

Court of King's Bench of Alberta

Citation: Western Securities Limited v Rocky View (County), 2026 ABKB 382

Date: 20260515
Docket: 2301 06910
Registry: Calgary

Between:

Western Securities Limited

Applicant

- and -

Rocky View County Also Known As the Municipal District of Rocky View No. 44

Respondents

**Memorandum of Decision
of the
Honourable Justice Susan L. Bercov**

I. Introduction

[1] On January 12, 2021, the Rocky View County Council (Council) approved terms of reference (TOR) for the Gardner Area Structure Plan Project (Gardner ASP) on lands (Lands) owned by Western Securities Limited (Western).

[2] The Gardner ASP was a developer-led and developer-funded residential development project that was proposed to occur on the Lands. Western was the developer.

[3] On November 28, 2022, Council passed a resolution (Decision) to rescind the TOR for the Gardner ASP, resulting in the discontinuance of the project.

[4] Western filed a judicial review of the Decision.

[5] Western argues that the Decision is procedurally unfair in two respects. The first is that no reasons for the Decision were given. The second is that Council did not provide Western with an opportunity to amend the TOR before passing a motion to rescind the TOR.

[6] Western also argues that the Decision is unreasonable because Council did not consider whether Western should be given an opportunity to amend the TOR.

[7] The County argues that the Decision was carried out in a procedurally fair manner, complying with the duty of procedural fairness. The County disagrees with Western that there is a duty to provide formal reasons and the County disagrees that there is a duty to provide Western with an opportunity to amend the TOR.

[8] The County also disagrees with Western that the Decision is unreasonable. While there are no formal reasons for the Decision, the County argues that the reasons are discernable from the Record of Proceedings (Record) that discloses that there were several problems with the TOR. Considering these challenges, the Decision is reasonable.

[9] In adjudicating this judicial review, I must consider the following issues:

- 1) Is the Decision procedurally unfair because Council did not provide formal reasons or because Council did not provide Western with an opportunity to amend the TOR before rescinding it?
- 2) Is the Decision unreasonable in failing to consider whether Western should be given an opportunity to amend the TOR?

II. Factual Background

[10] On January 12, 2021, Council approved the TOR for what came to be known as the Gardner ASP. In the TOR, Council directs that a wholly developer funded area structure plan be drafted for the Lands to provide a framework for future growth in the area.

[11] The TOR provides that the Gardner ASP shall be drafted to align with the following three statutory documents:

- a) The Calgary Metropolitan Region Board (CMRB) Interim Growth Plan
- b) The County Plan/Municipal Development Plan (MDP)
- c) The Elbow View Area Structure Plan.

[12] Under Other Matters, paragraph 8, the TOR states:

In the event that there are changes or updates to County policies regarding the preparation of ASPs, this TOR will allow for the project to proceed in accordance with Council approved policy and would not require amendment.

[13] On August 15, 2022, the CMRB approved a Growth Plan (New Growth Plan). The New Growth Plan replaced the CMRB Interim Growth Plan.

[14] On September 13, 2022, Council passed a motion rescinding its approval for the Terms of Reference for the Elbow View Area Structure Plan. The Elbow View project was proposed immediately east of the Gardner Project.

[15] On September 20, 2022, the County's Planning Manager emailed Western advising that Council rescinded the TOR for the Elbow View Area Structure Plan due to new requirements brought in by the New Growth Plan. The email indicates that the County's Planning and Development Department (Department) will be drafting a report to Council recommending that Council rescind the TOR for the Gardner ASP. The email advises that Western does have the option to request to speak to Council or submit a letter if Western wishes to rebut the Department's recommendation.

[16] On September 27, 2022, Western requested a meeting with the Planning Manager. It appears from an email dated November 9, 2022, that there was a meeting.

