SUPERIOR COURT

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF BEDFORD

No. 460-17-002145-159

DATE: January 5, 2017

PRESENT: THE HONOURABLE FRANÇOIS TÔTH J.S.C.

ROBERT BENOIT
FRANÇOIS CHAMPAGNE
CHARLES WELDON
BARBARA SHRIER
JEAN GAUDET
LOUISE GRATTON
THÉRÈSE LECLERC
ROBERT JOANNISSE
CATHERINE ZELLWEGER
DAVID JAMES
LILIANNE DE GRANPRÉ
DIANE DUCHESNE
SERGE GAGNÉ
JACQUES VIAU
DOMINIQUE DUFFAUD
DOMINIQUE PARENT
JEAN PERRAULT
NICOLE BEAUDRY
ANN DYER
MICHAEL WAGELI
DIANA DYER
ROBERT LAROCQUE
NICOLE LAFLEUR
and

JT 1409

ÉRIC PINEAULT
Plaintiffs,
v.
TOWN OF SUTTON
Defendant

JUDGMENT

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[1] A group of 24 citizens (the plaintiffs) of the town of Sutton (the "Town" or "Sutton") applied for zoning by-law 254 (RZ 254) and subdivision by-law 256 (RL 256), adopted by Sutton on June 15, 2015, as well as a large number (around 50) of other by-laws adopted in the wake of the referendum approval process of RZ 254 and RL 256, to be quashed and rendered null.

[2] According to the plaintiffs, the by-laws in question were [TRANSLATION] "replacement by-laws" of existing by-laws, and there should have been a revision of the municipality's urban planning program first. They claimed that there were irregularities in the procedure by which the by-laws were adopted, and that those irregularities were fatal defects.

[3] Sutton held the opposite opinion and argued that it had fully complied with the legal procedure for amending its urban planning by-laws.

* * * * *

BACKGROUND

[4] Sutton is a small municipality of 4000 inhabitants located 40 kilometres to the south of Granby, close to the United States border. It is part of the RCM of Brome-Missisquoi and the administrative region of Montérégie.

[5] The land in Sutton has an unusual topography owing to the Sutton mountain range,[1] large wooded zones (covering over 80% of the area), agricultural zones, a village core, the Mont Sutton ski resort and the fact that there are secondary homes ("vacation homes") located across the entire area. More than 50% of the population of Sutton is seasonal.[2] Recreation and eco-tourism are dominant.[3]

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1 The Sutton mountain range is the principal special physical feature in the area: Exhibit P-1 at 8.
2 Exhibit P-1 at 10.
3 Exhibit P-1 at 4.

[6] Sutton is the regional centre of tourism of the RCM of Brome-Missisquoi.

Sutton's urban planning program

[7] Sutton has an urban planning program, which contains the following:

> [TRANSLATION]
>
> The urban planning program is a legally required guidance document designed to meet the requirements of the *Act respecting land use planning and development* (R.S.Q. c. A-19-1),[4] and to give the town of Sutton a shared vision enabling it to pursue urban planning policies and development plans set out in a municipal management document in service to the community.[5]
>
> The urban planning program is a document that guides the development and land use of an area over a 15- to 20-year period. It is:
>
> - a planning tool to provide a framework for development;
> - a management tool that affects citizens' lifestyles;
> - a promotional tool for projects with promise for the future;
> - an intervention tool for implementing projects for the benefit of future generations.[6]

[8] In order to understand the origins of the dispute, we must go back in time.

Revision of the urban planning program

[9] In 2002, Sutton and its township were merged. Consequently, the urban planning program had to be revised, especially since it would have to be in conformity with the RCM's development plan, which would come into effect in 2008.

[10] Sutton wrote:

> [TRANSLATION]

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4 Hereinafter "LAU".
5 Exhibit P-1 at 3.
6 Exhibit P-1 at 1.

> The revision was an opportunity for citizens and government to reflect on Sutton's future development as a town, and in particular as a setting for social, economic, cultural and environmental life.[7]

[11] Everything began in January 2005, with the proposal of a public consultation process. Following many working sessions, a draft urban planning program (draft 114) and draft urban planning by-laws were filed in November 2007. These documents were presented at a public consultation meeting. The program and by-laws were adopted by the Council in January 2008. A register was opened. Over 880 names were registered, forcing a referendum to be held. Draft 114 was abandoned. The Council decided to employ a mediator specializing in urban planning (Bruno Bergeron) to reconcile the different visions of development and urban planning, with respect to both the urban planning program and urban planning by-laws.

[12] The mediation process with the citizens began in the fall of 2008. It included many consultations, public meetings, filing of briefs, workshops, filing of drafts and public presentations, as well as the use of the Internet to gather comments from citizens.[8] Over 100 volunteers participated in the process.[9]

[13] The mediator, Bruno Bergeron, submitted his recommendations in April 2009, and revised versions of the urban planning program and by-laws were prepared.

[14] In 2010, the legal process for adopting the program and by-laws was set in motion. Urban planning program **114-1**, zoning by-law **RZ 115-2**[10] and subdivision by-law **RL 116-1**[11] were adopted by the Council. There was no request for a referendum or for an assessment of conformity from citizens.[12]

[15] Urban planning program 114-1 came into force on **March 8, 2011** as did, concurrently, RZ 115-2 and RL 116-1, after 30 months of consultative work.

[16] This urban planning program was innovative and introduced new notions, such as the mountainside protected area (PAM), of which there will be much discussion hereinafter.

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7 Exhibit P-1 at 1.
8 Exhibit P-1 at 2.
9 Exhibit P-1 at v.
10 Exhibit P-2.
11 Exhibit P-3.
12 LAU, s. 103.

Content of Sutton's urban planning program

[17] A strategic vision of conservation, urban planning and development was drawn up when the urban planning program was revised. That vision, spanning 20 years, was stated as follows:

> [TRANSLATION]
>
> In 2029, Sutton will be a rural territory with a welcoming multicultural population, known for its dynamic agricultural, recreational, tourism and socio-cultural sectors. The foundation of this will be the inhabitants' participation in the sustainable development of their area.
>
> Residents and visitors will be attracted by its conservation areas, landscapes, public spaces, farmland and a range of cultural, artistic and sports activities in a healthy environment that is accessible to all age groups.[13]

[18] One of the principles flowing from the development vision was the creation of high-altitude protected or conservation areas, and mountainside protected areas. This is how the urban planning program defines these areas:

> [TRANSLATION]
>
> - High-altitude conservation area
>
> . . . The high-altitude conservation areas are the areas located at over 550 metres in altitude, and are intended to maintain the landscape and protect the headwater streams of the Sutton, Yamaska Sud-Est and Missisquoi rivers. In addition to including the highest peaks of the Mont Sutton mountain range (Sommet Rond, Mont Gagnon, the Dos d'Orignal, mounts Écho, Brock and Brûlé), these high-altitude conservation areas include a very high proportion of 30% to 50% slopes, and the majority of areas with slopes over 50% in the Sutton area. They also encompass the habitats of the spring salamander, northern dusky salamander and Bicknell's thrush, three threatened or vulnerable species in Canada and Québec.[14]
>
> - Mountainside protected area (PAM)

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13 Exhibit P-1 at 54.
14 Exhibit P-1 at 55.

> The mountainside protected areas are the areas between 350 and 550 metres in altitude to which regulatory measures will apply so as to preserve the landscape and protect the headwater streams of the Sutton, Yamaska Sud-Est and Missisquoi rivers. In addition to including a few peaks of the Mont Sutton mountain range, these medium-altitude zones encompass a large proportion of 30% to 50% slopes, as well as habitats of the spring salamander and the northern dusky salamander, two threatened or vulnerable species in Canada and Québec.[15]

The broad lines concerning land use in the urban planning program

[19] We will quote the urban planning program on this:

> [TRANSLATION]
>
> The broad lines concerning land use in the area convey the town of Sutton's vision of conservation, land use and development in its territory over a period of twenty (20) years, and are accompanied by means of action to translate these policies into urban planning by-laws.
>
> Once they come into effect, these broad lines will make it possible to validate the expediency of requests for changes to urban planning by-laws and to evaluate municipal and private plans that are subject to special provisions.
>
> **The following broad lines concerning land use are proposed:**
>
> - **Consolidate existing development zones while ensuring development is consistent with the environment's capacity to accommodate it;**
> - **Protect and promote Sutton's heritage in terms of buildings, nature and landscapes, in particular in conservation areas;**
> - **Support the development of recreational tourism, ecotourism, artistic and cultural activities, and related land use, for a sustainable, dynamic economy;**
> - **Develop services and equipment adapted to the needs of Sutton's residents and vacationers (residences, businesses, artistic, cultural and sports activities, etc.);**

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15 Exhibit P-1 at 55-56.

- **Revitalize the village core by creating an atmosphere suited to the rural nature of Sutton;**

- **Protect, promote and favour the development and diversification of agricultural activities and production methods;**

- **Improve the local and regional transportation network.**

Other proposed policies do not flow from the urban planning program or by-laws:

- Improve families' quality of life in all spheres of their daily activities;

- Establish an environment that favours qualitative development of enterprises and attracts self-employed workers;

- Set up tools for informing and consulting inhabitants in an ongoing manner.

The urban planning program, by-laws and all interventions in the Sutton area must comply with the principles of sustainable development.[16]

[Bold in the original.]

[20] Avenues of action were identified to implement these broad lines,[17] for example:

[TRANSLATION]

. . . The town of Sutton thus expresses its wish to implement the means that were identified in the context of determining the land use policies.

1.1.4. Restrict real estate development in conservation zones and their protection areas.[18]
. . .

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16 Exhibit P-1 at 59-60.
17 Exhibit P-1 at 62.
18 Exhibit P-1 at 63. See Map 10 of P-1 (Conservation plan), which identifies the conservation zones, including high-altitude conservation zones and PAMs.

