

## Press Release

Sutton, January 16, 2017

Judgment of Judge François Tôth of the Québec Superior Court rendered on January 5, 2017 re:

Robert Benoît et al. vs. the Town of Sutton

### **Judgment Favours Anti-Democratic Abuses in Town of Sutton**

This judgment throws the door wide open to anti-democratic abuses by municipal administrations, which will not have to hesitate to direct development of their territory to the benefit of private developers, while weakening the participation and mobilization of citizens.

The consequences of the judgment are clear: citizens are left to their own devices because, between elections,

**"A municipality is presumed to act in good faith and in the public interest when it adopts a by-law. "** (paragraph 130 of judgment)

The Court has decided not to interfere in these specific matters, considering them a political debate.

### **Help Yourself to the Countryside!**

The judge attached little importance to the meeting of the mayor and two councillors with promoters and other persons related to the real estate market on October 9<sup>th</sup>, 2014, calling it a "**non-public meeting**" allowing elected officials to

**"learn the concerns of those involved in construction and real estate development"**(paragraph 26).

The judge found that at least eight major changes to the then-current regulations

**"... Incorporate the subjects and grievances of the October 2014 meeting participants. The overriding evidence is that the purpose of these amendments is to facilitate and stimulate residential construction, particularly in the PAM zone"** the Mid Altitude Protection zone (paragraph 28)

Promoters with particular economic interests are therefore satisfied with the new zoning and subdivision by-laws without having to participate in the information and public consultation process.

### **Double Standards!**

For their part, citizens had to engage in a process of senseless complexity to express their point of view on the development of the territory already provided for in the Urban Plan, which clearly runs counter to the objectives of the Act Respecting Land Use Planning and Development / Loi sur l'aménagement et l'urbanisme - LAU.

**"It was titanic indeed."** (paragraph 75).

The judge added:

**"From the testimony of the citizens and the documentary evidence filed, the Court concludes that the procedure for amending RZ 115-2 and RL 116-1 proved to be extraordinarily complex ... "** (paragraph 84).

In fact, by not deeming illegal the strategy of a **"thousand or even several thousand"** (paragraph 38) of registries to request a referendum approval process in a town of less than 3,000 permanent residents, the Court effectively endorses a coup that discredits democracy and encourages the use of disinformation strategies. Ultimately, these tactics discourage and exhaust citizen mobilization.

### **Citizens of Sutton, Not Citizens of its Zones!**

The Court stated that Sutton had no choice to proceed in this manner because the Urban Plan could not, under the LAU, be revised prior to five years from the date of its adoption, that is, before March 8, 2016. Do not forget that the process for replacing zoning and subdivision by-laws began in the spring of 2015, less than a year before that deadline.

The town should have waited for March 2016, as part of a five-year review of the Urban Plan as provided for by the LAU, to open a public debate on these major changes, which would have been essential to explain the impact of the many changes. The town instead opted for a complex process.

The Court observes:

**"It was titanic indeed. The municipal document P-14 indicates that 269 regulations are subject to approval by referendum, which could apply to several distinct zones, if not all 125 zones of the town, hence the possibility for a considerable number of registries. "(Paragraph 75).**

Moreover, elected officials did not take into account

- A petition of 500 names,
- The results of a public assembly of 400 people and
- Individual opinions of citizens proposing mediation.

All indicators clearly demonstrated to the elected representatives that the population was greatly concerned about the proposed changes and that it wished to vote only once in a referendum because the amended provisions affected all zones and therefore the entire population.

Sutton residents are not and do not want to be citizens of zones but citizens of Sutton. It is revealing that some elected officials, who testified at the trial, admitted that they did not know the zone in which they lived! The town preferred to turn a deaf ear to concerns expressed by citizens who had no personal interest in this affair, but had the interests of the community at heart.

What was the urgency to hurry and impose a process of unprecedented complexity if not to respond to the demands heard at the meeting of October 9, 2014 and to kill citizen mobilization in the bud?

This ruling will open the door to the abuse by other municipalities in Québec who might be tempted to use the same strategy.

Why would a municipality wishing to replace its zoning and subdivision by-laws follow the LAU's replacement procedure when the 'Sutton Strategy' has proved its worth?

Did the town planner Réal Girard of the Town of Sutton not boast that he had already used it successfully in Laval under the Vaillancourt administration and that the citizens made no applications for the opening of registries?

Bill 122, tabled at the end of the session last December by the Government of Québec, proposes to abolish the right of citizens to use a referendum approval process in the case of "re-designated zones". If this bill is passed, municipal councils will have the power to re-designate certain zones for diversification, rehabilitation or densification and exempt them from the referendum approval process.

### **Unreasonable?**

The judge quotes an excerpt from a federal Supreme Court judgment:

**"The standard by which courts can review the actions of a municipality performed within the limits of its jurisdiction is patently unreasonable.** (Paragraph 124)

The judge uses the word "**titanic**" (paragraph 75) to describe the whole affair, but what citizens have experienced by making enormous efforts to have the law respected corresponds exactly to the dictionary definition of the word 'unreasonable' –

**"Unreasonable - that which is not reasonable; absurd, excessive, foolish, irrational"** (Petit Robert)

During the trial, the judge interrupted and contradicted Réal Girard, the town's urban planner, who said that the whole exercise had been a good example of democracy because it had enabled citizens to get to know each other and to share their thoughts. Judge Tôth pointed out that

- He did not share M. Girard's opinion,
- The town planner had instead "**created a monster**", an "**incomprehensible**" creature, complex to the power of N, 'n' being the infinite

The plaintives and their supporters fought against a "monster" with the weapons that the law put at their disposal. Their cause was far from trivial and if they lost that battle, it is no exaggeration to say that they lost it honourably.

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