EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards of Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10035

Date:	September 14, 2021
Licence Number:	315630226
CSLAC File Number:	CSLAC-21-035

Between:

and

The City of Edmonton, Community Standards and Neighborhoods

Committee Members

Kathy Cherniawsky, Chair
Allan Bolstad
Chris Samuel

DECISION

[1] On August 17, 2021 the Community Standards and Licence Appeal Committee (the "Committee") heard an appeal that was filed on June 28, 2021. The appeal concerned the decision of Community Standards and Neighbourhoods to revoke licence number 315630226 pursuant to Section 27(4) of the *Animal Licensing and Control Bylaw*.

[2] The subject property is located at 9115 - 65 Avenue NW, Edmonton.

[3] The following documents were received prior to the hearing and form part of the record:

- Appellant's Appeal Form with reasons
- Licencing Record from the Program Manager, Urban Beekeeping
- Appellant's written request for appeal, written submission, and rebuttal
- Respondent's written submission and rebuttal documents

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Video of a conversation between the Appellant and the Complainant

Preliminary Matters

[5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time.

Summary of the Hearing

i) Position of Appellant 1, , CSLAC-21-035

[8] was accompanied by his wife, . They have participated in Urban Beekeeping for three years.

[9] The person who filed the complaint does not meet the definition of an adjacent or abutting neighbour. The City's language refers to "surrounding neighbours" but then clarifies that term to mean owners or tenants of abutting properties including the property across an alleyway. referred to an overhead map (Appendix F in his written submission) which shows his property in relation to the "surrounding neighbours". The Appellant's property is numbered 2 and the "surrounding neighbours" are the properties numbered 1, 3 and 6. The Complainant's property is numbered 7.

[10] While the term "radius" was mentioned several times by the City, the City's documents do not reference a radius nor was one ever provided to the Appellants. The Appellants only had the City Beekeeping Guidelines to rely on.

[11] The original complaint regarding the bee operation was in December, 2020, and a second complaint was made on April 1, 2021. Initially, the Complainant just mentioned that she did not mind the bees and agreed they were not a danger, just extra work cleaning. She stated that the bee defecation covered their truck and yard furniture in the springtime. The Appellants question these comments since the truck is parked inside the garage the majority of the time. The Complainant also mentioned that the bee defecation was black and smelled, but bee defecation is brown and has a sweet smell due to the honey they produce.

[12] was asked by the Complainant to point the hives towards an adjacent property but this is contrary to the City's Beekeeping Guidelines and would be in violation of his licence.

[13] When the initial complaints failed, it escalated to a bee allergy. According to City records no mention of a bee allergy was brought up until May 5, 2021. On May 11, 2021 C. Hodgson of the City of Edmonton, Law Branch, said she had read the Posse file (electronic file) and did not see any mention of an allergy.

[14] While the City's website states that a licence can be revoked due to a neighbouring allergy, the doctor's note provided by the Complainant is inconclusive. It only states that the Complainant suffered from a severe bee reaction in the past. This doctor's note was based on information provided by the Complainant, and there is no proof that it was based on medical evidence. The Complainant also provided false information to the doctor in saying that she lived beside the Appellants.

[15] The Appellants have gone through extensive steps and expense to acquire their beekeeping licence and find it absurd that a licence can be revoked upon word of mouth after operating for three years. While they understand that a licence can be revoked due to an allergy and that a bee allergy can be quite severe, in this case the validity of the allergy is concerning due to the progression of the complaint.

[16] They are frustrated that they had to take time off of work to attend the meeting today while neither the City nor the Complainant had to show up.

[17] Proper evidence has not been provided by the other parties and th do not believe this to be a valid complaint.

[18] An 11 minute video taken by a garage camera on April 1, 2021 (Exhibit A), shows a conversation between the Complainant and the Appellant regarding the concerns with the bees. The Appellant quoted extensively from this interchange. At no time during this conversation or during the last three years was there ever any mention of a bee allergy.

[19] The Appellants provided the following responses to questions from the Committee:

a) There have been no further conversations with the Complainant since the April 1, 2021 conversation (Exhibit A).

b) The Complainant has a vintage truck which is stored in her garage and has concerns that the truck is being destroyed from the bee defecation.

c) After being cooped up in a hive all winter there is a six week period in the spring (April to mid May) during which the bees take cleansing flights and defecate. This appears as little brown dots on the snow and is easily washed off from vehicles when it rains. They have personal knowledge as their vehicles are parked in their driveway next to their hive.

d) A volunteer tree that has grown in the corner of their yard is in the path of the bees which acts to divert the direction the bees fly. The Appellants would be happy to

add more trees if required. They are also willing to rotate the hives if the City would allow it.

e) Letters of support were received and submitted from all of their adjacent neighbours. They were never advised by the City to expand the notification radius or to provide any other information prior to receiving the revocation letter dated June 10, 2021.

