, nothing in the Applicants development meets the requirements of this subsection. It does not contain unique characteristics, innovative ideas or unusual site constraints... the very fact that virtually identical developments exists elsewhere in the City is proof of that. Furthermore, the proposed development was already granted approval by the City in the Original



Redesignation to MU-1, therefore it can't possibly require "*specific regulation unavailable in other land use districts*", for had it required such, the Original Redesignation would have failed.

Secondly, Bylaw 1P2007, at subsection 20 (2) states that:

"20 (2) *Direct Control Districts must not be used:*

- (i) *in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without the relaxations of this Bylaw;*"

It is a fact that the Applicants have achieved a redesignation of the Lands in the City Council decision of February 2020, wherein the land use was amended to MU-1. The designation of MU-1 allows the Applicant to proceed with its intended development with increased height and mixed use residential/retail. Since the proposed development is allowed by "*any other land use district in this Bylaw to achieve the same result*" then the effect of subsection 20 (2) would operate to preclude redesignation to DC. In the specific words of subsection 20 (2): "*Direct Control Districts must not be used*".

Further support to the fact that the Proposed Redesignation is unnecessary is evidenced by the fact that related parties have applied to develop property situated at 2022, 2026 – 24 Avenue NW. Their proposal is virtually identical in size, scope and use, and has also achieved a land use designation of MU-1. The developer of that project is not seeking a further redesignation to a DC because their lots are not subject to the restrictive covenant.

The bottom line is that the Applicant is attempting to subvert the land use application to strengthen its position in the Lawsuit, but there is no basis in law to grant this request. The only reason the Applicant needs the DC designation is to conduct an "end-run" around the restrictive covenant. Since the proposed development does not have unique characteristics that require specific regulation, the DC zoning does not apply. And since Council is specifically *precluded* from considering the terms and effect of the restrictive covenant this redesignation to DC *must not* be allowed.

I trust that Calgary Planning Commission and City Council will abide by the terms of Bylaw 1P2007 and deny the Applicants attempt at redesignation of the Lands to a DC designation if endorsed by Administration.

Yours truly,



**ROLLAND C. LEQUIER**

## FORM TITLE

Header text

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## FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT

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- ☒ I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Kerstin

Last name (required) Plaxton

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) LOC2021-0019 & LOC2021-0020

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters) PLEASE FIND MY COMMNETS ATTACHED. THANK YOU

July 18, 2021

Re: **LOC2021-0019** (2404 22 ST NW) & **LOC2021-0020** (2460, 2464, 2468 - 23 ST NW and 2103, 2107 - 24 AV NW)

To: Mayor and Council

Cc: Madeleine Krizan, File Manager;

Stuart Dalglish, General Manager, Planning & Development

Please accept these comments as my opposition to the applications for land use redesignations in the community of Banff Trail, identified as **LOC2021-0019** and **LOC2021-0020** (the “**applications**”), made by Civicworks on behalf of the owners of the lands subject to such applications (the “**applicants**”).

When reviewing these applications and developing its recommendations I expect that City Officials will act according to the rules as counselled by the City Solicitor many times previously and again at the 2019 Sept 9 Combined Meeting of Council regarding the preclusion of the Development Authority and Members of Council from any consideration related to restrictive covenants; that these applications will be reviewed solely on their merits absent consideration of any influence of the private contractual restrictive covenant on the proposed developments and based solely on the criteria for land use redesignation to direct control districts under the City of Calgary Land Use Bylaw 1P2007 (LUB), considering community, resident, and stakeholder input. In that respect, as is outlined below it must be concluded that these applications fail to satisfy the specific requirements for the redesignation of lands to direct control districts and should thus be rejected.