> 2.9 Integrate buildings into the natural landscape in a harmonious manner.
>
> . . .
>
> 2.9.2 Regulate the construction of buildings in areas with steep slopes (30% and over).
>
> . . .
>
> 2.9.3 Limit real estate development in areas that are over 350 metres in altitude and over 550 metres in altitude through qualitative and normative provisions. .
>
> . . .
>
> 2.9.4 Maintain the prohibition of construction at altitudes over 600 metres.[19]
>
> . . .
>
> [Our emphasis.]

[21] The urban planning program defined twelve broad land uses, including the [TRANSLATION] "mountainside protected area" PAM 1:[20]

> [TRANSLATION]
>
> The mountainside protected area (PAM 1) zone covers areas where there is little human activity or development, and its purpose is to showcase high-quality natural areas while authorizing some compatible uses, such as:
>
> - low-density residential use.[21]
>
> [Our emphasis.]

[22] In PAM 1, the land occupancy density was set at a maximum of two dwellings per hectare[22] (one dwelling/5000 m^2), according to the urban planning program.[23]

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19 Exhibit P-1 at 67-68.
20 Exhibit P-1 at 76 and the map in Annex 3.
21 Exhibit P-1 at 82.
22 One hectare = 10 000 m^2, in other words, 100 m x 100 m. One hectare = 2.47 acres.
23 P-1 at 84.

[23] On Plan A of Annex 3 of the urban planning program, we find that PAM 1 is on the border of conservation area C-1. This is easy to understand: C-1 is a high-altitude area (C-1 > 550 m) and PAM 1 is a medium-altitude area (350 m < PAM 1 < 550 m).[24]

Changes to RZ 115-2 and RL 116-1

[24] In November 2013, Louis Dandenault was elected Mayor of Sutton. He was concerned about young families' access to home ownership and the survival of the village school.

[25] At the beginning of 2014, the Council and public servants in the urban planning department began studying the urban planning by-laws.

[26] In October 2014, the Mayor held a closed meeting with councillors Kenneth Hill[25] and John Hawler, the municipal inspector, a real estate broker, three excavation contractors, two property developers, a land surveyor, a landscaping contractor and a construction contractor. They wanted to know about the concerns of people in the construction and property development industries, and find out what were the obstacles to real estate development in Sutton[26].

[27] Following that meeting, the urban planning department redoubled its efforts to make the changes desired by the Council.

[28] At the beginning of 2015, the town of Sutton sped up its legal steps to amend RZ 115-2 and RL 116-1. The changes took into account the topics and complaints of the participants in the October 2014 meeting.[27] The evidence is preponderant that the purpose of the changes was to facilitate and stimulate residential construction, in particular in PAM areas.

[29] On February 2, 2015, during the regular meeting of the Sutton municipal Council, a notice of motion was filed. It was to the effect that by-law 254, entitled [TRANSLATION] "Zoning By-Law," would be tabled for adoption. According to the notice of motion, the object of the by-law was to replace town of Sutton zoning by-law No. 115-2, as

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24 See Map 10 in annex to Exhibit P-1.

25 Mayor of Sutton from 2005 to 2009.

26 This meeting was made public in July 2015 by the daily newspaper *La Voix de L'Est*, Exhibits P-4 and P-5.

27 Document Exhibit D-12 is an accurate summary of the topics discussed at the meeting of October 9, 2014.

amended.[28] At the same meeting, a notice of motion was filed; it was to the effect that by-law 256 would replace subdivision by-law RL-116-1.[29]

[30] The notice to citizens dated February 1, 2015 provided that [TRANSLATION] "a notice of motion was filed with a view to replacing the zoning and subdivision by-laws."[30]

[31] On March 2, 2015, the Council adopted the first draft of 254, entitled [TRANSLATION] "Zoning By-Law" (RZ 254), and, on the same day, adopted the first draft of by-law 256, entitled [TRANSLATION] "Subdivision By-Law" (RL 256).[31]

[32] The Council held an information session on February 21, 2015 in the context of the [TRANSLATION] "replacement of zoning and subdivision by-laws".[32] Citizens could come to the session and consult a summary of the proposed amendments to the by-laws.[33] Around 30 people showed up. Maps of municipal areas were displayed on the walls. The Director of Urban Planning, Réal Girard, gave an impromptu presentation. It was acknowledged that this was not the public consultation meeting required under the LAU.

[33] Next, the Council gave notice that there would be a public consultation meeting on this topic on March 11, 2015.[34] That public notice referred to the repeal of by-laws RZ 115-2 and RL 116-1 by by-laws RZ 254 and RL 256, respectively.

[34] On March 21, 2015, over 200 citizens came to the public consultation meeting in the municipal Council room, which exceeded the capacity of the room. The consultation was rescheduled so that it could be held in a place able to receive more people.

[35] A new public notice was published for a public consultation meeting on April 11, 2014, at the Saint-André church in Sutton.[35]

[36] On April 11, 2014, there was a crowd at the Saint-André church. It was estimated at 350 citizens. Even the rood screen had to be opened. That had not been seen for ages.

[37] In the morning, the director of urban planning, Mr. Girard, gave a presentation lasting an hour and a half using a "PowerPoint"-style visual aid.[36] In the afternoon, citizens submitted briefs (in particular, against the drafts), and asked questions.

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28 Exhibit P-19.
29 *Ibid.*
30 Exhibit D-9.
31 Exhibit P-20.
32 Exhibit D-7.
33 Exhibit P-21, a three-page document.
34 Exhibit P-6.
35 Exhibit P-7.
36 Exhibit P-8.

[38] The evidence is preponderant that Mr. Girard did not identify the by-law provisions that could be subject to approval by way of referendum, contrary to what was announced in the agenda[37] and what is required under section 127 LAU. Since there are over 123 zones in Sutton and given the number of proposed amendments, some of which targeted all zones, the number of requests for approval by way of referendum could easily exceed a thousand, or even several thousand.

[39] The first time the [TRANSLATION] "by-law modifying and consolidating zoning by-law 115-2" was discussed was at the municipal Council meeting on June 1, 2015, as was subdivision by-law 116-1[38].

[40] On June 15, 2015, Sutton Council adopted[39] the second draft by-law 254, [TRANSLATION] "Zoning By-Law" ("RZ 254/2")[40] and the second draft by-law 256, [TRANSLATION] "Subdivision By-Law" (RL 256/2).[41]

[41] Section 305 of RZ 254/2 provides:

> [TRANSLATION]
>
> **Repeal**
>
> The present by-law amends, for all legal purposes, zoning by-law No. 115-2 in accordance with the table of amending amendments in annex to and forming an integral part of the present by-law.[42]

[42] Since these by-laws could be submitted for approval by way of referendum, Sutton issued a public notice on July 22, 2015, in compliance with section 132 LAU. The public notice referred to RZ 254/2, entitled "By-law modifying and consolidating the zoning by-law 115-2".[43]

[43] The notice began by stating that a summary of the second drafts could be obtained free of charge, and that it was also available on the Town's website. It informed citizens that the second drafts contained provisions concerning which interested parties in the zones in question or contiguous with those zones could request that the by-laws be submitted for approval by way of referendum. Citizens could sign a request so that those in the zone concerned or a contiguous zone could put their name in a register so that the provision in question would be subject to approval by way of referendum if the required

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37 Exhibit P-8 at 2.
38 Exhibit P-22.
39 Exhibit P-23.
40 Certified copy, Exhibit P-10.
41 Certified copy, Exhibit P-11.
42 Exhibit P-10.
43 Exhibit P-12; a public notice of the same sort was issued regarding RL 256/2.

number of signatures was reached. The witnesses spoke of this procedure as a [TRANSLATION] “request to open a register,” which is the expression we will use from now on.

[44] From July 22 to 30, 2015, requests to open registers were made by citizens. According to the December 1, 2015 affidavit by Town urban planner, Réal Girard, 51 valid requests were received.

* * * * *

THE DISPUTE

[45] On August 20, 2015, the plaintiffs instituted an application for declaratory judgment to quash and render null municipal by-laws and for an interlocutory injunction against the Town.

[46] On November 2, 2015, the Council adopted [TRANSLATION] “residual by-laws” RZ 254 and RL 256, in other words, provisions of RZ 254 and RL 256 for which there was no request to open a register.

[47] On November 17, 2015, residual by-laws RZ 254 and RL 256 came into force after having received the legally required approvals and the certificates of conformity from the regional county municipality (RCM).

[48] On November 27, 2015, the plaintiffs amended their application to obtain a provisional injunction to suspend the effects of by-laws RZ 254 and RL 256 for 10 days

[49] The application for a provisional injunction was heard on December 2, 2015. At the judge’s suggestion, the parties decided to go directly to the merits and to skip the interlocutory injunction stage.

[50] On December 3, 2015, Ouellet J. dismissed the application for a provisional injunction.[44]

[51] On January 18, 2016, the Town submitted for adoption 50 by-laws amending RZ 254/2 and RL 256/2. The 50 by-laws were in response to the July 2015 requests to open registers.[45] They also show that the Town wanted to adopt RZ 254/2 and RL 256/2 as presented.

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[44] 2015 QCCS 5709.
[45] Exhibit P-32.

[52] On Friday, February 5, 2016, that is, three days before the beginning of the hearing, the defence sent the plaintiffs Exhibit D-1.1, a 600-page document containing the requests to open registers submitted by citizens in July 2015.

[53] On Monday, February 8, 2016, the hearing began before the undersigned. Three days of hearing were planned.

[54] On Wednesday, February 10, 2016, the Town published 50 public notices in the Sutton newspaper *Le Guide*, announcing the opening of the registers, which would take place on February 19, 2016.

[55] On Friday, February 12, 2016, after five days of hearing, the proceedings were adjourned. The defence had begun the hearing of its witnesses. The plaintiffs filed an application for a safeguard order:

(1) so that the referendum process subsequent to the 50 public notices published in the weekly newspaper *Le Guide* of February 10, 2016 would be suspended;

(2) to prohibit the Town from issuing permits, in particular, for construction and subdivision, on the basis of zoning by-law 254 and subdivision by-law 256, until a final judgment was rendered in these proceedings.

[56] The plaintiffs showed that four of the 50 by-laws subject to the referendum process contained errors. The Town agreed that those four by-laws had to be abrogated.