f) If the licence is revoked, the bees would have to be moved out of the city. Bees can travel between 7 to 10 kilometres from their hives and may return to their original home if not relocated out of the City. Should the Appellants be required to move the hives they request that this be delayed until Thanksgiving as the hives are quite heavy and dangerous to move right now. The bee population is much lower in October.

g) The Appellants believe this decision should be reviewed on a standard of correctness. All of their submissions have been based on fact. No facts have been provided by the Complainant and the City has not required that. The process needs to be more fair.

h) The Appellants had a conversation with J. Cotnam, an Animal Control Peace Officer, on April 24, 2021. She advised them that the April complaint was deemed to be invalid and to go ahead with a planned application for a second hive.

i) No further discussions were had with the City nor was further information requested by the City prior to the letter of revocation being issued.

j) The Appellants have concerns about the validity of the Statutory Declaration signed by the Complainant as no proof to back it up has been submitted.

k) Another neighbour had a similar issue with the Complainant last year but it had to do with birds rather than bees. The Complainant asked them to remove all of their bird feeders and stop feeding the birds.

ii) Position of Appellant 2, , CSLAC-21-036

[20] The Appellant agrees with all of the submissions made by the previous Appellant, who is her next door neighbor and mentor when it comes to beekeeping.

[21] If a person has a severe and deadly bee allergy the only solution would be to move the hive; however, as presented by , this may not be the case here.

[22] Bee allergies have different levels of severity ranging from mild to moderate to systemic (severe). Only a severe allergy can cause anaphylaxis. There has been no evidence presented that the Complainant has a systemic allergy and this is not clarified by the Doctor's note.

[23] The Doctor's note also does not speak to the probable identity of the insect. Stings can be caused by wasps, hornets, bumblebees and honey bees and the allergic reactions from the various types of bees can differ. A blood test or skin prick test would help to determine what type of insect a person is allergic to and the extent of the allergy.

[24] It does not appear that any allergy test was performed when reading the Doctor's note and it is not clear if the sting was from a honey bee or another type of bee. It appears that the Doctor's diagnosis was taken from the words of the Complainant.

[25] There is a history of complaints regarding the bees starting with the mess they cause. When the Complainant was advised that the complaint was not relevant, it escalated to a bee allergy. It is doubtful that a severe, deadly allergic reaction exists otherwise it would have been brought up during the initial complaints. Her neighbour has operated his hive for three years and no allergy complaint has arisen until very recently.

[26] She requests the Committee to reconsider the revocation of her licence. She does not think this behaviour should be encouraged and be allowed to set a precedent for other people.

[27] The Appellant provided the following responses to questions from the Committee:

a) The Appellant has never physically met the Complainant. She moved into her property in mid December and due to the cold temperatures and Covid, she has not had an opportunity to speak with her.

b) She only had her hive for five days when she received the revocation letter.

c) While most people in the neighbourhood get along very well she is aware that there have been other issues with this particular Complainant.

d) She cannot plant additional trees in her yard due to the presence of a power line. She is prepared to rotate the hive if necessary.

e) She referred to Appendix F which was included in written submission. Her house is labelled No. 4 and she provided letters to the houses labelled No. 3, 5 and 7 on April 26, 2021. No response was received to any of these letters. She also spoke directly to the neighbours in the properties labelled 3 and 5. She used the guidelines provided on the City's website to determine who to contact and also used the template letter from that website.

f) She believes the City's decision should be reviewed on the basis of correctness. More facts and evidence should be required from the Complainant and the Respondent.

g) She received her approval letter on May 28, 2021 but it took her a while to source the bees. The revocation letter, dated June 10, 2021, was received 5 days after she purchased the bees.

h) After receiving her approval letter, she did not receive anything from the City, until the revocation letter arrived.

i) She followed all the instructions required to acquire her licence. All the other party has is a signed statement about an allergy without any evidence to back it up.

iii) Position of the Respondent, J. Wilson, Acting Director of Animal Control and Peace Officers, City of Edmonton

[28] The Respondent did not attend the hearing and the Committee relied on their written submissions.

