
SUMMARY OF HEARING

Submission of the Licensing Authority

- [3] The Licensing Authority stated that in the opinion of the Licensing Authority, the application had met all the requirements for a Hen License in *Backyard Hen Bylaw*, No. 21/006 (“*Backyard Hen Bylaw*”) and had granted Hen License No. 2021-09 (the “Hen License”) for the property legally described as Lot 13, Block 47, Plan 7620092 and municipally described as 137 Hinge Road, Fort McMurray, Alberta (the “Property”). However, the Licensing Authority takes no position on the merits of the appeal of Hen License.
- [4] The Licensing Authority noted that the appeal is a hearing *de novo* and that the Committee is not bound by any of the conclusions that the Licensing Authority made.
- [5] This appeal is governed by section 26 of the *Backyard Hen Bylaw*. Under section 26, the *Backyard Hen Bylaw* provides that:
- 26. Upon receiving a Notice of Appeal under section 24 or 25, the Community Standards Appeal Committee shall hear the appeal and may either:*
- (a) confirm the decision to refuse or revoke a License;*
- (b) direct the Licensing authority to issue a License, with or without conditions; or*
- (c) direct the Licensing authority to reinstate a License, and where it directs that a License be reinstated, the Community Standards Appeal Committee may vary any condition provided however that it shall not vary the expiry date of the License.*
- [6] An Adjoining Neighbour can appeal the decision of the Licensing Authority to issue a Hen License under section 25 of the *Backyard Hen Bylaw*. The *Backyard Hen Bylaw* provides three possible grounds appeal:
- 25 An Adjoining Neighbour may appeal a decision to issue a License within 14 days of the decision by submitting a Notice of Appeal to the Clerk only where the grounds of the appeal are:*
- (a) that the keeping of Hens on the Parcel is likely to have a materially adverse effect on the health of the Adjoining Neighbour or of a person living in the premises of the Adjoining Neighbour; or*
- (b) a reason or factor listed in clauses 9 (a) or (c) of this Bylaw.*

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- [7] Section 9(a) and (c) of the *Backyard Hen Bylaw* provide that
- 9. The Licensing authority may revoke a License or refuse to issue or renew a License, without refund or compensation to the applicant or License holder, for any of the following reasons:*
- (a) the applicant does not meet the requirements of this Bylaw;*
- ...
- (c) the License was issued based on incorrect information or a misrepresentation by the license holder;*
- [8] An Adjoining Neighbour is defined in subsection 3(a) of the *Backyard Hen Bylaw* as an owner or occupant of a property that is contiguous to a parcel along a common property line and where the parcel is a corner lot, includes an owner or occupant of a property that is adjacent to the parcel across a rear lane, but not across a street.
- [9] The Licensing Authority submitted that Damian Raike, as the registered owner of a property contiguous to the Property is an Adjoining Neighbour, however, it did not have confirmation of Sheri Raike’s residence
- [10] The Licensing Authority submitted that a “material adverse health effect” is one where the health impact:
- a. is more than trivial or a mere inconvenience;
 - b. is or would be caused by the keeping of hens on the authorized parcel of land;
and
 - c. impacts the individual’s ability to use and enjoy the parcel of land on which they are resident.
- [11] In response to questions from the Committee, the Licensing Authority provided the following information:
- a. The Property is over 400 square metres in size;
 - b. The Applicant for the Hen License advised in conversation that she had posted the notification of her Application for a Hen License;
 - c. There are 12 current Hen License holders in Fort McMurray; and
 - d. There have been three complaints received regarding Hen License holders. These were not in relation to wildlife.
 - e. No bylaw tickets have been issued to Hen License holders for contravening the *Backyard Hen Bylaw*.