[17] On November 9, 2022, the Planning Manager sent a further email to Western attaching a draft report and advising that the report will go to Council on November 29 for decision. The email indicates the Planning Manager is aware that Western would like to address Council on the project. The email advises that Western also has the ability to submit a letter to Council for their consideration. While the item is not a public hearing and thus there is no automatic right to speak or submit a letter, the Planning Manger indicates that they allowed others these opportunities and the Planning Manager expects Council would do the same for Western.

[18] On November 18, 2022, the Planning Manager followed up with another email to Western to see if Western was still planning on attending and speaking to Council on November 29. The email asks Western to let the Department know whether Western will be attending and/or submitting a letter.

[19] On November 29, 2022, the Department issued a written request for decision (Request for Decision) from Council regarding rescinding the TOR.

[20] The Request for Decision recommends that Council rescind the TOR because of challenges the Department noted in aligning the Gardner ASP with the New Growth Plan. In particular, the Request for Decision notes the following:

- a) The project was expected to be complete by the end of 2021, however, to Administration's knowledge, there has been no significant work completed to meet the deliverables outlined within the Terms of Reference, and no public engagement has been undertaken.
- b) The Department assessed the Gardner ASP against the policies in the New Growth Plan and the MDP and concluded that the Gardner ASP would be assessed as a new hamlet under both the New Growth Plan and the MDP.
- c) The New Growth Plan limited the maximum allowable area for new hamlet growth areas to 260 hectares (640 acres), which was significantly less than the proposed Gardner ASP area.
- d) The New Growth Plan required proposals for new hamlet growth areas to demonstrate necessity to meet established growth pressure and market demand. The MDP also required demonstrated market need for the establishment of a new hamlet. The Department's assessment was that this may be difficult to demonstrate considering development capacity within existing growth areas and county residential areas in the County.

- e) The MDP also required proposed new hamlets to be appropriately located within the existing settlement pattern. The Department identified that the Gardner ASP was not contiguous with existing settlement areas as approval for the Elbow View Area Structure Project Terms of Reference had been rescinded.

[21] There is no evidence that Western made a request to either attend the meeting and speak to Council or to submit a letter for Council's consideration.

[22] On November 29, 2022, Council passed a resolution to rescind the TOR for the Gardner ASP. The Minutes from the meeting state: "Moved by Councillor Hanson that the Gardner (West Elbow Valley) ASP Terms of Reference be rescinded. Carried"

III. Is the Decision Procedurally Unfair?

[23] Questions of procedural fairness are assessed on whether the proceeding met the level of fairness required by the common law: see *Case v Edmonton (City)*, 2023 ABKB 232 at paras 21 – 25, see also *R. v Ferzli*, 2020 ABCA 272 at para 21

[24] *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at paras 23-27 sets out the factors to consider in determining the level of procedural fairness required.

[25] Western argues that Council had a duty to provide Western with formal reasons and an opportunity to submit a revised TOR because:

- a) The Supreme Court's decision in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 expands the duty to provide formal reasons set out in *Baker*; and
- b) The *Baker* factors impose a high level of procedural fairness on County Council.

A. Does Vavilov Expand the Duty to Provide Formal Reasons?

[26] Western's position is that *Vavilov* expands the duty to provide formal reasons set out in *Baker*. Western argues that *Vavilov* represents a shift in culture from deference to justification for municipal decisions. Under *Vavilov*, municipal decision makers must ensure that their reasons demonstrate that they have considered the consequences of a decision and that the consequences are justified in light of the facts and law.

[27] The Supreme Court stated in *Vavilov*, para 136, that "...where reasons are provided but the reasons fail to provide a transparent and intelligible justification as explained above, the decision will be unreasonable". Western argues that by extension, if there are no reasons the decision will be unreasonable.

[28] While I agree with Western that *Vavilov* shifts the culture for judicial review of administrative decisions to one of justification, I disagree that *Vavilov* expands the duty of procedural fairness set out in *Baker*.