Considerations:

1. With respect to these Applications, it appears that the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.
2. Provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

***Direct Control Districts***

***20(1) Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.***

- (2) *Direct Control Districts must **not** be used:*
- (a) *in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or*
  - (b) *to regulate matters that are regulated by subdivision or development permit approval conditions.*
- (3) *An applicant for a Direct Control District must provide a written statement indicating why, in the applicant's opinion, a Direct Control District is necessary and why the same results cannot be achieved through the use of a land use district in this Bylaw.*
- (4) *The General Manager must review each application for a Direct Control District and advise Council as to whether or not the same result could be achieved through the use of a land use district in this Bylaw.*
3. There are current City of Calgary approvals for the proposed development at these locations.
4. The application is not supported by the City of Calgary Land Use Bylaw 1P2007 (LUB):
- (i) With existing City land use approvals for the proposed developments in place, manifestly LUB Section 20(2) sub sections (a) and (b), cited above, apply. Therefore, these subsequent applications for the employment of a Direct Control (DC) land use here is without merit and not applicable. In fact, the applicants recently circulated postcard mailers to the community to reassure neighbors and other stakeholders that the proposed land use re-designations are unrelated to the proposed development plans for the lands which "remain unchanged", that such re-designations are only being sought to "provide an additional layer of certainty" and to "reinforce existing City Counsel approvals". Providing additional certainty and reinforcing existing approvals are not valid reasons under the City of Calgary LUB to approve such applications. More specifically, utilizing the land use redesignation process to designate these properties as direct control districts would directly contradict 20(2)(a) of same. Again, it follows that having made these applications with a purpose contrary to the requirements of s.20(2), these applications should be denied
  - (ii) Furthermore, the application has not satisfied LUB Section 20(3) for DC requirements which is to indicate why a DC is "*necessary, and why the same results cannot be achieved through the use of a land use district in this Bylaw*". Again, with existing and applicable City approvals for the proposed developments in place, this subsequent application for the employment of a Direct Control (DC) land use here is unnecessary, inappropriate, and should be denied
  - (iii) Neither do these applications satisfy LUB Section 20(1), which states "*Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.*" -

because none of these conditions apply here. The applicants have not identified anything unique or innovative with the development that would justify the DC or that require specific regulation unavailable in other land use districts, and certainly none that specifically require the prohibited use of the subject lands for single detached homes, side-by-side homes, and duplex homes. Many similar developments to the proposed have been constructed under RC-G and MU-1 designations respectively without any need to prohibit other uses. There is no bona fide rationale advanced by the applicants to explain how or why the advancement of the proposed developments requires that these prohibited uses be implemented through direct control districts. Nor, *importantly* are there any unusual site constraints to consider from *the legally proscribed perspective of City of Calgary Planning Administration, Development Authority, and City Council*. Thus, having failed in every regard to satisfy s.20(1), these Applications should be denied.

With that, **as a resident of Banff Trail I recommend against both LOC2021-0019 and LOC2021-0020** and recommend that Council vote to **NOT** to approve these applications.

Thank you,  
Kerstin Plaxton  
2116 23 AVE NW

## FORM TITLE

Header text

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- ☒ I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Laura

Last name (required) Sharp

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) Banff Trail Bylaw 105D2021

Date of meeting Jul 26, 2021

Comments - please refrain from providing personal information in this field (maximum 2500 characters)

Several neighbours have reached out to inform me that they tried consistently to submit their comments over the weekend to this website but were notified that the service had an error. I wonder how many people were unable to submit their comments due to this error. Could you please extend the deadline to remedy for the technical errors? Thank you.

To city Councillors,

As the neighbour who lives on the adjacent property to the north of the applicant address, I would like to submit my comments on the proposed land use change.

Following on my previous submission to the file manager of this application, there are a few points I would like to follow up on subsequent to the CPC meeting which approved this application to go forward to council.

The applicants failed to mention specifically in their application that they are seeking the DC designation to support their current open private civil case against the 300+ landowners with RC #1358GL on title. However, this was openly discussed at the CPC meeting as can be found on the public record.

Supporting one private interest in an open court case will betray your statutory duty to balance the interests of all affected parties on an issue. I'm sure you know that violating your statutory duty is against your mandate as sworn in public officials. Aside from violating the public's trust in elected officials, the act of an intentional on record decision acting blatantly in the interest of a private commercial interest may open up liability under Canadian tort law.

"...that some plaintiffs may have an easier claim in misfeasance in circumstances where the relevant duty involves the balancing of interests or is owed to the public at large."