Decision

[29] The appeal is **ALLOWED** and the decision of Community Standards & Neighbourhoods is **CANCELLED.**

Reasons for Decision

[30] These are appeals of two decisions revoking specialty animal licences to keep bees made by the Acting Director of the Community Standards Peace Officer Section (the duly appointed delegate of the City Manager). The Committee heard the revocation appeals, CSLAC 21-035 (Appellant 1) and CSLAC 21-036 (Appellant 2), jointly for the following reasons:

a) The appeals raise common legal and factual issues.

b) A significant amount of the supporting evidence was relevant to both appeals.

c) A joint hearing was supported by the parties in attendance. Both Appellants appeared in person and adopted one another's submissions for the consideration by the Committee.

d) The revocation letters are substantially identical and the City's submissions and disclosure show that the licences were both revoked under section 27(4) of the *Animal Licensing and Control Bylaw,*

> The City Manager may refuse to issue or may revoke a Licence issued pursuant to this section by providing written notice to the Licensee

for the same reason – a concern from the resident of a neighbouring property ("Neighbour A"). A single statutory declaration with accompanying physician's note was presented in both cases.

e) The Appellants' properties are in close proximity to one another and to the concerned neighbour. The Appellants' properties face 65 Avenue, back onto a common lane and are separated by a single subdivided lot. The neighbour is directly across a common rear land from Appellant 2's property.

[31] Unless specifically indicated to the contrary, these reasons apply to both appeals.

Background Information

[32] Licence 315630226 (the "2019 Licence," CSLAC File 21-035 for the hive located at 9115 - 65 Avenue, the "2019 Hive") was issued to Appellant 1 on June 17, 2019. It was revoked almost two years later on June 10, 2021. The decision revoking the 2019 licence provides the following reasons for the revocation:

> "An allergy concern has been reported to the City of Edmonton's Animal Control Peace Officers in proximity to your Urban Bees Licence number #315630226. According to the City of Edmonton's Urban Bees Guidelines, "Permission for a Licence can be revoked due to documentation of medical concerns from residents of neighbouring properties," including those attached to your property or across an alleyway.
>
> Additionally, pursuant to section 27(4) of the *Animal Licensing and Control Bylaw*, this Licence may be revoked if at any time there is reasonable cause to believe that revoking the Licence is in the public interest. As there is limited ability to control bees or mitigate the health risk they pose to citizens with allergies, even by responsible permit holders, the City has determined it is in the public interest to revoke Licences where neighbouring residents advise the City of an allergy to bees."

[33] Licence 396289565 (the "2021 Licence," CSLAC File 21-036 for the hive located at 9111 - 65 Avenue, the "2021 Hive") was issued to Appellant 2 on May 28, 2021 and revoked 12 days later by letter dated June 10, 2021.

[34] The decision revoking the 2021 licence states identical reasons for the revocation:

> "An allergy concern has been reported to the City of Edmonton's Animal Control Peace Officers in proximity to your Urban Bees Licence number #396289565. According to the City of Edmonton's Urban Bees Guidelines, "Permission for a Licence can be revoked due to documentation of medical concerns from residents of neighbouring properties," including those attached to your property or across an alleyway.
>
> Additionally, pursuant to section 27(4) of the *Animal Licensing and Control Bylaw*, this Licence may be revoked if at any time there is reasonable cause to believe that revoking the Licence is in the public interest. As there is limited ability to control bees or mitigate the health risk they pose to citizens with allergies, even by responsible permit holders, the City has determined it is in the

public interest to revoke Licences where neighbouring residents advise the City of an allergy to bees."

Procedural Fairness and Standard of Review

The City's Position

[35] The Committee first considered the City's written submissions with respect to procedural fairness of the initial revocation and the appropriate standard of review to be applied by the Committee in these appeals:

a) The hearing before the Community Standards and Licensing Appeal Committee is a de novo hearing, where the board has the ability to take all of the evidence available to the City at the time of the original decision, as well as all of the evidence presented by both parties to make a new decision. Pursuant to the *Society for Promotion of Alternative Aris & Music v Edmonton* case, an appeal in this forum affords an "adequate alternative remedy to a party who is dissatisfied with the decision made" by the City. Although not argued by the appellant, any procedural fairness issues that could be alleged would also be solved by the de novo hearing process and are therefore moot.

b) Generally in an appeal, the standard of review is reasonableness at default and following the Supreme Court direction in *Vavilov*, the presumption of reasonableness will apply to discretionary decisions. The standard of reasonableness does not require correctness or perfection, but only that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. To be reasonable, the reasons must meet the standard of justification, transparency and intelligibility. On the other hand, reasons are inadequate where there is no line of analysis within them that could reasonably lead the delegate from the evidence to the conclusion it arrived at.

c) The City submits that the decision to revoke the Appellant's Beekeeping Licence was reasonable in the circumstances. Although the Appellant has shown himself to be a diligent and responsible licence holder and beekeeper, the City adhered to its internal policy that an allergy concern by an immediate neighbour requires rejection or revocation of a beekeeping licence. The potential of revocation based on a medical concern from a neighbour was clearly stated on the City's website. As such, the City argues that CSLAC should also find it reasonable to revoke the Appellant's Beekeeping Licence.

d) Pursuant to section 8(2) of the *Community Standards and Licensing Appeal Committee Bylaw* (*CSLAC Bylaw*), the Committee has the same powers under the *Animal Licensing and Control Bylaw* (*ALC Bylaw*) as the City Manager. This includes the power to issue, reject or revoke a beekeeping licence, or to impose any terms and conditions on a licence deemed necessary in the public interest, pursuant to Section 27 of the *ALC Bylaw*.

e) The City respectfully submits that the question to be determined by the Committee in this appeal is whether the City's decision was reasonable in the circumstances and should stand, or if the decision should be replaced by a new Committee decision. The City has provided all of the information that was available to the City when they made the initial decision for the Committee's consideration. For this reason, the City does not intend to attend the appeal hearing, and instead will allow our written submissions and evidence to speak for the City's position.