[29] Prior to *Vavilov*, *Baker* established that in some circumstances, an administrative decision maker is required to provide formal reasons. In determining under what circumstances formal reasons are required, courts must examine all factors, including those set out at paras 23 – 27.

[30] If the Supreme Court in *Vavilov* intended to require municipal decision makers to provide formal reasons for all decisions, regardless of the circumstances, this change would be clearly and expressly set out in the decision. It is not. Further, *Vavilov* expressly recognizes at paras 136 and 137 that there will be cases where the duty of procedural fairness does not require formal reasons and provides as an example where a municipality passes a bylaw.

[31] In summary, while I agree with Western that *Vavilov* shifts the approach to judicial review by prioritizing the decision maker's justification for the decision, I disagree that *Vavilov* expands or changes the duty of fairness to provide formal reasons. Whether formal reasons are required to comply with the duty of fairness remains to be considered under the *Baker* factors.

B. Do the Baker Factors Impose a High Level of Procedural Fairness?

[32] Western argues that when the *Baker* factors are examined, a high level of procedural fairness arises including a duty to provide formal reasons and a duty to provide Western with an opportunity to submit an amended TOR. I disagree for the reasons set out below.

1. Nature of the Decision Being Made/Process

[33] Under this factor, I must consider how close the administrative process is to the judicial process. The closer the administrative process is to the judicial process the more likely procedural protections closer to the judicial model will be required by the duty of fairness.

[34] Western argues that the resolution rescinding the TOR effectively cancelled the Gardner ASP. It was done by way of motion and vote without particulars or any record of any debate or deliberations. Western argues that this lends itself to a high level of procedural fairness.

[35] I am not satisfied that either the nature of the decision or the process followed in making it resemble the judicial process. I agree with the County that the Decision is limited in its implication. It was not a decision in relation to the ASP itself; it was a decision to rescind the TOR for the ASP. It did not prevent Western from coming forth with an alternate TOR. Western may still propose an alternate or amended TOR for Council's consideration.

2. Nature of the Statutory Scheme

[36] The role of the Decision within the statutory scheme helps determine the content of the duty of fairness owed. Greater procedural protections will be required when no appeal procedure is provided within the statute or when the Decision is determinative of the issue and further requests cannot be submitted.

[37] Western argues that the statutory scheme requires that planning decisions should not infringe on the rights of individuals except to the extent necessary for the overall greater public interests. Because there are no reasons, there is no information as to how competing interests were balanced.

[38] The requirements under the statutory scheme to pass the resolution are that the resolution be passed at a council meeting held in public and that quorum is present. These requirements were met in this case. There is no appeal from the Decision. Lack of any appeal procedures such that the decision effectively ends the issue often indicates a higher duty of fairness. However, in this case the Decision is not determinative of the issue. Western can submit a revised terms of reference for the project.

3. Importance of the Decision to the Affected Individual

[39] Western argues that the importance of the Decision is significant as Western cannot develop the Lands which impacts their value significantly.

[40] The Record does not establish that Western cannot develop the Lands. The Record is clear that there were regional planning considerations that applied to decisions made by the County, including the requirement that area structure plans must be consistent with the New Growth Plan and must be approved by the CMRB. Western received the Request for Decision. Western was aware of concerns that the TOR did not comply with these regional requirements. Following the Decision, Western retained the ability to submit an alternate or revised TOR. Western did not. The Record is silent as to why.

[41] In summary, I am not prepared to infer from the Record that Western is not able to develop the Lands. Even if that is the case, I am not satisfied that it was the Decision that precluded development of the Land.

4. The Legitimate Expectations of the Individual Challenging the Decision

[42] The legislation does not require Council to provide formal reasons or to provide developers with an opportunity to submit a revised term of reference before rescinding an approved term of reference. There is no evidence in the Record of any industry standard or practice of municipal administrative bodies providing formal reasons or an opportunity to submit a revised term of reference for an area structure plan before rescinding an approved term of reference.