"However, if a municipality negligently carried out a statutory power, it would be regarded as misfeasance, and thus open to an action for liability and damages."

"If we run into situations where people at city hall, or people in the provincial government, or people of the federal government start abusing our rights, or not seeing that we are properly served, ... [the tort of misfeasance in public office] is something that the average citizen can use to effect some sort of remedy."

The city ombudsman will not review issues that are currently involved in open court cases. The council would be wise to maintain neutrality in an open private civil matter. As the city of Calgary is not a party to the current lawsuit, to uphold the public trust it is necessary to withhold decisions that are currently before a greater judicial authority. Acting in *Ultra Vires* is also not advised.

I am not a lawyer, but I believe you have access to the law department at the city who could advise on the issue. The city solicitor has stated on record that council must **not** include consideration of restrictive covenants in matters regarding land use.

Thank you for your time and attention to this matter,  
Laura Sharp

Hello Madeleine Krizan,  
(587) 576-3073  
Madeleine.Krizan@calgary.ca

Good day, I am writing to you in response to city land use application LOC2021-0019 (2404 22St NW). Let me introduce myself, my name is Laura Sharp, I am the neighbour to the north of the described piece of land. As I have been referred to in the applicant's letter to the city, I thought it was important to make sure that my words are spoken through my own voice.

Understanding that this letter will be part of the public record, I invite the proponent to clarify their assertions of what I said.

In regards to Civic Works assertion that they led any applicant engagement with me, the neighbour to the north of the property, that is not true. I have e-mail correspondence that contradicts their statement, if you would like to see it.

In order to gain audience with the proponent, I had to spend several days researching and reaching out to various contacts within their organization before I gained audience with the architects. The landowners and developers refused to take my phone calls and discuss a very friendly and collegiate invitation to meet each other and address each other's concerns. I approached them as one intelligent person to another, and suggested we could workshop ideas on the issues at hand, including the full extent of land title law.

It concerns me as well that Civicworks asserts, on my behalf, without actually consulting me, that a series of changes were undertaken to ease neighbour concerns regarding privacy. Although we discussed my concerns regarding privacy, the only changes to their proposed design that they were willing to discuss involved by-law infractions. I approached them in good faith to discuss all of the legal concerns at hand, especially how their design was in conflict with the Restrictive Covenant (RC) on title. When questioned about why the applicants would choose to make development plans that were out of alignment with the RC's on title, the representatives stated that they simply saw the RC as a cost of doing business.

All of the above mentioned activities give me more concern as to the integrity, honesty and intent of the applicant and the measures that they are willing to go through to push what they want onto the community without community support. I am more than willing to meet with Civicworks in person, or on Zoom, with the city planners to discuss the validity of their submitted statements. I challenge the truth in those words and the intention in this application.

According to the City of Calgary website,

The Direct Control Districts 20



- (1) Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.
- (2) Direct Control Districts must not be used: (a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or (b) to regulate matters that are regulated by subdivision or development permit approval conditions.

According to section 20 (2)(b), DC's must not be used in substitution of the Bylaw or to regulate matters that are regulated by subdivision or development permit approval conditions. The applicant clearly states that a written decision was made by the SDAB to uphold the conditions of the DP. Therefore, this matter is currently being regulated by subdivision approval conditions.

While there already exists approval of the intended development on this parcel of land, changing the land to a DC which prohibits the build of anything else, is redundant, superfluous, excessive and problematic for the land. It is a waste of tax payers money to consider such a maligned application. The applicant already has an approved development permit.

As you know, the owners of this lot are currently involved in an application to remove the Restrictive Covenant on title to their property. This is a matter that is currently before the provincial courts. The outcome of the case can not be anticipated, as this is a legal matter to be resolved by a provincial court judge. However, if the judge denies the removal of the Restrictive Covenant on title, then where does that leave the land? It will be impossible for anyone to ever develop anything else on the property. The current building, lovely as it is, will need to stand in perpetuity on the property, and the direction of the ARP will not be able to be realized as modest redevelopment won't even be possible.

Requesting that the applicant apply for the DC after the court case is over makes the most amount of sense for the administrative process of prohibiting developments.