[57] The Court allowed the referendum process to continue for the 46 other by-laws provided that the coming into force of the regulations was suspended. The Town was therefore prohibited from requesting the RCM to assess the conformity of any of these by-laws until a final judgment was rendered on the merits.

[58] The Town admitted that there were two other errors in by-law RZ 254, which were also discovered by the plaintiffs. The Court suspended the issuing of subdivision and construction permits until corrections were made to section 50 and the calculation of the height of buildings in zone PAM 07.

[59] Subsequently, Sutton abrogated five by-laws owing to errors found in the public notices.[46] It also adopted by-law 254-3-2016, entitled [TRANSLATION] “By-law modifying by-law 254 in order to re-establish the standard of one main building per lot and in order to incorporate into by-law 254 special provisions regarding height calculation in zone PAM -07”[47] in order to correct the two errors previously identified.

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46 See the five stricken by-laws in table D-14.

47 Exhibit P-58.

[60] On Friday, February 19, 2016, 45 registers were therefore opened.

[61] Of the 45 registers:[48]

- 16 by-laws were deemed approved;
- 29 by-laws were not deemed approved.

[62] Regarding the 29 by-laws that were not deemed approved, the Council was waiting for the Court's judgment before deciding what to do.

* * * * *

THE PLAINTIFFS' ALLEGATIONS

[63] The plaintiffs' main allegations were the following.

(1) The notices of motion and the public notices

[64] The plaintiffs alleged that the notices of motion issued by Sutton did not describe the purpose of the by-law accurately: sometimes it was spoken of as a replacement, sometimes repeal, sometimes amendment and sometimes consolidation.

[65] Moreover, the plaintiffs made the same criticism of the notice of public consultation. The LAU provides that the public consultation process begins with a public notice and provides for the content of that notice:[49]

[66] The title of the notice was as follows:[50]

> Public Consultation Meeting
>
> To those persons or bodies wishing to express an opinion regarding the first draft By-laws number 254 and number 256 entitled "Règlement de zonage" (Zoning By-law) and Règlement de lotissement" (Subdivision By-law);

[67] The notice continued, describing the purposes of the draft regulations:

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48 Exhibit D-14.
49 Section 126(1) LAU.
50 Exhibits P-6 and P-7.

> The first draft By-Law number 254 entitled “Règlement de zonage” (Zoning By-law) is to repeal By-law number 115-2 entitled “Règlement de zonage de la Ville de Sutton” (Zoning By-law of the Town of Sutton);
>
> The first draft By-Law number 256 entitled “Règlement de zonage” (Zoning By-law) is to repeal By-law number 116-1 entitled “Règlement de lotissement de la Ville de Sutton” (Subdivision By-law).
>
> [Our emphasis.]

[68] In these notices, there was no question of amendments to or consolidation of existing by-laws. They gave notice of a zoning by-law designed to repeal the existing RZ 115-2. The plaintiffs argued that the reason RZ 115-2 was repealed was to replace it with a new by-law.

(2) The public consultation meeting

[69] Proving the interest that the issue raised in the community, the citizens mobilized massively to attend the public information meeting on April 21, 2015. The citizens of Sutton were clearly interested in the development of their community and land-use planning in the area.

[70] Section 127 LAU states that, during a public meeting, the person presiding must explain the draft by-law. However, both draft by-laws were presented at the same time, without distinction and in a general manner, so that the citizens attending were not able to identify which provisions might concern them and could not assess the degree to which the planned changes could affect them.[51] This was shown through the testimony of a number of citizens who had attended.

[71] According to the plaintiffs, the PowerPoint presentation[52] was a marketing tool to [TRANSLATION] “sell” the plan, rather than to explain it in accordance with the LAU. For example, on page 3 of the document, the agricultural zones are added to the PAM and CONS zones to reach the impressive figure of 73% of the land being [TRANSLATION] “subject to restrictions” (understand [TRANSLATION] “protected”).[53] The [TRANSLATION] “redrawn” PAM zones in the draft by-law were also presented,[54] but with no indication of the area lost.[55]

[72] Since the draft by-laws contained provisions making them subject to approval by way of referendum, some of which could target one or another (or even all) of the

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51 See the PowerPoint, Exhibit P-8 at 14 and 15.
52 Exhibit P-8.
53 See also the table, Exhibit P-8 at 9.
54 Exhibit P-8 at 6, 7.
55 For this, consult the table in the plaintiffs’ Exhibit P-51 E.

municipality's zones, under section 127 LAU, the person responsible for explaining the draft by-laws was obliged to identify those provisions and explain the nature of and means of exercising the right of persons concerned to apply to open a register.

[73] That public information obligation makes it possible for people concerned to know:

(a) whether they are affected by the proposed changes and, if so, how;

(b) whether they can challenge the proposed changes;

(c) and, where applicable, how they can challenge them.

[74] Sutton's urban planner, Mr. Girard, testified that it would have been impossible to comply with the provisions in the act because there were so many that could have been subject to approval by way of referendum.

[75] Indeed, it was a Herculean task. Municipal document P-14 says that 269 by-law provisions could be subject to approval by way of referendum, and that they could apply to a number of different zones, or even all of the Town's 125 zones, which is why a large number of registers was possible.

(**3) The summary**

[76] On June 15, 2015, Sutton's town Council adopted the second draft of zoning by-law 254 and the second draft of subdivision by-law 256. The LAU provides that the Town then had to issue a public notice.

[77] The public notice of July 22, 2015[56] invited interested people to consult a summary online or available at the Town Hall offices, since the Town chose not to describe the purpose of the provisions of the second draft by-law in the public notice announcing the possibility for interested persons to request to participate in a referendum.

[78] According to the plaintiffs, the summary in question[57] was not a summary; it was a 172-page legal document of such complexity that it interfered with the citizens' right to information.[58]

[79] A summary must be [TRANSLATION] "a digest, an abridged version" of the provisions of the second draft.[59] The summary of a draft by-law cannot be the draft by-

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56 Exhibits P-12, P-13.

57 Exhibit P-14.

58 Section 44 *Charter of human rights and freedoms*, CQLR, c. C-12.

59 According to the document, "Manuel de procédure, modification du plan et des règlements d'urbanisme," prepared by the Direction générale de l'aménagement of the ministère des Affaires

law itself. However, the summary placed online or made available to citizens contained the complete provisions of RZ 115-2 and the complete provisions of the second draft of RZ 254. The two by-laws were placed in parallel columns, with the comments [TRANSLATION] "added," [TRANSLATION] "amended," [TRANSLATION] "repealed," [TRANSLATION] "status quo" for RZ 254, in accordance with a colour code for each of the comments.[60] The document also stated whether the provision was subject to approval and which zones were concerned. People who wanted to know which provisions concerned them had to read the whole document, identify the topic that concerned them, determine whether the provision affected them and whether it was subject to approval by way of referendum. Prior to doing this, they had to know which zone they lived in.

[80] The summary could be found under the title "Zoning By-Law number 115-2 modifications table (in French only)" on Sutton's website.[61] The only maps available on that page were those of draft by-laws.[62]

[81] It should be noted that the document "Chart of concerned zones and contiguous zones"[63] referred to the zones of by-law 115-2, which was then in force. This was because interested persons' requests to open a register must be assessed on the basis of the zones as they are before the adoption of a draft amending by-law.[64]

[82] The situation becomes more complicated when people have to find out what zone they live in by searching elsewhere on the site in the zoning plan for by-law 115-2[65] and by identifying which zones are contiguous with their own according to the table. Even the person responsible for Sutton's website and deputy clerk had trouble finding the zone where she lived.

[83] The evidence is preponderant that people could not, except by doing in-depth research and demonstrating perspicacity, find out which zone they lived in using the Town's website. Despite all the technology, the solution was a good old phone call to the Town, and this was suggested in the Frequently Asked Questions section.[66]

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municipales, placed online on the Town's website. See P-17, Annex 1 at 47, which provides examples. This is also the definition of "sommaire" in the dictionary *Le Petit Robert de la langue française* 2013.

60 A similar 22-page document employed the same method for RL 256, Exhibit P-16.

61 Exhibit D-3.

62 Maps A, B and C.

63 Exhibit P-18.

64 Exhibit P-17 at 25.

65 Exhibit P-36, map on a scale of 1:20 000.

66 The first question listed under the link [TRANSLATION] "Frequently Asked Questions" invited citizens to contact the urban planning department, D-2.

[84] From the citizens' testimony and the documentary evidence filed, the Court draws the conclusion that the procedure for amending RZ 115-2 and RL 116-1 was extraordinarily complex owing to many factors added one to the next:

- The notice of motion and public notices, and the titles of the draft by-laws, referred successively to replacement, repeal, amendment and consolidation of urban planning by-laws;

- The public consultation was not in compliance with the information obligations set out in the LAU regarding provisions that could be subject to approval by way of referendum;

- A "summary" of the zoning by-law that was 172 pages long and drowned citizens in a sea of provisions;

- A very large number of repealed, amended and added sections, and consolidated numbering;

- Public notice of the adoption of the second draft by-laws was given on July 22, 2015, in the middle of the vacation period;

- A mandatory deadline of eight days to make a request to open a register with the required number of signatures and that had to clearly indicate the provision in question and the zone or zone sector from which it came.[67]

(4) Replacement of RZ 115-1 and RL 116-2 without revision of the urban planning program

[85] According to the plaintiffs, the amendments to the by-laws amounted to nothing more nor less than a complete replacement of the zoning and subdivision by-laws, and Sutton was therefore required to first revise the urban planning program, according to the LAU.

[86] The LAU provides:

> **110.10.1.** To replace the zoning or subdivision by-law, the council of the municipality shall, on pain of nullity, adopt the replacement by-law on the same day as it adopts the by-law revising the planning program.

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67 Section 133 LAU.

> The zoning or subdivision by-law must be in conformity with the revised planning program, as provided by the by-laws adopted on the same day.