[43] Western argues that there were representations in the TOR that there would be communication about planning changes and policy changes and an ability to adjust without simply cancelling the project. These representations led to a reasonable expectation on the part of Western that there would be consultation and discussion and an opportunity to amend the TOR before any decision was made.

[44] I agree with Western that there are several provisions in the TOR indicating flexibility in terms of aspects of the project and that there would be discussions and communications between the County and Westerns as the project evolved. I am satisfied that these terms created a reasonable expectation that there would be discussions and communications as changes occurred and that some changes would not require amending the TOR.

[45] However, I am not satisfied that the terms of the TOR created an expectation that Western would have the ability, regardless of the nature of the changes, to incorporate changes without amending the TOR or submit an amended TOR before rescinding the TOR.

[46] Western relies on paragraph 8 of the TOR:

In the event that there are changes or updates to County policies regarding the preparation of ASPs, this TOR will allow for the project to proceed in accordance with Council approved policy and would not require amendment.

[47] I agree with the County that this provision is very specific and refers to County policies. There are no terms in the TOR that indicate changes to the Interim Growth Plan or MDP can be addressed without amending the TOR

5. The Choices of Procedure

[48] In analyzing what procedures the duty of fairness requires I must also consider and respect the choices of procedure made by the administrative body, particularly when the legislation leaves to the administrative body the ability to choose its own procedures.

[49] As noted in *Vavilov* producing formal reasons is not easy in situations where a municipality passes a vote. While there may be agreement on the ultimate outcome, different members may have different reasons. I agree with Western that this significantly complicates providing formal reasons.

[50] I agree with the County that by rescinding a TOR where there are significant concerns regarding the ability to comply with mandatory requirements, a clear message is sent to the developer of the risks involved in investing further time and funds.

IV. Conclusion

[51] Considering all factors I conclude that in this case the level of procedural fairness owed to Western is at the lower end. I am satisfied that there was a duty to advise Western of any concerns regarding alignment with the New Growth Plan and MDP, and to provide Western with the opportunity to respond to those concerns. I am not satisfied that there was a duty to provide Western with formal reasons or an opportunity to submit a revised TOR prior to the Decision.

[52] The Record is clear that the Department sent a draft of the Request for Decision to Western. The draft outlined the concerns. Western met with the Manager of the Department to discuss the concerns. The Department advised Western more than once that, while there was no absolute right to appear before Council or submit a letter without approval, the Department expected that any request to make representations at the meeting and /or submit a letter to Council would be approved. While Western did not avail itself of these opportunities, I am satisfied that the steps the County took prior to the Decision satisfied the duty of procedural fairness.

V. Is the Decision Unreasonable?

A. Legal Principles

[53] *Vavilov* is clear that the standard of review analysis begins with a presumption that reasonableness is the applicable standard in all cases. The narrow exceptions to the presumption do not apply in this case. Therefore, I am satisfied that the standard of review is reasonableness.

[54] *Vavilov* provides the following guidance to judges in applying the reasonableness analysis:

- Reasonableness review is meant to ensure that courts intervene only where it is truly necessary to do so to safeguard the legality, rationality and fairness of the administrative process: see para 12.
- The focus of reasonableness review is on the decision actually made by the decision maker, including both the reasoning process and the outcome: see para 83.

- A court applying the reasonableness standard does not ask what decision the court would make, conduct a de novo analysis, or seek to determine the correct answer to the issue. Instead, the court considers only whether the decision, including both whether the outcome and the rationale for the decision is reasonable: see para 83.
- A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The hallmarks of reasonableness are justification, transparency and intelligibility: see para 99.
- The Applicants bear the burden of establishing that the decision is unreasonable. The court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency. Alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. Minor missteps are not sufficient: see para 100.
- The principle of responsive justification means that if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention: see para 133.
- Concerns regarding arbitrariness will generally be more acute in cases where the consequences of the decision for the affected party are particularly severe or harsh, and a failure to grapple with such consequences may well be unreasonable: see para 134.
- The corollary to the degree of power that administrative decision makers have over the lives of ordinary people is a heightened responsibility to ensure their reasons demonstrate that they have considered the consequences of a decision and that the consequences are justified: see para 135.
- In cases where no formal reasons are provided, the reasoning process that underlies the decision will not usually be opaque. In these cases, the reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision. As noted by McLachlin C.J. in *Catalyst*, "the reasons for a municipal bylaw are traditionally deduced from the debate, deliberations and the statements of policy that give rise to the bylaw": see para 137