I know, I've heard from the city of Calgary, too many times to count, that the city of Calgary is NOT allowed to take Restrictive Covenants into consideration when making planning decisions. (I have many recordings on file of the city solicitor stating this fact in more than one public meeting). But I thought it was important to reiterate that this matter is currently before a provincial judge.

Furthermore, the applicant has not satisfied number 20 (3) of the DC requirements which is to indicate why a DC is necessary, and why the same results can not be achieved through the use of a land use district in this Bylaw. As well, the applicant has not at all spoken to the satisfaction of item 20 (1), which states "Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts.". I am not sure which one of these would apply. The applicant certainly doesn't refer to any of the above

purposes, so it is hard to know on what grounds the CPC would actually approve a DC in this situation. One can only guess.

The lot is a standard 50x120 corner lot, it has no special characteristics that make it unique and there are no unusual constraints. According to the online oxford dictionary, usual means: not habitually or commonly occurring or done. The RC is quite usual, it is on title on nearly 400 surrounding properties. Having a property with no RC on title in this land area would be quite unusual. Thank you for your time, Madeleine, in reviewing my comments and concerns. Please feel free to follow up if you want to clarify anything or to chat,

All my best, Laura Sharp

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- ✓ I have read and understand that my name and comments will be made publicly available in the Council agenda. My email address will not be included in the public record.

First name (required) Kristian

Last name (required) Quinn

What do you want to do? (required) Submit a comment

Public hearing item (required - max 75 characters) LOC2021-0019, CPC2021-0758, LOC2020-0205, CPC2021-0904

Date of meeting Jul 26, 2021

Please accept these comments as our opposition to the applications for land use re-designations in the community of Banff Trail, identified as LOC2021-0019 and LOC2021-0020 (the "Applications"), made by Civicworks on behalf of the owners of the lands subject to such applications (the "Applicants").

With respect to these Applications, it appears the singular published objective is to prohibit the use of these lands for single detached homes, side-by-side homes, and duplex homes.

For reference, as you are no doubt aware, provisions of the City of Calgary Land Use Bylaw in respect of the redesignation to direct control districts are contained at Part 2, Division 2. Section 20 addresses the overall use of direct control districts, and provides that:

"s20(1) "Direct Control Districts must only be used for the purpose of providing for developments that, due to their unique characteristics, innovative ideas or unusual site constraints, require specific regulation unavailable in other land use districts" and

s.20(2) "Direct Control Districts must not be used:

Comments - please refrain from providing personal information in

(a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or

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1/2

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Jul 19, 2021

10:32:02 AM

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characters)

(b) to regulate matters that are regulated by subdivision or development permit approval conditions."

As the City is aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the Applicants, regarding the enforceability of the Banff Trail restrictive covenant ("RC"), which is registered against, among others, the lands subject to the Applications. Such RC prohibits the construction of more than two dwelling houses on each parcel of land subject to the RC. The lawful constraints of the RC on planning and development in certain parts of Banff Trail are undoubtedly well known to the City, being that a City solicitor wrote a letter of support for the benefit of, among others, the Applicants, in support of their court application seeking the discharge of such RC, and the City has filed a brief further affirming such support and advocating for the discharge of the RC.

Attachment 1 to the Planning & Development Report to the Calgary Planning Committee, dated June 3, 2021, contained the following comments in respect of these applications:

"The existence of the restrictive covenant creates unusual site constraints that prevent implementation of the goals contained in the

July 19, 2021

City of Calgary  
P.O. Box 2100, Stn. M  
Calgary, Alberta, Canada T2P 2M5

**RE: LOC2021-0019 and LOC2021-0020**

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Please accept these comments as our opposition to the applications for land use re-designations in the community of Banff Trail, identified as LOC2021-0019 and LOC2021-0020 (the "**Applications**"), made by Civicworks on behalf of the owners of the lands subject to such applications (the "**Applicants**").