[87] According to the plaintiffs' analysis of RZ 254 compared with RZ 115-2,[68] there were:

(a) 102 identical provisions (24%);

(b) 64 added provisions (15%);

(c) 137 amended provisions (32%);

(d) 128 repealed provisions (30%).

[88] In his affidavit of November 28, 2015, Sutton's urban planner, Réal Girard, spoke of consolidation, amendment, clarification, adjustment and renumbering of the zoning and subdivision by-laws.

[89] Using the municipal document,[69] Mr. Girard explained that, despite the apparent amendments of sections labelled [TRANSLATION] "status quo," that label was applied when it was considered that the meaning or purpose of the provision had been maintained.

[90] According to that document, of the 306 sections comprising RZ 254/2, 270 provisions could be subject to approval by way of referendum in one or more zones.

[91] Based on the above tally, the plaintiffs were of the opinion that a complete by-law was purely and simply replacing RZ 115-2. The Town's veritable intention was to repeal by-laws 115-2 and 116-1, and to replace those by-laws completely by by-laws RZ 254/2 and RL 256/2.

[92] The Town's urban planner explained that he had used the [TRANSLATION] "administrative coding" method, which consisted in integrating by-law amendments directly into the former text (if applicable) and renumbering it. Consequently, the numbering of the by-law provisions had been completely changed.

[93] According to the plaintiffs, including provisions and annexes, RZ 254/2 totalled no less than 648 pages and was a complete zoning by-law in itself. It was clear that the second draft by-law 254 targeted the pure and simple replacement of by-law RZ 115-2. Thus, when the notice of motion and public notices spoke of repeal and replacement of

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68 Exhibit P-56.

69 Exhibit P-14. It is RZ 254/2.

the zoning and subdivision by-laws,[70] they expressed the Town's veritable intention. It was probably during a legal verification that the title was quietly changed to [TRANSLATION] "amendment and consolidation" to avoid the obstacle of the five-year revision of the urban planning program.

[94] However, in the form in which it was issued,[71] the notice of motion ([TRANSLATION] "replacement of RZ 115-2 and RL 116-1 as amended") did not provide the veritable object of what the Council claimed to have done in the end: amendment and consolidation of the by-laws. The notice of motion was completely silent on the proposed amendments of the by-laws.[72] The plaintiffs alleged that such insufficiency regarding the notices was equivalent to failure to give notice and rendered the by-laws null.[73]

[95] According to the plaintiffs, the Town could not replace RZ 115-2 without revising its urban planning program, which could not take place until March 8, 2016.[74] In this case, the coming into force of the replacement by-laws was subject to a single referendum vote by all of the people in the Town, and not to dozens of local or sectoral referendums.

[96] The plaintiffs submitted the same reasoning for RL 256.

(5) The urban planning program under attack

[97] The plaintiffs claimed that urban planning program 114-1, which was in force, was attacked by RZ 254 and RL 256, and that this constituted an indirect revision of the program.

[98] The configuration of the 14 PAM zones provided for in the zoning plan of RZ 115-2[75] corresponded to the delimitation of the mountainside protected areas in Annex 3 of urban planning program 114-1.[76] Their borders were at an altitude of 350 to 550 metres.[77] Likewise, the conservation areas C-1[78] were high-altitude protected and conservation areas, and they were integrated into RZ 115-2 as "CONS" zones.

[99] In order to show that RZ 254 and RL 256 were replacement by-laws having the indirect effect of revising the urban planning program, the plaintiffs filed highly

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70 Exhibits P-6, P-7, P-19 and P-21.
71 Exhibit P-19.
72 Section 356 *Cities and Towns Act*, CQLR, c. C-19.
73 *Immeubles Port Louis Ltée v. Lafontaine (Village)*, [1991] 1 S.C.R. 326 at 355-356.
74 Section 110.3.1 LAU.
75 Exhibit P-2, Annex 3.
76 Exhibit P-1.
77 Exhibit P-1 at 55 and 76.
78 Exhibit P-1, Annex A, Plan A.

sophisticated evidence on the impact that by-laws RZ 254/2 and RL 256/2 would have on the broad land use policies and means of action in urban planning program 114-1.

[100] According to the urban planning program, its broad land use policies make it possible to validate the expediency of requests to change municipal by-laws.[79]

[101] The plaintiffs alleged that RZ 254 and RL 256 did not comply with the broad land use policies of urban planning program 114-1, in particular with respect to mountainside protected areas[80] (PAM). The by-law amendments directly targeted the promotion of real estate development in the PAM zones identified in RZ 115-2, which was in contradiction with the 114-1 urban planning program, which was designed to limit such development.[81]

[102] According to the plaintiffs, RZ 115-2 and RL 116-1 were in accordance with the urban planning program and were steps taken to implement the general land use policies. Thus, limits on residential construction in PAM zones had been adopted. Any subsequent amendments were limited to being equivalent or stricter in order to be in compliance with the urban planning program (*limiter*) as adopted, so long as the program had not been revised.

Changes made by RZ 254 and RL 256

[103] The plaintiffs filed a number of tables to show the changes made to the RZ 115-2[82] PAM and CONS zones by RZ 254/2 and RL 256/2, which:

- changed their borders from elevation contours to lot lines;
- purely and simply eliminated some PAM zones by [TRANSLATION] “rezoning” them as RUR or agricultural (A) zones;

[104] Table P-51 C shows these changes to the PAM and CONS zones in terms of area; tables P-51 D and P-51 E show, respectively, the gains and losses of the zones in question. It can be seen that zones PAM-01, PAM-02 and PAM-03 disappeared and were integrated into other zones,[83] and that PAM-13 suffered a substantial loss in area.

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79 Exhibit P-1 at 59.

80 Exhibit P-1 at 55, 59, 63 (1.1.4) and 68 (2.9.3), 82 (7.1.9). See the PAM 1 land uses in Plan A, Annex 3 of Exhibit P-1. The borders of the land use zones follow the altitude contours (Exhibit P-1 at 76).

81 Exhibit P-1 at 68, action 2.9.3.

82 Exhibit P-51.

83 See the map, Exhibit P-38, which shows the zones under RZ 254/2. Compare this with Exhibit P-36, which shows the zones under RZ 115-2.

[105] In the urban planning program, the land occupancy density in the conservation area was limited to 0.125 dwellings/hectare, and construction at over 600 metres in altitude was prohibited.[84] The plaintiffs alleged that a decrease in the area of CONS zones would change the land use and thus decrease the protection that the urban planning program had provided those areas.[85]

[106] The plaintiffs also alleged that the land occupancy density of the PAM zones, which RZ 115-2 set at 0.25 dwellings/hectare[86] (that is, 1 dwelling/4 hectares) limited development in PAMs in accordance with the action identified in the urban planning program.[87] Any increase in that density would be inconsistent with objective 2.9 of the urban planning program.

[107] The plaintiffs also examined the by-law changes that had the effect of reducing restrictions[88] on residential construction and real estate development in PAM and CONS zones (Table P-51 F). According to their calculations, the changes made an additional 800 hectares (1977 acres) available for residential construction.[89]

[108] Based on the conservation plan in the urban planning program,[90] Table P-51 H shows the changes made (in terms of more or less area) to the high-altitude conservation and mountainside protected areas with respect to their borders. The same thing[91] was done for the land use zones in urban planning program 114-1.[92]

[109] Originally, zoning plan 115-2[93] perfectly integrated the conservation plan and land uses as set out in the urban planning program.[94] The PAM and CONS zones followed elevation lines, which is logical when we are speaking of altitude.

[110] By-law RZ 254 changed everything: zones were then delimited by lot lines, and, as Sutton's urban planner explained, for lots spanning two zones, a rule of [TRANSLATION] "dominance" was applied. Thus, if a lot was mostly in a RUR zone, the entire lot was zoned RUR, with no regard for altitude.

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84 Exhibit P-1 at 82-84.
85 Exhibit P-1 at 55 [TRANSLATION] "conservation zones."
86 Much lower than the PAM maximum of two dwellings/hectare in the urban planning program, Exhibit P-1 at 83-84.
87 Exhibit P-1 at 68, action 2.9.3.
88 Area of the lots, slope, etc., see *infra*, Specific changes.
89 302 hectares have to be subtracted from the increase.
90 Exhibit P-1, Map 10.
91 Exhibit P-51, Table I.
92 Exhibit P-1, Annex 3.
93 Exhibit P-36
94 Exhibit P-1, Map 10 and Annex 3, Plan A.

[111] The land uses that had been set out in the urban planning program according to altitude were no longer followed,[95] and, according to the plaintiffs, this was a major violation of the objectives of the urban planning program.[96] In short, it was a substantial change that required prior revision of the urban planning program.

Specific changes made by RL 256

[112] The plaintiffs' table, Exhibit P-54, lists the specific changes made by RL 256 to by-law RL 116-1, which was adopted with the urban planning program in 2011.

[113] The plaintiffs alleged that the purpose of the changes was to promote real estate development in PAM zones by:

(a) permitting road construction on land where the slope was equal to or greater than 30% (instead of 20%);

(b) permitting the construction of a private local road with a longitudinal slope of 15% instead of 12%;

(c) repealing the method for calculating slopes set out in RL 116-1, which established a standard in accordance with a lot's mean slope and a minimum lot surface area for construction (for example, an area of 8 hectares was required if the slope was greater than 20%);

(d) changing the borders of some PAM zones and integrating them into RUR zones, which had the consequence of reducing the minimum area for construction from 4 hectares (in a PAM zone) to 1 or 2 hectares, depending on the zone, since in some RUR zones there was a request for a referendum;[97]

(e) expanding the definition of a driveway (not a private road) from a road that could be longer than 75 metres, but could lead to only a single residential building, to a road that could lead to three or more dwellings in separate buildings (which is a private road), which had a direct impact on the calculation of the area that could be deforested per lot.[98]

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95 Exhibit P-1 at 68, actions 2.9.3 and 2.9.4.

96 On the meaning of [TRANSLATION] "objective of the urban planning program," see *Di Palma c. Montréal (Ville de Montréal*) 2014 QCCS 4599 at paras. 301 to 312.