[55] While s 539 of the *Municipal Government Act (MGA)*, RSA 2000, c M-26 prohibits courts from reviewing bylaws or resolutions for their wisdom, policy choices or effectiveness in achieving their aims, the section does not eliminate reasonableness as a standard of review: *Koester v Wheatland County*, 2025 ABCA 308, at paras 39 and 40.

B. Western's Position

[56] Western's position is that the Record discloses no rational or justification for the Decision. Western acknowledges that where there are no reasons *Vavilov* directs the reviewing court to the record as a whole to understand the decision, However, Western argues that the record, as discussed in *Vavilov*, is the debate, deliberations, and the statements of policy. In this case, there is no record of any debate or deliberations. Western argues that the Request for Decision is the recommendations of government employees or bureaucrats. Recommendations of government employees are not part of the record that *Vavilov* refers to .

[57] Western also argues that Council has a duty under Part 17 of the *MGA* to balance individual interests with the overall public interest. Council has a responsibility under *Vavilov* to demonstrate that it considered the consequences of the decision to the developers and stakeholders and that the consequences are justified.

[58] Western's position is that the Decision is unreasonable because there are no reasons and no record of any deliberations, analysis, or debate demonstrating that Council considered the impact on the developers and stakeholders. There is nothing in the Record demonstrating that the Council considered whether to provide Western with an opportunity to amend the TOR and nothing that justifies their decision to rescind without considering whether to provide Western with an opportunity to amend the TOR. Accordingly, there is no basis to determine whether the rationale for the decision is justified or logical.

C. County's Position

[59] In response to Western's argument that the Record discloses no rationale or basis for the Decision, the County's position is that I can look to the Request for Decision. This document clearly discloses the reasons why Council rescinded the TOR.

[60] Relying on Justice Reed's decision in *Koester v Wheatland County*, 2024 ABKB 103 at para 123, 2025 ABCA 308, the County argues that the appropriate approach for judicial review of a municipal resolution in light of the application of s 539 of the *MGA* involves considering two questions. The first is whether the statutory and regulatory scheme were reasonably followed. The second is to look at all the facts, using the reasonableness standard of review, and assess whether the Decision was aberrant, overwhelming, or one that no reasonable municipality would have taken.

[61] In this case the County argues that it is clear that the County reasonably followed the statutory scheme. While no longer the case, at the time the TOR was approved, and at the time of the Decision, the County was a member of the CMRB. As such, the County was bound by the framework set out in Part 17.1 of the *MGA* and the Calgary Metropolitan Region Board Regulation. This statutory framework mandated that area structure plans must comply with any growth plans, and development plans and required the County to apply to the CMRB for approval of any area structure plan. There is no discretion regarding these requirements.

[62] The TOR complied with the Interim Growth Plan, and the MDP when the TOR was approved. However, in 2022 when the Decision was made, the CMRB had approved the New Growth Plan, and the County rescinded the terms of reference for an adjacent area structure plan. These changes raised significant concerns that the TOR did not comply with the New Growth Plan, and the MDP and, as a result, the Gardner ASP would not likely be approved by the CMRB.