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- (a) in substitution of any other land use district in this Bylaw that could be used to achieve the same result either with or without relaxations of this Bylaw; or
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As the City is aware, there is ongoing active litigation between groups of landowners in the Banff Trail neighborhood, which includes the Applicants, regarding the enforceability of the Banff Trail restrictive covenant ("**RC**"), which is registered against, among others, the lands subject to the Applications. Such RC prohibits the construction of more than two dwelling houses on each parcel of land subject to the RC. The lawful constraints of the RC on planning and development in certain parts of Banff Trail are undoubtedly well known to the City, being that a City solicitor wrote a letter of support for the benefit of, among others, the Applicants, in support of their court application seeking the discharge of such RC, and the City has filed a brief further affirming such support and advocating for the discharge of the RC.

Attachment 1 to the Planning & Development Report to the Calgary Planning Committee, dated June 3, 2021, contained the following comments in respect of these applications:

"The existence of the restrictive covenant creates unusual site constraints that prevent implementation of the goals contained in the Municipal Development Plan (MDP) and Banff Trail ARP. The intent of the DC District is to address the unusual site constraints and allow for multi residential development on the site in furtherance of the MDP and Banff Trail ARP.

...

If the restrictive covenant is upheld, the vision in the Banff Trail ARP for the area cannot be achieved. The key issue is that The City's higher policy goals may not be realized unless the DC District is supported, which is also required for local area plans to be implementable, and ultimately buildable."

It must be recognized that designating the sites as DC Districts will not necessarily result in a favourable decision for the City of Calgary or the Applicants in respect of the RC litigation or the discharge of the RC

from title to the lands. Even if the Applications are approved, the RC may very well be determined to remain lawful and enforceable by the courts. **The Applicants do not require a DC District to implement the developments contemplated by the Applications. They require discharge of the RC from title to the lands. That determination is the jurisdiction of the Courts of the Province of Alberta, not the City of Calgary.**

If the Applicants fail to have the RC discharged, and the City of Calgary moves ahead with these land use redesignations, the outcome for such subject lands from a planning perspective would be, to put it lightly, absurd – no uses permitted by the direct control district land use re-designations would be permitted under the RC, and vice-versa. Such lands and the existing structures thereon would effectively be undevelopable, pending a reversal of these proposed land use re-designations to those currently in force under the Banff ARP, and under which there are currently permissive and compatible uses. That sort of flip-flopping on appropriate land use designation cannot and should not be supported as appropriate planning policy.

Accordingly, if the Applications are approved by the City based on submissions that the existence of the RC forms a “unique characteristic” or “unusual site constraint” that satisfies s.20(1), yet the RC survives litigation and is determined to remain lawful and enforceable, it cannot then follow that the Applications were ever actually compliant with s.20. A re-designation of these subject lands to direct control districts in such circumstances would have served no further benefit in advancing the proposed developments than the existing designations of RC-G and MU-1, ultimately failing to satisfy s.20(1) and directly contravening s.20(2). Instead, approval of the Applications in such circumstances would have been a purely speculative effort to assist a litigation effort to the anticipated benefit of the Applicants (and, arguably, the City), with no other compelling purpose for the re-designation, and no certainty of outcome.

Accordingly, the City should firmly reject any suggestion that the existence of the RC should be considered as part of the approval process for the Applications.

For the City to approve an approval for these Applications in light of the foregoing would have the appearance of an arbitrary, unfair, inequitable, and biased exercise of the land use re-designation process set out under the Land Use Bylaw, especially in light of the City’s noted written support and intervention on behalf of the Applicants in the ongoing litigation regarding discharge of the RC. We would instead expect that these Applications will be reviewed solely on their merits (or lack thereof), absent consideration of the impact of the RC on the proposed developments, and based solely on the criteria for land use re-designation to direct control districts under the Land Use Bylaw. In that respect, it must be concluded that these Applications wholly fail to satisfy the specific requirements for the re-designation of lands to direct control districts, and such Applications should thus be soundly rejected.

**Accordingly, as residents of Banff Trail, we strongly object to the proposed Applications to re-designate the subject lands as direct control districts pursuant to LOC2021-0019 and LOC2021-0020 and recommend that all applicable parties vote AGAINST approving these Applications.**

Sincerely,

Kristian & Morgan Quinn