97 RL 256 reduces the minimum size in RUR zones from 2 hectares, as it was under RL-116, to 1 hectare.

98 Read in correlation with point (a) under Specific changes made by RZ 254.

Specific changes made by RZ 254

[114] The plaintiffs' table P-55 lists specific changes made by RZ 254 to by-law RZ 115-2, which was adopted with the urban planning program in 2011.

[115] The plaintiffs alleged that the purpose of the changes was to promote real estate development in PAM zones by:

(a) increasing the area of deforestation for constructing a 1200-m^2 building, which would be 2000 m^2 including the driveway, but in that case would not include the deforestation of the 75-metre or longer private road serving three or more dwellings in separate buildings;

(b) eliminating the specific norm concerning the maximum height of a building constructed on an embankment;

(c) eliminating the special provisions for calculating the height of buildings in PAM zones, which has to be read with the preceding provision concerning embankments;

(d) eliminating the prohibition on cutting trees in the front setback, except for a window of a maximum width of eight metres, which, combined with the two preceding measures, has major visual impact in mountain zones;

(e) reducing the minimum undivided area maintained in its natural state from 80% to 50% in the case of integrated residential projects; this measure was dropped following the opening of registers;

(f) increasing the slope of driveways from 12% to 15% for a third of the intervals;

(g) eliminating the maximum front setback of 100 metres, which makes construction at higher altitudes possible;

(h) changing the borders of PAM zones from altitude contours to lot property lines.

[116] These changes were requested by the developers at the meeting of October 9, 2014,[99] and were designed to facilitate real estate development in PAM zones.

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[99] Exhibit D-12.

[117] According to the plaintiffs, these were numerous, significant and substantial changes to RZ 115-2 and RL 116-1, and were contrary to the principles, spirit and objectives of the urban planning program. The changes applied to the whole area[100] and were of collective interest. Under the LAU, this made it mandatory to revise the urban planning program since they were replacement by-laws.

[118] The urban planning program places great importance on conservation areas, as was shown above. RZ 254 and RL 256 were radical changes to the use of those areas, which the urban planning program was designed to protect. The plaintiffs alleged that at issue were not simple adjustments or one-time amendments, but questions that concerned the community.

[119] The *Complément au Manuel de procédure* by the ministère des Affaires municipals says:

> [TRANSLATION]
>
> Revision of the urban planning program is the keystone of the new process: if there is no revision of the program, there is no replacement of zoning or subdivision by-laws.
>
> The replacement of zoning and subdivision by-laws is under section 110.10.1. This provision is now the only instrument allowing municipalities to replace these regulations.[101]

[120] Upon the occasion of the five-year revision of the urban planning program, the CMQ can be seized with determining the conformity of replacement by-laws by any qualified voter (s. 137.10 LAU). Replacement by-laws must be approved by the whole community (s. 136.1 LAU). The procedure followed by Sutton avoids these obligations, which are not pure formalities, but are at the very heart of the municipal decision-making process.

THE TOWN'S POSITION

[121] The Town pleaded that changing urban planning by-laws was the municipal Council's prerogative and at its discretion.[102] It was part of political expediency.

[122] Citizens do not have a vested right to the permanence of a by-law.

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[100] See the public notices in Exhibits P-6 and P-7, which mention this.

[101] Exhibit P-46, *Révision quinquennale du plan d'urbanisme et des règlements de zonage et de lotissement*, Complément au Manuel de procédure, ed. 1997, Ministère des affaires municipales du Québec, December 1998 at 7.

[102] *Catalyst Paper Corp. v. North Cowichan (District)*, [2012] 1 S.C.R. 5 at para. 19. *Laurentides Motel v. Beauport (City)* [1989] S.C.R. 705, 722.

[123] The Superior Court must look only at the legality of by-laws. The expediency of a by-law must be tested in the arena of municipal democracy.

[124] In *Nanaimo (City) v. Rascal Trucking Ltd.*, the Supreme Court wrote:[103]

> **35** In light of the conclusion that Nanaimo acted within its jurisdiction in passing the resolutions at issue, it is necessary to consider the standard upon which the courts may review those *intra vires* municipal decisions. Municipal councillors are elected by the constituents they represent and as such are more conversant with the exigencies of their community than are the courts. The fact that municipal councils are elected representatives of their community, and accountable to their constituents, is relevant in scrutinizing *intra vires* decisions. The reality that municipalities often balance complex and divergent interests in arriving at decisions in the public interest is of similar importance. In short, these considerations warrant that the *intra vires* decision of municipalities be reviewed upon a deferential standard.
>
> . . .
>
> **37** I find these comments equally persuasive in the scrutiny of municipal resolutions. The conclusion is apparent. The standard upon which courts may entertain a review of *intra vires* municipal actions should be one of patent unreasonableness.

[125] The municipality's power to regulate land use by dividing the municipality's territory into different zones and different uses is provided under the LAU (s. 113).

[126] The Town followed the LAU procedure for amending by-laws. Also though it proved to be especially complex, the broad stages of the process were followed and citizens were able to exercise their democratic rights.

*** * * * ***

THE LAW

[127] The recourse is based on section 397 of the *Cities and Towns Act* (LCV)[104] and article 34 of the *Code of Civil Procedure*.

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[103] [2000] 1 S.C.R. 342.
[104] CQLR, c. C-19 (LCV).

> **397 LCV** Any person concerned may, in accordance with the rules that apply to judicial review proceedings under the Code of Civil Procedure (chapter C-25.01), apply and obtain on the ground of illegality, the quashing of any by-law or part of by-law of the council, with legal costs against the municipality.
>
> **34 C.C.P.** The Superior Court is vested with a general power of judicial review over all courts in Québec other than the Court of Appeal, over public bodies, over legal persons established in the public interest or for a private interest, and over partnerships and associations and other groups not endowed with juridical personality.
>
> This power cannot be exercised in cases excluded by law or declared by law to be under the exclusive purview of those courts, persons, bodies or groups, except where there is lack or excess of jurisdiction.
>
> A matter is brought before the Court by means of an application for judicial review.

[128] There is a presumption that the municipality observed the formalities prescribed by the Act and that the by-law was adopted validly.[105] Therefore, those who challenge the validity of a by-law have the burden of proving that an irregularity was committed.

[129] In municipal affairs, the plaintiff has another burden. The LAU provides:

> **246.1.** Failure by a responsible body or a municipality or any of its council members or officers to observe a formality prescribed by this Act does not invalidate a deed, except where such failure causes serious harm or the Act provides for its effect, in particular, by stating that the formality must be observed on pain of nullity or rejection of the deed.

[130] Moreover, a municipality is presumed to have acted in good faith and in the public interest when it adopts a by-law.

[131] The [TRANSLATION] “whole” RZ 254 and RL 256, that is, the second drafts as they were adopted by the Council on June 15, 2015, must be analysed, and not the residual by-laws, from which the provisions later repealed were removed, to which the provisions considered to be adopted following the opening of the registers procedure were added, and from which the provisions that are pending the judgment of this Court and that of the Council were omitted. Drafts RZ 254/2 and RL 256/2 are concrete embodiments of Sutton’s real intentions.

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[105] *Ferme Messicour, S.E.N.C.* c. *Guertin* [2001] R.J.Q. 2575 (C.A.) at para. 38.

The urban planning program and the urban planning by-laws

[132] The *Act respecting land use planning and development* (LAU)[106] provides:

> **81.** A municipality **may** have a planning program applicable to its whole territory.
> A municipality that has a planning program in force may not repeal it.
>
> . . .
>
> **83.** A planning program **must** include
> (1) the general aims of land development policy in the territory of the municipality;
> (2) the general policies on land uses and land occupation densities;
> (3) the planned layout and the type of the principal thoroughfares and transport systems
>
> **84.** A planning program **may** include
> (1) the zones to be renovated, restored or protected;
> (2) *(paragraph repealed);*
> (3) the nature, location and type of the public services and infrastructure intended for community use;
> (4) the estimated costs pertaining to the implementation of the components of the program;
> (5) the nature and intended layout of the main waterworks, sewer, electricity, gas, telecommunications and cable distribution systems, networks and terminals;
> (6) the delimitation within the municipal territory of development areas that may be the object of special planning programs;
> (7) the delimitation within the municipal territory of development areas that may be the object of comprehensive development programs in accordance with sections 145.9 to 145.14.

[133] Subsequent to the adoption of an urban planning program, the municipality must render its zoning and subdivision by-laws in conformity with the program (s. 102 LAU). If applicable, the municipality must adopt a resolution and publish a notice indicating to its citizens that an application for an assessment of conformity may be filed with the Commission municipale du Québec (CMQ)[107].

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[106] CQLR, c. A-19.1.
[107] Section 102 and 103 LAU.

[134] A municipality can amend its urban planning program by adopting a draft by-law (s. 109.1 LAU), holding a public meeting (s. 109.2 LAU), preparing a summary of the draft by-law (s. 109.3 LAU) and submitting its draft by-law to the RCM (s. 109.7 LAU).

[135] The Act also provides for revision of the urban planning program (s. 110.3.1 LAU). It is a so-called simplified procedure that makes it possible for the Council to revise the urban planning program as of the fifth anniversary of it coming into force. During the revision, new zoning and subdivision by-laws must, on pain of nullity, be adopted to replace the former by-laws,[108] unless concordance by-laws are adopted.[109]

[136] Thus, complete replacement of the zoning and subdivision by-laws must necessarily be preceded by revision of the urban planning program. According to the plaintiffs, RZ 254 and RL 256 are [TRANSLATION] "replacement by-laws" that could not be adopted without revision of the urban planning program, which was not done in this case. The procedure that Sutton followed would therefore be attended by nullity.[110]

Legal scope of an urban planning program

[137] What is the legal scope of an urban planning program?

[138] In *Hartel Holdings Co. v. City of Calgary*,[111] the Supreme Court wrote:

> **16** The structure of the Act [*The Planning Act*] discloses a fully integrated scheme of planning documents comprising various types of statutory plans and a land use by-law. Each document has a discrete role to play in the overall planning process. Plans are policy documents and set out proposals for future development. They may be subject to review and amendment from time to time as policies and proposals are refined. The land use by-law is the instrument by which policies are finally implemented.
>
> [Our addition.]