Submissions of the Appellants*Sheri Raike*

- [12] Ms. Raike gave evidence in support of the Appellants' position.
- [13] The Appellants' biggest concern is the health and safety of their family. In this respect they have two major concerns. First, that the hens will attract wildlife including bears, coyotes and foxes to their home. Second, their children have health needs which are aggravated or triggered by the hens.
- [14] Ms. Raike noted an article from British Columbia that stated that backyard hens draw bears to people's homes. She stated that there are fox dens in the green space across the street to her home, she has sighted two bears in trees across the street and, there are multiple coyotes in the neighbourhood. There have been no close encounters in the community with wildlife that she is aware of, but she would like to keep it that way.
- [15] Ms. Raike raised concerns that the Property is not fully fenced. The driveway area of the Property is fully exposed.
- [16] In respect of her children's' health, Ms. Raike stated that she had evidence of the impact of the hens on her children's health but did not want to provide it to protect the privacy of her children. She provided some details around the impact on her son and daughter and their mental and physical health.
- [17] She stated that the noise and smell from the hens impacted her and her children. She noted that in the Appellants' written submissions they stated that the Property was a rental and the backyard was frequently not cleaned up and had dog feces in it. She stated that in the last month the Property has been cleaned up nicely. However, she noted that in the winter, the Property's sidewalk and driveway were not kept clear of snow and ice.
- [18] Ms. Raike stated that chickens have a high risk of carrying Salmonella or Campylobacter if not cared for properly. The Appellants are concerned that the hens will cause a risk of infection for their children.
- [19] Ms. Raike stated that the Appellants were only notified after the Hen License had been granted.
- [20] Ms. Raike noted that the hens were on the Property prior to the appeal period being over and that her children did not want to play in the yard as a result of the hens. They were able to have the children outside when the hens were on the Property, but they had to be with them.
- [21] If the Hen License is approved, Ms. Raike stated that her family is considering moving. She also believes their property value will decrease.

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- [22] In response to questions from the Committee, Ms. Raike stated that the only way she would be slightly ok with the Hen License is if there were a number of conditions placed on it.

Submissions in support of the Appeal

- [23] The Committee received letters from Edward and Theresa Portugie, Brian and Rena Rott and Dale Hannigan, who indicated they were not supportive of the Hen License approval. These letters have been marked as exhibits 5, 7 and 10, respectively.

Submissions Opposed to the Appeal

Rebecca Turner

- [24] The Committee heard from Rebecca Turner, the Applicant for the Hen License.
- [25] The Applicant stated that there were no fox dens in the greenspace across from the Property. She had gone out to identify any fox dens and found none. Fish and Wildlife were called and they had no reports of foxes. If foxes were reported, Fish and Wildlife Officers would relocate them. Fish and Wildlife also stated there were no known bear dens in the area and no known sightings of bears on Hinge Road.
- [26] Bears are generally not interested in hens. Bears are more interested in garbage and other waste which may attract them to people's homes.
- [27] If the Hen License is granted, the Applicant will dig in the fence surrounding the coop and place a hardware cloth skirting to prevent any digging predators from having access to the hens. The hens will be locked into their coop every night. The Property has a fence where the garage is and the Applicant has installed a motion sensor on the garage which will also deter wildlife.
- [28] Prior to June 1, 2020, the Property was a rental. Now the Applicant and her partner have moved in and are paying the mortgage payments. They take care of the Property including picking up after their dogs and double bagging dog feces.
- [29] The Applicant is dedicated to taking proper care of the hens. She stated the fecal smell claims are false. Chicken coops smell as a result of moisture in the coop. The Applicant's coop is moisture proofed using a variety of measures. She stated that the hens' feed and water are located outside of the coop and that she has utilized wood chips and barn lime for odor control.
- [30] The coop is located more than 13 feet from the property line of the Appellants' property. It is in the back quarter of the Property's yard and behind the detached garage which deflects noise.

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- [31] Chickens at their loudest are 60-70 decibels. The Applicant stated that this was as loud as a normal conversation or city traffic. She noted in particular that a general conversation is 60 decibels and stated that the hens at their loudest would be as loud as a conversation.
- [32] The Applicant stated that in respect of the Appellants' concerns regarding her children's health, the children were out in the backyard the weekend the hens were on the Property.
- [33] When the Applicant applied for the Hen License online, a notification form is created. She printed that notification form and put it on the Appellants' front door.
- [34] In response to questions from the Committee, the Applicant acknowledged she had brought the hens onto the Property before the appeal period had expired. She had gotten the call her Hen License was approved and believed that she could bring the hens onto the Property.

Rick Turner

- [35] The Committee heard from Rick Turner, the owner of the Property.
- [36] Mr. Turner stated that there was a house 100 yards away from the Property which has a Hen License and has kept hens for over a year.
- [37] Mr. Turner spoke with neighbours, which included a discussion with a neighbour who stated that, when selling his home, his property value did not decrease as a result of the hens nor did he have an issue with the smell.
- [38] The Committee received letters from KC Hutchins, Ella Rankin, Annie Legris, Barry Waller, Monique Web, Nicole Funk, Christa Warren, and Nolan Metzler in opposition to the appeal. These letters have been marked as exhibits 8, 9, 11, 12, 13, 14, 15, and 16 respectively.

