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Amending Urban Planning By-laws and Local Conformity

On July 20, the Québec Court of Appeal handed down an interesting urban planning decision in *Merulla v. Ville de Pointe-Claire*.¹ It upheld the dismissal of an action seeking to nullify a by-law adopted by the City of Pointe-Claire (the City) to amend its zoning by-law. Before discussing the decision in greater detail, let's take a brief look at the case.

Zoning amendment to allow the construction of a church complex

In 2013, an Orthodox church acquired buildings with the intent of creating a church complex with a place of worship, a bookstore, a gym, a theatre, and a banquet hall. However, only the "multi-family buildings" use was authorized in the zone.

After an initial rejection from the City in 2014, the Church returned in 2017 with a revised project, which was more favourable in the eyes of the neighbours and the City. The latter took the opportunity to clarify the amendment procedure for its by-laws, as there was some debate over whether the amendment needed to be checked against the planning program for conformity. It was determined that the City's planning program did not need to be amended.

The City therefore proceeded with the formalities required under the *Act respecting land use planning and development* (the ALPD) to amend its zoning by-law so the project could go ahead. The amendment by-law was then duly approved.

It was at this point that two citizens, who lived directly across the street from the church, applied to the Superior Court² to have the amendment by-law nullified on the grounds that the new uses authorized on the church property did not align with the town's planning program.³ According to the plaintiffs, the City had to first or simultaneously amend its planning program before amending its zoning by-law.

The Superior Court did not agree with the appellants. In its opinion, the new uses authorized by the amendment by-law did not conflict with the City's planning program. In fact, it became clear from the program that the lots in question were not exclusively meant for multi-family use. The City could therefore allow other uses to promote the continued use of the building for worship, which benefited from acquired rights. Dissatisfied, the citizens appealed the lower court's decision.

The ALPD, a close relative of the *Taxation Act*!

In its decision, the Court of Appeal started by discussing the ALPD:

"A simple look at the ALPD shows the extensive set of rules municipalities need to follow when exercising the powers conferred on them by this law. In some respects, this level of complexity is akin to that of the *Taxation Act*, which is saying something. None of the multiple categories of procedures in the ALPD is simple, and it is only after a careful and detailed reading that one can understand which ones a municipality must follow when preparing to adopt a by-law in this area."
[Translated from French]⁴

These comments from the Court of Appeal are especially relevant given the recent amendments to the ALPD, which feature the complex, technical wording for which the law is so well known.

Does amending a zoning by-law require a local conformity exercise?

The Court of Appeal then considered the general conformity of an amendment by-law with the planning program.

From the outset, the Court of Appeal stated that the planning program, like the land use and development plan, is binding on the municipality itself but has no direct effect on citizens. The use of a planning program is therefore one of planning and intention; its primary purpose is to specify major development guidelines, land uses, and densities that the land use and development plan has already dictated on a regional scale.

It is precisely this regional nature of conformity that the Court of Appeal focused on, noting that there are no cases in which the ALPD requires a certificate of conformity with the planning program to be issued before a local by-law can come into force. The Court therefore concluded that when a municipality amends one of its urban planning by-laws outside of an amendment to its planning program, and if it is not required to do so because of the revision or amendment of the land use and development plan, there is no requirement to ensure local conformity.

¹ 2023 QCCA 954. At the time of writing, the deadline for appeal to the Supreme Court of Canada had not passed.

² 2020 QCCS 3847.

³ Initially, the appellants also contested the by-law on the grounds that it did not align with the City of Montréal's land use and development plan (metropolitan conformity). However, this ground was dropped, so that only local conformity was invoked.

⁴ Paragraph 43 of the Court of Appeal decision.