[139] The Supreme Court then cited Professor Laux:

> **24** Professor F.A. Laux, in his text *The Planning Act (Alberta),* discusses the relationship between statutory plans and land use by-laws. He says at pp. 28-29:
>
> . . .

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[108] Section 110.10.1 LAU.
[109] Section 110.4 LAU.
[110] Section 110.10.1 LAU.
[111] [1984] 1 S.C.R. 337.

> What is the purpose of having a general municipal plan if a land use by-law need not conform to the plan? In other words, if a municipality is entitled to prepare and adopt a general municipal plan and then proceed to ignore it in the planning document that really counts, the land use by-law, it is obvious that the whole purpose and intent of a general municipal plan would be defeated. It follows from that logic that the Legislature must have intended that there be at least substantial, if not complete, conformity between the two documents. Hence, if certain land use designations found in a land use by-law, either on the first passing of the by-law or later by amendment, are at complete variance with the spirit and intent of a general municipal plan, it would seem arguable that such designations would be *ultra vires*. This result, it is suggested, is necessary to ensure that a municipal council, after having so carefully laid out the scheme of things to come in the plan, does not proceed to regulate land use in an ad hoc and narrow fashion without regard to general planning.
>
> . . .
>
> [Our emphasis.]

[140] In Québec, Professor L'Heureux wrote that a Council must comply with its urban planning program, and he cited this Supreme Court decision in support of his position:[112]

> [TRANSLATION]
>
> **164** The Council is obliged to comply with its urban planning program. This is because the urban planning program became mandatory, like any other by-law or resolution of the Council of the regional county municipality, when it came into force. Regarding this, section 361 of the *Cities and Towns Act* and article 450 of the *Municipal Code* provide that by-laws that come into force are effective as law. Section 364 of the above Act and article 452 of the above Code add that they are executory.
>
> **165** This interpretation is confirmed by section 101 of the *Act respecting land use planning and development*, which states that the coming into force of an urban planning program "creates no obligation in respect of the calendar or the terms and conditions of implementation of the public services and infrastructure provided for in the plan." The legislators would not have had to include this section if they had thought that the urban planning program was not mandatory for the local municipality. This interpretation is also confirmed by the complex procedure required to adopt, amend and revise the program.
>
> **166** This interpretation is also confirmed by section 102 of the *Act respecting land use planning and development*, which requires

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[112] *Nature et effets d'un schéma d'aménagement et d'un plan d'urbanisme* (2000-01) 31 R.D.U.S 3 at 62-63.

> municipalities to amend even those of its urban planning by-laws that are in force in order to make them in conformity with the urban planning program. This obligation would not make any sense if the municipality were not obliged to comply with its urban planning program.
>
> **167** Moreover, what is the use of a municipal program if the municipality does not have to follow it? The legislators would be contradicting themselves if, after having given municipalities the power to adopt a plan, they allowed the municipalities to subsequently disregard it, in other words, to contradict the very purpose of the plan.
>
> **168** **We hold that, unless there is a provision to the contrary in the Act, the Council of a local municipality therefore cannot perform an action that contradicts a provision in its urban planning program that is sufficiently precise to create an obligation.** Owing to its very nature, the urban planning program, like the development plan, contains its share of vagueness and not all of its provisions have legal impact. Naturally, the Council can, however, amend its program, but it must follow the required procedure to do so.
>
> [References omitted, our emphasis, bold added.]

[141] This is the perspective that the Court of Appeal adopted with regard to *Canton Tremblay (Municipalité) c. Chicoutimi (Ville)*:[113]

> [TRANSLATION]
>
> **10** The urban planning program and the chart of specifications of the City zoning by-law, in conformity with the RCM development plan, provide that the areas used for eliminating waste snow will be located in industrial zones.
>
> **11** However, for economic reasons, the City decided to place the site in dispute in a commercial zone.
>
> . . .
>
> **24** The judge was, moreover, of the opinion that the City was obliged to comply with its urban planning program and to place its waste snow elimination sites in the areas provided for in the program.
>
> . . .
>
> **39** The City also alleged that the judge erred by concluding that the City's failure to comply with its urban planning program and the RCM's development plan rendered its certificate of conformity null. According to the City, only the by-law was effective as law.

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[113] [2000] J.Q. No. 5728.

40 In my opinion, the conclusion of the trial court judge on this issue was well founded.

. . .

43 It seems that the municipal Council's decision violated:

> (i) the City's urban planning program, which provided for the establishment of future sites for depositing waste snow in industrial zones only:

. . .

44 The real issue in dispute is thus whether the City Council could override its urban planning program and zoning by-law, given the discretionary power that it had reserved in section 13.2 of the by-law.

45 In my opinion, the City, before authorizing the development of the site in dispute, had to amend both its zoning by-law and its urban planning program. This would have obliged it to notify the municipalité du Canton Tremblay and the RCM of its plan [s. 109.1 *et seq*. and s. 137.2 of the *Act respecting land use planning and development*] and to obtain approval from the RCM regarding the planned amendments [s. 109.7 and 137.3]. If the RCM did not approve the amending by-law, the City would have been able to apply to the Commission municipale du Québec [sections 109.8 and 137.4].

46 In this case, this is not what the City did. It used a by-law provision that allowed it to set up a public service site anywhere on its territory.

47 In my view, the City was bound by its zoning by-law and urban planning program, which was approved by by-law. It could not decide to override its earlier decision. It should be recalled that we are not in a situation where a citizen is confronted with a zoning by-law in contradiction with a local urban planning program, but in a situation where a decision-maker, after having notified its partners when drawing up and adopting a development plan, and land use and development policies for its territory, changes its mind and decides, unilaterally, to change the use of part of its territory that is contiguous with that of a neighbouring municipality.

48 Professor Lorne Giroux, an author well known for his works on urban planning law, concludes that the coming into force of a development plan imposes on local municipalities the obligation to adopt urban planning by-laws in conformity with the objectives of both the development plan and the local urban planning program:

> Every R.C.M.. is obliged to maintain in force, at all times, a development plan applicable to its whole territory (s. 3 LAU). The development plan is, above all, a planning or policy document. . .

> The establishment of the broad directions of development of the R.C.M.'s territory and the general uses of that territory are the essential components of the plan.
>
> . . .
>
> The urban planning program is, like the development plan, a planning and policy document that must be adopted by each local municipality belonging to the R.C.M. Its purpose is to update and specify, with respect to the territory of the local municipality, the broad development policies and land uses, as well as occupation densities, that were already established at the level of the R.C.M.
>
> . . . the coming into force of the original development plan imposes on the local municipality the obligation to adopt or amend an urban planning program in conformity with the objectives of the plan and the provisions of the complementary document (ss. 33 and 34 LAU). The same obligation applies to municipal urban planning by-laws, which must not only be in conformity with the objectives of the plan and the provisions of the complementary document, but must also be in conformity with the local urban planning program (ss. 102 and 137.9(1) LAU).
>
> [Our emphasis.]

49 In this case, despite the discretionary power that the City has in virtue of section 13.2 of its zoning by-law, a provision the legality of which is not debated, but which is debatable, I come to the conclusion that the City, when exercising this discretionary power, could not make a decision that was contrary to the land use policies provided for in the development plan, its urban planning program and its zoning by-law.

[Our emphasis, references omitted.]

Conformity, legality, expediency…

[142] We have to fully clarify these notions to avoid the danger of exceeding our jurisdiction. Author Lorne Giroux explains:[114]

> [TRANSLATION]
>
> The Commission [municipale du Québec] has always emphasized that its jurisdiction is limited to the question of the conformity of urban planning by-laws, especially zoning by-laws, with the objectives of the development plan and urban planning program. It systematically refuses to rule on questions of legality, which are the prerogative of the courts, or on

[114] Lorne Giroux, *Le règlement de zonage selon la Loi sur l'aménagement et l'urbanisme, (*2000-01), 31 R.D.U.S. 77-139 at 88-89.

questions of expediency, which belong exclusively to elected representatives:

> It is important to delimit the jurisdiction of the Commission clearly when asking it to rule on a dispute over the conformity of an urban planning by-law. A distinction must be made between three aspects from which a by-law can be considered: expediency, legality and consistency.
>
> **The expediency** of a by-law, that is, its reason for being, is entrusted by law to the municipal Council.
>
> **The legality**, that is, its process of adoption, is under the jurisdiction of the courts of common law.
>
> **The conformity** of a by-law with other development and urban planning documents is under the exclusive jurisdiction of the Commission municipale.
>
> The Commission has neither the mandate to nor the possibility of ruling on the expediency of a municipal decision to develop one area rather than another. It also cannot rule on the City's choice of mechanism to amend its by-laws or the planning applying to its territory.
>
> . . .

Consequently, it is not the Commission's role to rule on the legality of by-laws or their adoption procedure, or on a municipal Council's decisions concerning the specific use of an area.

[Our addition, references omitted, bold added.]

Conformity or legality?

[143] According to the Town, the citizens attacked the conformity of the zoning by-law with the urban planning program before the Superior Court, but this is not under its jurisdiction.

[144] The plaintiffs pleaded the invalidity of RZ 254 and RL 256, in short, their illegality. Since they were [TRANSLATION] "replacement by-laws," they should have been adopted, under pain of nullity, at the same time as the by-law that revises the program.

[145] The adoption of a replacement by-law in the context of section 110.10.1 LAU follows from the obligation of conformity. Lorne Giroux explains: [TRANSLATION]

"conformity is the logical link that there has to be between the planning document and the legal instruments for its implementation."[115]

[146] In 2012, it was impossible to revise the urban planning program because the 5-year period set out in section 110.3.1 was not over. The plaintiffs argued that Sutton did indirectly what the LAU prohibited doing directly: it replaced urban planning by-laws without revising the program. In short, revision of the program was a prerequisite for replacing by-laws. Otherwise, there was illegality.