FINDINGS OF FACT

- [39] The Site is located at 137 Hinge Road, Fort McMurray, Alberta, legally described as Lot 13, Block 47, Plan 7620092.
- [40] The Appellants are Adjoining Neighbours to the Property.
- [41] The Applicant and Mr. Turner are Interested Parties.
- [42] The keeping of hens on the Property is not likely to have a materially adverse effect on the health of an Adjoining Neighbour or of a person living in the premises of an Adjoining Neighbour.
- [43] The Applicant has met the requirements of the *Backyard Hen Bylaw* and the Hen License was not issued based on incorrect information or a misrepresentation by the Applicant.

DECISION

[44] **It is the decision of the Community Standards Appeal Committee that Appeal No. 2021-001, filed in relation to the approval of a Hen License Application No. 2021-009, at the address 137 Hinge Road, legally known as Lot 13, Block 47, Plan 7620092 be DENIED; and the Hen License Application No. 2021-009 for 137 Hinge Road is APPROVED.**

REASONS

Jurisdiction

[45] The Committee notes that its jurisdiction is found in section 203 of the *MGA* and the *Community Standards Appeal Committee Bylaw No. 19/001* (“*CSAC Bylaw*”). In making this decision, the Committee has examined the provisions of the *Backyard Hen Bylaw*, the *CSAC Bylaw* and considered the oral and written submissions made by the Licensing Authority, the Appellants, the Applicant and those speaking in favour of, and in opposition to the appeal.

Adjoining Neighbours

[46] The first question the Committee must determine is whether the Appellants are Adjoining Neighbours to the Property as only an Adjoining Neighbour can appeal under section 25 of the *Backyard Hen Bylaw*. The Appeal was filed by the Appellants, Damian and Sheri Raike. Mr. Raike is the registered owner of 141 Hinge Road which is contiguous with the Property. The Appeal Committee finds that Sheri Raike is an occupant of 141 Hinge Road. As such, the Appellants’ are Adjoining Neighbours to the Property.

Interested Party

[47] The second question the Committee must determine is who is an Interested Party. The Committee can only allow Interested Parties to speak while hearing an appeal under section 39 of the *CSAC Bylaw*.

[48] An Interested Party means a person who is, or may be, directly affected by a matter before the Committee. (*CSAC Bylaw*, section 2(m))

[49] The Committee determined that the Applicant and Mr. Turner are Interested Parties. The Applicant is directly affected by the appeal before the Committee as the Applicant for the Hen License under appeal. Mr. Turner is directly affected by the appeal before the Committee as he is the owner of the Property.

[50] The Committee has considered the written submissions it has received.

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- [51] In respect of written submissions received in support of the Appeal, the Committee notes that these individuals all reside less than a block from the Property and as such considered them Interested Parties. However, the Committee did not give any weight to the written submissions that spoke to issues not before the Committee, such as, if the keeping of hens in an urban area is appropriate. The Committee has not given weight to these submissions.
- [52] In respect of written submissions received in opposition to the Appeal, except for the submissions from Christa Warren, the Committee finds that these individuals are not Interested Parties as they do not reside near the Property and are not directly affected by the Appeal before the Committee. The Committee gives no weight to these submissions.
- [53] Christa Warren does live close to the Property and so the Committee considered her an Interested Party and has considered her submissions insofar as they speak to the Appeal before the Committee.

Questions to be addressed

- [54] The Committee finds that the following questions arise:
- a. Is the keeping of hens on the Property likely to have a materially adverse effect on the health of an Adjoining Neighbour or a person living in the premises of an Adjoining Neighbour?
 - b. Does the Applicant meet the requirements of the *Backyard Hen Bylaw*?
 - c. Was the Hen License issued based on incorrect information or a misrepresentation by the Applicant?

Material Adverse Effect on Health

- [55] The Committee has considered the submissions of the Appellants in respect of the impact of the keeping of hens on their family's health and safety. The Appellants raised two concerns:
- a. The risk of attracting wildlife to their property; and
 - b. Their children's health.
- [56] The Committee has considered the Appellants' submissions in respect of wildlife and those of the Interested Parties supporting the Appeal. The Committee recognizes that there is a risk to human health from wildlife interactions in the Wood Buffalo region, however, the Committee finds as fact that the Applicant's keeping of hens is not likely to have a material adverse effect on the health of an Adjoining Neighbour by attracting wildlife.