[63] In summary, the County's position is that the statutory and regulatory scheme were reasonably followed. The impetus for Council's decision was to ensure that it was not allowing the continuation of the preparation of the Gardner ASP which, in the assessment of the Department, would not comply with the MDP and New Growth Plan. While there were other options available to Council, considering all the facts, it cannot be said that the option of rescinding the TOR was aberrant, overwhelming, or one that no reasonable municipality would have taken.

D. Analysis

[64] I disagree with Western's very narrow interpretation of what a reviewing court can consider in understanding the decision where no reasons are given. While *Vavilov* at para 137 quotes from McLachlin C.J. that traditionally reasons for a bylaw are deduced from the debate, deliberations and statements of policy, the language used by the Supreme Court in paras 137 and 138 of *Vavilov* is clear that I am to look at the whole of the record and where the record is not clear, the larger context.

[65] In this case the Record includes the Request for Decision. *Vavilov* mandates that I must look at the whole of the Record, including the Request for Decision, to understand the decision. Like the situation in *Koester*, at para 46 of the Court of Appeal's decision, in this case the context enables me to infer why Council passed the resolution; namely, that it relied on the Request for Decision. The inference is based on the reason why the municipal employees created the document, to get a decision from Council, and the fact that no other information was provided to Council.

[66] I am satisfied that the reasons why Council passed the resolution are clear. The TOR was inconsistent with both the MDP, and the New Growth Plan and any area structure plan based on the TOR would not likely be approved by the CMRB

[67] I am also satisfied that in passing the resolution Council reasonably followed the statutory and regulatory scheme. The requirements for passing the resolution were met. The resolution followed the statutory framework that mandated area structure plans to comply with growth plans and development plans.

[68] Lastly, I conclude that Western has not established that the Decision was aberrant, overwhelming, or one that no reasonable municipality would have taken. Western argues that the Request for Decision is speculative. I disagree. While it is not fact but an opinion of the Department, there is no information indicating that the opinion is based on incorrect facts, or an improper interpretation of the legislation or plans. There is no evidence that the Department could not reasonably and logically come to their opinions based on the terms of the New Growth Plan and MDP.

[69] I agree with Western that rescinding the TOR was only one option. Other options were available. Council could have adjourned to provide Western with an opportunity to amend the TOR. Council could have adjourned to get a second opinion. Council could have allowed the TOR to continue and made an application to the CMRB to approve the Gardner ASP based on the TOR to see if it would be approved. These were all options.

[70] When I consider the whole of the Record and the larger context, I do not conclude that the option Council chose was aberrant, overwhelming, or one that no reasonable municipality would have taken. Although given an opportunity for input, Western did not provide any input.

There was no reason for Council to be concerned that the opinions in the Request for Decision were wrong or unreasonable. There was no information before Council that Western wanted to revise the TOR or that it was possible to revise the TOR in a manner that would satisfy both the developers and the statutory framework. While Western complains that Council did not consider the consequences of the rescission on the developers, no information was provided to Council on what those consequences were. It is reasonable to infer without any information that rescinding the TOR would have some consequences in terms of not being able to proceed to develop the Lands in the manner proposed under the TOR and that there would be some wastage of time and money. However, those are not consequences that flow from the Decision. Those are consequences that flow from the requirements that any area structure plan must align with the New Growth Plan and the MDP. Adjourning the Decision to allow Western to propose an amended TOR would not change those consequences. Further, if Western wanted to amend the TOR to comply, the Decision did not preclude Western from doing so. Under all these circumstances, I am not persuaded that it was unreasonable for Council not to consider the consequences to Western or that it was unreasonable for Council not to provide Western with an opportunity to amend the TOR before rescinding it.

VI. Conclusion

[71] Western's application for judicial review is dismissed.

[72] If the parties are not able to agree on costs, they may each provide me with written argument, within 20 days limited to 5 pages each plus copies of any cases they rely on.

Heard on the 16th day of April, 2026.

Dated at the City of Calgary, Alberta this 15th day of May, 2026.

Susan L. Bercov
J.C.K.B.A.

Appearances:

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