[147] Examination of conformity, which is under the CMQ's exclusive jurisdiction, cannot lead to a declaration of nullity. An urban planning by-law that is not in conformity with the urban planning program cannot come into force (s. 106 LAU).

[148] At the time of the adoption of a zoning by-law, citizens can ask the CMQ to examine local conformity. This is not the case at the time of the amendment of a zoning by-law, in which case only regional conformity is required.

[149] The plaintiffs undertook a detailed study of the new urban planning by-laws not to examine the local conformity, but to show that the preceding by-laws RZ 115-2 and RL 116-1 had undergone so many and such substantial changes that their foundations had been undermined, which, from a legal point of view, would constitute replacement.

[150] The legislative history of RZ 115-2 and RL 116-1 is intimately linked with the long process of adoption of the urban planning program. It was by demonstrating that RZ 254 and RL 256 deviated from the urban planning program that the plaintiffs intended to show that the numerous, substantial changes made by the new by-laws RZ 254 and RL 256 were complete by-laws in themselves, which made them replacement by-laws.

What is a "replacement by-law" under the LAU?

[151] It is not the label given to a by-law (replaced, repealed, consolidated, amended. . .) that determines the intended legal operation, but what was indeed done.

[152] Under the LAU, the legislator distinguishes between the adoption of an urban planning program, the amendment of an urban planning program and the revision of an urban planning program.

[153] The notion of "replacement by-law" is intimately linked with that of revision of the urban planning program. If the program is revised, the municipality must adopt, on the

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[115] Lorne GIROUX, *L'articulation du régime d'aménagement établi par la Loi sur l'aménagement et l'urbanisme*, in Collection de droit 2015-2016, École du Barreau, Vol. 7, *Droit public et administratif*, (Cowansville: Éditions Yvon Blais, 2015) at 414.

same day, a zoning and subdivision by-law in conformity with the revised plan, otherwise there will be a legal gap.

[154] The LAU does not define what is meant by a "replacement by-law," but distinguishes between the concepts of amendment and replacement of a by-law (s. 123 LAU).

[155] In the *Guide de rédaction législative*, the authors explain:[116]

> [TRANSLATION]
>
> V. Repeal and replacement provisions
>
> 100. Repealing a legislative text means withdrawing its binding force. Replacing it means repealing it by replacing it with another.
>
> . . .
>
> 108. In general a whole enactment is not replaced unless the changes that it undergoes are such that its foundations or structure are undermined, or if the changes are too numerous to be performed easily through an amending act.

[156] There are thus qualitative and quantitative notions involved.

[157] The plaintiffs showed that RZ 254 and RL 256 were not simple consolidations of previous by-laws that set out rules identical to those of earlier by-laws.

[158] RZ 254 includes provisions that are identical (24%) to those of the earlier by-law, but also many provisions that amend (32%) or repeal (30%) the earlier rules, or introduce new urban planning rules (15%).

[159] From a quantitative point of view, the hypothesis is that there is a replacement. However, from the Court's point of view, this is not sufficient. The plaintiffs must demonstrate that, on the qualitative level, the changes are substantial and deviate from the urban planning program. It is only then that the syllogism will be complete. We will come back to this.

* * * * *

DECISION

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[116] Richard Tremblay, Rachel Journeault-Turgeon and Jacques Lagacé, *Direction générale des affaires législatives*, 1984, SOQUIJ at 33-34.

Land use policies and zones

[160] The urban planning program speaks of the territory in terms of land use policies. The zoning by-law deals with zones and regulates uses. The fact that some of the zones in the zoning program have the same name as the land use areas in the urban planning program (in particular, the PAMs) created some conceptual confusion.

[161] Thus, the PAM and C-1 land use areas in the urban planning program[117] correspond in zoning plan RZ 115-2[118] to zones PAM-1 to PAM-13, and to zone CONS-1, except for zone PAM-2, which was added at the time the zoning plan was made to correspond to elevation lines.[119]

[162] In the zoning plan for RZ 115-2, RUR ("rural", the primary purpose of the zone[120]) zones were created out of [TRANSLATION] "agro-forestry, [TRANSLATION] "low density residential" and [TRANSLATION] "recreational" zones.

[163] Is changing the *uses* of a zone (from PAM to RUR, for example) a violation of the urban planning program? Did the Town Council override its urban planning program?

[164] The zoning by-law regulates the uses of a zone, while the urban planning program speaks of land use policy. The zoning by-law specifies those uses.

[165] If an area of land use in the urban planning program is sliced into more than one zone in the zoning plan, there is not necessarily a violation of the urban planning program. Likewise, the uses of a zone can be changed without necessarily changing the land use.

[166] These distinctions are important.

Failures to observe formalities

[167] Notices of motion were issued. A notice of motion places the Council in a state to legislate. Section 356 LCV does not specify the content of a notice of motion.

[168] Authors Giroux and Chouinard do not fail to point out that the case law has shown itself to be contradictory on the issue of the content of a notice of motion.[121] The courts

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117 Exhibit P-1, Annex 3, Plan A.

118 Compare Exhibit P-49 with Table A of Exhibit P-51.

119 PAM-2 is a [TRANSLATION] "little isolated knob" that seems to have been overlooked in the urban planning program.

120 RZ 115-2, s. 9.3, P-2.

121 Lorne Giroux, Isabelle Chouinard, *Le contrôle réglementaire des usages, de leur intensité et de leur implantation: le zonage* in Collection de droit 2015-2016, École du Barreau du Québec, Volume 7 - Droit public et administratif, Chapitre V – 2015, (Cowansville: Éditions Y. Blais at 457).

have followed Dugas J.'s decision in *Lacharité c. Ste-Marthe-sur-le-Lac*[122] distinguishing between the motion's primary effect (placing in a state to legislate) and the secondary effect (suspension).

[169] In this case, the notice of motion can only be attended by the relative nullity covered by section 11 LCV:

> **11.** No suit, defence or exception, founded upon the omission of any formality, even imperative, in any act of the council or of an officer or employee of the municipality, shall prevail, unless the omission has caused actual prejudice or it be of a formality whose omission, according to the provisions of the law, would render null the proceeding from which it was omitted.

[170] The plaintiffs alleged a prejudice in law that does not exist. They argued that since the notice of motion said that the proposed by-law would replace zoning by-law 115-2, they could anticipate a revision of the urban planning program, given s. 110.10.1 LAU. The Court considers that this gives excessive scope to the notice of motion, which makes no reference whatsoever to any revision of the urban planning program, which could not legally be launched until five years had gone by. The reasoning is backwards. No prejudice resulted from the notice of motion. As the evidence has shown, the Council was closely monitored by the plaintiffs from that time on.

[171] The public consultation notice[123] was very clear on the purpose of the meeting on the Town's zoning and subdivision by-laws, on the fact that they targeted the entire territory, and that they contained provisions that could be subject to approval by way of referendum. No one was misled, unlike in the situation described in *City of Beaconsfield.*[124]

[172] The failures to observe formalities during the public consultation are not likely to invalidate the by-laws either (s. 246.1 LAU). Moreover, the objectives, that is, to inform the public and to submit requests to open registers, were reached since 50 requests were submitted. Thus, under section 246.1 LAU, no prejudice was demonstrated. In consequence, the plaintiffs' subsidiary arguments are dismissed.

Illegality of RZ 254 and RL 256

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122 [1981] S.C. 426.
123 Exhibit P-7.
124 *City of Beaconsfield v. Bagosy* [1974] Q.J. 69 (C.A.).

[173] According to the plaintiffs, the urban planning by-laws adopted in 2011 with the urban planning program were [TRANSLATION] “ceiling limits” with respect to construction in PAM zones (1 dwelling/4 hectares), in other words, they were binding limits. Any changes could only limit [TRANSLATION] “more severely.”

[174] On this, they were wrong. The urban planning program does not define the binding limit on construction in PAM or CONS zones other than by land-occupation density and altitude (600 m).

[175] A municipal Council cannot renounce its right to legislate, including with respect to amending its by-laws, and it cannot bind a future Council.

[176] It was not shown that the Council legislated in a manner inconsistent with the land-occupation densities provided for in the urban planning program,[125] even when it redesignated PAM zones as agricultural or rural zones. The densities are the following:

- PAM 1: max. 2 dwellings/hectare or 1 dwelling/5000 m^2
- CONS 1: max. 0.125 dwelling/hectare or 1 dwelling/80 000 m^2

[177] It was not proven that a use provided for in RZ 254/2 was in contradiction with the broad land use policies in the urban planning program or that there were inconsistencies among the uses provided for regarding the zones that were discussed at the hearing (RUR, CONS, PAM).

[178] It was also not proven that the broad land use policies in the high- and medium-altitude conservation areas provided for in the urban planning program were not complied with by the urban planning by-laws.

[179] The urban planning program does not prohibit residential construction in PAM 1 areas (low-density residential use) or Conservation 1 areas (isolated single-family residential use). While the urban planning program provides that there is a desire to limit in PAM zones and restrict in CONS zones, the density of land occupation is the only way to distinguish between these two apparent synonyms.

[180] According to RZ 115-2, the construction area in PAM zones was 4 hectares, well under the land occupation density permitted under the urban planning program. Even by reducing it to 2 hectares (dwelling/20 000 m^2) or to 1 hectare (1 dwelling/10 000 m^2), there is compliance with the density in the urban planning program of 2 dwellings/hectare (1 dwelling/5000 m^2).

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[125] Exhibit P-1 at 83-84.

[181] As for the plaintiffs' other allegations (changes to the way of calculating height, slope, deforestation area, driveway length, tree cutting in the setback, the front setback[126] in PAM zones), there is nothing in the urban planning program that limited the Council's discretion to legislate on these topics. The program's margin of manoeuvre (to limit or restrict construction in PAM and CONS areas—which does not mean prohibiting it) can be expressed in various ways, at the Council's discretion.

[182] It cannot be said that real estate development is not limited or governed by qualitative and normative provisions.[127] It is accurate to say that it was extended or made less restrictive, perhaps or certainly, according to one party or the other, but this does not contradict the urban planning program. It is not a question of opening PAM areas up to unbridled construction with no normative framework, which would have been a devious, illegal manoeuvre.