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- [57] The Committee has considered the steps taken by the Applicant, including installing a motion sensor, fencing around the coop and digging in the fence around the coop to address concerns about the hens attracting wildlife. The Applicant contacted Fish and Wildlife and there have been no reports of bears on Hinge Road or foxes in the green space in front of the Property.
- [58] The Committee notes that food and waste can attract wildlife. The *Backyard Hen Bylaw* provides specific provisions regarding the storage of feed and manure in animal proof containers with an air-tight seal at sections 20(f) and (g). The coop must be maintained in good repair and sanitary conditions and free from noxious or offensive smells and substances (section 20(b)). A Hen Licensee must immediately remove any feed, trash or manure from the Property upon notice from a Bylaw Enforcement Officer. As such, the Committee finds that the keeping of hens in accordance with the *Backyard Hen Bylaw* is not likely to cause a material risk to human health from attracting wildlife on the Property.
- [59] The Committee has considered the Appellants' submissions in respect of their children's health. The Committee appreciates the Appellants' desire for privacy for their children's health need and the Committee agrees if the keeping of hens was shown to be likely to have a material adverse impact on an Adjoining Neighbours mental health, that would meet the test under section 25(a) of the *Backyard Hen Bylaw*. The Committee does not have sufficient evidence before it to determine that the keeping of hens is likely to have a material adverse impact on the mental health of a member of the Appellants' family.
- [60] In respect of the Appellants' concerns regarding disease transmission from the hens, the Committee notes that the diseases noted are not airborne. The coop is more than 13 feet from the Appellants' property line. The Appellants and their children will not be handling or interacting with the hens. As such, the Committee finds that the keeping of hens on the Property is not likely to have a material adverse impact on the health of a member of the Appellants' family through the transmission of disease.

Does the Applicant meet the requirements of the Backyard Hen Bylaw?

- [61] The Committee has considered the evidence put before it by the Applicant and the Licensing Authority and finds that the Applicant meets the requirements of the *Backyard Hen Bylaw*. The Property is larger than 400 square meters, the Property owner (Mr. Turner) has consented, the Property contains a single detached dwelling as the principal building. The Applicant has completed a hen training course and resides on the Property.
- [62] The Committee notes that the Appellants stated they were not notified of the Applicant's application for a Hen License. The Appellants stated that they received two letters but could only locate the second – the letter from the municipality. She could not locate the first notice letter. The Committee accepts the evidence from the Applicant that the notification form is automatically generated as part of the licensing application and that she put the notification form on the Appellants' door.

Was the Hen License issued based on Incorrect Information or Misrepresentation?

[63] No parties raised issues that the Hen License was issued based on incorrect information or misrepresentation. The Committee finds that the Hen License was not issued based on incorrect information or misrepresentation.

Dated the Regional Municipality of Wood Buffalo in the Province of Alberta this 14th day of July, 2021.

Section 17 (1) FOIP

Sean Schaffer

If you wish to challenge this decision you must follow the procedure in the Alberta Rules of Court, Alta Reg 124/2010 which require an application for judicial review must be filed and served not more than six months after the date of this decision.

APPENDIX "A"**DOCUMENTS RECEIVED AND CONSIDERED BY THE COMMUNITY STANDARDS APPEAL COMMITTEE**

EXHIBIT NO.	ITEM	DATE FILED
	Subject Area Map	2021-05-20
1.	Notice Of Appeal	2021-05-14
2.	License Approval Letter	2021-05-14
3.	Application for Hen License	2021-05-14
4.	Hen License Holder Submission	2021-06-16
5.	Edward and Theresa Portugie Written Submission in Support of the Appeal	2021-06-16
6.	Municipality's Evidence Submission	2021-06-17
7.	Dale Hannigan Written Submission Supporting the Appeal	2021-06-18
8.	KC Hutchins Written Submission Opposed to the Appeal	2021-06-23
9.	Ella Rankin Written Submission Opposed to the Appeal	2021-06-23
10.	Brian and Rena Rott Written Submission Supporting the Appeal	2021-06-23
11.	Annie Legris Written Submission Opposed to the Appeal	2021-06-23
12.	Barry Waller Written Submission Opposed to the Appeal	2021-06-23
13.	Monique Webb Written Submission Opposed to the Appeal	2021-06-23
14.	Nicole Funk Written Submission Opposed to the Appeal	2021-06-23
15.	Christa Warren Written Submission Opposed to the Appeal	2021-06-23
16.	Nolan Metzler Written Submission Opposed to Appeal	2021-06-24
17.	Rebecca Baker Written Submission Opposed to the Appeal	2021-06-24

APPENDIX "B"**REPRESENTATIONS****PERSON APPEARING****CAPACITY**

Caitlin Hanly	Counsel for the Municipality
Camille Goodheart	Counsel for the Municipality
Sabrina Caterini	Bylaw Services Manager
Sheri Raike,	Appellant
Rebecca Turner	Hen License Applicant
Rick Turner	Property Owner