[183] The urban planning program provides that the borders of the land use areas normally coincide with lot lines or altitude.[128] The Council has the discretion to decide that the zones will be delimited by lot lines if it considers that this is the most practical method with respect to urban planning. This is a political choice made by the Council, and it is immune to judicial review.

[184] Moreover, the Town was right to plead that there was no examination of local conformity when a zoning or subdivision by-law was amended,[129] and that, in any case, it was not within the Superior Court's jurisdiction to rule on local conformity, but within that of the CMQ. Only validation of regional conformity had to be obtained from the RCM,[130] which was done.

[185] Author Lorne Giroux explains:[131]

> [TRANSLATION]
>
> 5. Finally, if the local municipality, upon its own initiative, adopts a by-law amending an urban planning by-law that is not a concordance amendment resulting from the amendment or revision of the schema or an amendment to the program, it must submit it to the R.C.M. Council for verification of regional conformity. However, local conformity, in

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126 Exhibits P-54 and P-55.

127 Exhibit P-1 at 68, action 2.9.3.

128 Exhibit P-1 at 76.

129 Lorne Giroux, Isabelle Chouinard, *L'articulation du régime d'aménagement établi par la Loi sur l'aménagement et l'urbanisme* in Collection de droit 2015-2016, École du Barreau du Québec, Volume 7 - Droit public et administratif, Chapter V, (Cowansville: Éditions Y. Blais, 2015) at 416.

130 137.1 to 137.4 LAU.

131 Lorne Giroux, *Le règlement de zonage selon la Loi sur l'aménagement et l'urbanisme*, (2001-01) 31 R.D.U.S. 77-139 at para. 62.

> other words, the conformity of the by-law, as amended, with the local urban planning program, cannot be verified by the Commission municipale du Québec upon qualified voters' request.
>
> [References omitted.]

Replacement of RZ 115-1 and RL 116-2

[186] Are RZ 254 and RL 256 "replacement by-laws" under section 110.10.1 LAU? This section has to be situated in its context. The LAU provides that zoning, subdivision and construction by-laws can be subject to:

- amendment ([TRANSLATION] "the so-called traditional method")
- replacement[132] ([TRANSLATION] "the simplified method")

[187] Replacement can occur only when the urban planning program is revised.

[188] In *Gestion Pierre et Charles (1991) inc. c. DrummondVille (Ville de)*,[133] Dubois J. wrote:

> [TRANSLATION]
>
> **42** Under section 110.3.1 LAU, a municipality can revise its urban planning program when five years have gone by since the coming into force of the first urban planning program or the last revised program.
>
> **43** A municipality has two options: adopt a concordance by-law (s. 110.4 LAU) or adopt a replacement by-law (s. 110.10.1 LAU).

[189] The five-year period had not expired and Sutton did not wish to revise its urban planning program, which, it should be recalled, had taken more than 30 months to draw up.[134]

[190] Sutton chose to amend its zoning by-law, and had followed the "traditional method," which proved very complex because the process itself, which is provided for in the LAU, is very complex.[135] The court proceedings even made it possible to repeal five

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132 Section 123 LAU, first paragraph at para. 4.

133 2016 QCCS 4385.

134 From the Council's decision in July 2008 to mandate urban planner Mr. Bergeron to March 8, 2011, when the urban planning program came into force.

135 In 2000, author Lorne Giroux was already of the opinion that the LAU had long before exceeded an acceptable level of complexity. *Le règlement de zonage selon la Loi sur l'aménagement et l'urbanisme*, (2000-01) 31 R.D.U.S. 77 at 110.

by-laws, which were found to contain errors, and to adopt two corrections of RZ 254.[136] It can be anticipated that, with use, other errors will be discovered.

[191] Not only has the system for amending by-laws become incomprehensible, it is a source of legal uncertainty, according to author Lorne Giroux, who writes:

> [TRANSLATION]
>
> **101** The complexity of the referendum approval procedure, particularly with respect to the many formalities to be observed before coming to the referendum proper, is a source of legal uncertainty. A complex, multi-stage procedure, requiring the publication of notices addressing groups that must be identified accurately depending on the scope of the amendment in question, further increases the chance that some formalities will not be observed correctly, that deadlines will not be met, or that notices will be insufficient with respect to what is prescribed by the Act.[163] The more complex the procedural requirements, the greater the probability that there will be legal disputes concerning conformity with zoning by-law amendment procedures.[137]

[192] Authors Giroux and Chouinard explain the conditions under which the simplified version can be used:[138]

> [TRANSLATION]
>
> A simplified approval procedure is provided by the legislator in the case of a replacement of a zoning or subdivision by-law under sections 110.10.1 and 136.0.1 LAU. Under such a hypothesis, the replacement by-law is not submitted only to qualified voters in the areas targeted by the amendments that the replacement makes to the earlier by-law. Instead, it is submitted to all of the municipality's qualified voters in compliance with the procedures provided for in the *Act respecting elections and referendums in municipalities*.
>
> For the municipality to take advantage of the simplified approval procedure, a certain number of conditions must be met. First, the replacement by-law cannot be adopted, on pain of nullity, except at the same time as the by-law that revises the urban planning program, and, under section 110.3.1 L.A.U., the urban planning program can be revised only every five years. Moreover, before the replacement by-law is submitted to the approval procedures

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136 See the safeguard order of February 15, 2016.

137 *Supra*, 135 at para. 101.

138 Lorne Giroux, Isabelle Chouinard, *Le contrôle réglementaire des usages, de leur intensité et de leur implantation: le zonage* in Collection de droit 2015-2016, École du Barreau du Québec, Volume 7 - Droit public et administratif, Chapitre V, (Cowansville: Éditions Y. Blais, 2015) at 453.

> involving all qualified voters in the municipality, the procedures for verifying regional and local conformity must also have been carried out, and certificates of conformity must have been issued on the same day for the revised program and every regulation replaced.

[193] Sutton could not follow the simplified method because the five-year period had not expired.

Illegality?

[194] Did the Town Council override its urban planning program? Did the approach taken by Sutton constitute an indirect or devious revision of the urban planning program?

[195] A town can revise its urban planning program and adopt a concordance or replacement by-law. If, as the plaintiffs allege, Sutton replaced its urban planning by-laws, we have to find indications of a revision of the urban planning program. There should be some clear incompatibility or contradictions between the by-laws and the urban planning program; or it should be possible to see in them that the Council clearly and obviously intended to override the program's objectives.

[196] Was the urban planning program jeopardized, compromised, challenged or rendered lapsed? Were there substantial or fundamental changes to the land uses provided for in the urban planning program? The evidence does not show this, and the Court does not think so.

[197] The Court does not have to examine the conformity of urban planning by-laws with the urban planning program. That is not its role. The plaintiffs must show that there was a breach of the law.

[198] We are far from the situation analysed in *Chicoutimi (Ville)*,[139] in which the City wanted to establish a waste snow storage site in a commercial zone when the urban planning program provided for such sites to be in industrial areas designated in the program. In that case, there was a binding provision.[140]

[199] The *Pires*[141] decision by the Court of Appeal does not seem to apply specifically to the situation in this case because it concerned a by-law that could be the object of a request that the CMQ examine local conformity, which is not the case here because this is a case of a by-law amendment (s. 137.9 LAU) and there is no examination of local

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139 [2000] J.Q. No. 5728.
140 Para. 43.
141 *Pires* c. *Charlesbourg (Corp. Municipale de)*, J.E. 88-708 (C.A.).

conformity in such circumstances. The CMQ has no jurisdiction in this matter. It is the legislator's choice.

[200] In the document from the ministère des Affaires municipales et de l'Occupation du territoire,[142] we find:

> [TRANSLATION]
>
> The choice of means to achieve conformity is a political power, and it is not the role of the Courts to rule on the exercise of this power, unless there is a breach of the law.

[201] Clearly, there are clashing visions in the Sutton area concerning development and protection of the environment and the landscape. This is normal in our society. It is part of the ideas and debates that belong to democracy and are immune to examination by the courts.

[202] Municipal procedure is special in that, in a case of amendment of zoning by-laws, only some provisions can be subject to approbation by way of referendum (use, density, structure) by qualified voters in the zone concerned or in contiguous zones, whereas in the case of revision of the urban planning program, there is only one collective consultation.

[203] Author Lorne Giroux explains that the replacement procedure makes it possible to [TRANSLATION] "drown" the referendum vote of local opposition with that of all of the people qualified to vote across the whole municipality since replacement is not submitted to only the qualified voters in the targeted zones and zones contiguous with the zones targeted by the amendment of the replacement by-law.[143]

[204] It is not the Court's role to decide whether one method is better than another. The LAU provides for both. However, only one was possible for the Council in this case: amendment.

[205] The Court is of the opinion that the adoption of by-laws RZ 254 and RL 256 did not indirectly revise the urban planning program, and the by-laws are not inconsistent with its provisions.

[206] The application must therefore be dismissed.

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142 http://www.mamrot.gouv.qc.ca/amenagement-du-territoire/guide-la-prise-de-decision-en-urbanisme/planification/regle-de-conformite/

143 Lorne Giroux, *Le règlement de zonage selon la Loi sur l'aménagement et l'urbanisme*, (2001-01) 31 R.D.U.S. 77-139 at para. 92.

[207] The trial shed light on failures to observe formalities in the adoption process. It led the Town to repeal five by-laws and to correct two others. Under the circumstances, no legal costs will be granted.

[208] The Court would like to point out the excellent work done by the attorneys, and to thank them for it. The quality of the submissions and documentation (maps, tables, slides, etc.) was very high and appreciated.

THEREFORE, THE COURT:

[209] **DISMISSES** the plaintiffs' action.

[210] **Without legal costs.**

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FRANÇOIS TÔTH J.C.Q.

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Counsel for the defendant

Dates of hearing: February 8, 9, 10, 11 and 12, 2016; March 21 and 22, 2016; and May 5, 6, 24 and 25, 2016