The Appellant's Position

[36] When asked to comment on fairness and the appropriate legal standard of review, the unrepresented Appellants answered that they were entitled to fairness at the CSLAC hearing. They argued that the decision should be correct and that a correct decision is one based on all the evidence before the Committee. Appellant 2 added that more facts and evidence should be required from the complainant neighbour.

Procedural Fairness

[37] In the Committee's view, procedural fairness applies to this appeal hearing and to the process involved in the initial revocation decisions. When the Committee decides on a question of procedural fairness there is no standard of review analysis - the question to be asked is whether the person challenging the revocation received the degree of procedural fairness to which they were entitled.

[38] In any event, no procedural fairness issues were raised by Appellant 1 or Appellant 2 as a reason for the Committee to cancel the initial revocations. To the contrary, the Appellants asked that the revocations be overruled based on the novel, previously unconsidered evidence they submitted to this Committee and based on the redacted record produced by the City which shows inconsistencies that bring the veracity of the medical complaints into question.

The Applicable Standard of Review is Correctness

[39] With respect to the standard of review, the Committee disagrees that the applicable is reasonableness. The City's position was that the Committee should apply the reasonableness standard of review and defer to the City Manager's delegate by upholding the revocation based on *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 (*Vavilov*) and the predecessor foundational decision *Dunsmuir v New Brunswick* 2008 SCC 9. *Vavilov* applies to determine the external standard of review to be applied by a court to administrative decisions on a judicial appeal or an application for judicial review. The appeal before CSLAC is an internal appeal from the City Manager's delegate to this quasi-judicial Committee.

[40] As the Alberta Court of Appeal noted in *Moffatt v. Edmonton (City) Police Service,* 2021 ABCA 183*,* a case not cited in the City's written arguments, *Vavilov* does not apply to the internal standard of review which this Committee must apply to the original administrative decision maker.

[41] The proper standards of review or levels of deference applicable to internal appeals has been addressed by the Alberta Court of Appeal in many cases decided prior to *Valvilov,* including *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399. Earlier this year, *Newton* and the cases cited in that decision were upheld post-*Vavilov* by the Court of Appeal in *Moffatt*. Following these cases, decisionmakers like this Committee are instructed that the standard of review must be decided on a case-by-case basis. They must consider several factors to determine the appropriate standard: the effective roles of the tribunal of first instance and the appellate tribunal as determined by the enabling legislation; the nature of a question in issue; the interpretation of the statute as a whole; the relative expertise of the tribunal of first instance; the need to limit the number, length and cost of appeals; preserving the economy and integrity of the proceedings in the tribunal of first instance; and any other relevant factors.

[42] An analysis of these factors suggests that, on balance, a standard of review of correctness is appropriate for these two appeals. Section 9(2) of the *CSLAC Bylaw* delegates this Committee all the authority granted to the City Manager (or delegate) under the applicable bylaw. That is, the Committee conducts a hearing *de novo*. It can hear evidence from the parties which was not before the City Manager (or delegate) when the initial revocation decisions were made. Further, the Appellants were not given a hearing before the revocation decisions were made. They did not know the decision process was underway and they had no opportunity to put forward their case or refute the Statutory Declaration prior to having their licences revoked. With respect to relative expertise, the Committee notes that in *Society for Promotion of Alternative Arts and Music v. Edmonton City*, 2008 ABQB 629 (cited by the City), the Court commented that both the first level decision maker and the equivalent of this Committee were owed deference in licensing matters by a court on judicial review. There was no distinction made with respect to relative expertise as between the two non-judicial levels.

Proximity & Severity of Allergy

[43] In these appeals, the Committee weighs the public interest in facilitating the benefits of urban bee hives while remaining mindful of the public interest in maintaining health and safety in making license revocation decisions with respect to beekeeping. This involves balancing the larger public good on both sides, as well as the rights and interests of the specific licensees and their neighbours. The City has identified the two key issues central to determining an appropriate balance, when one neighbouring resident raises objections to another neighbour's beekeeping licence: proximity of the resident to the licenced bee hive, particularly the "perimeter of concern" and the existence and severity of the resident's allergy or medical reaction to stings attributable to bees from the licenced beehive.

[44] The Committeecarefully reviewed the evidence provided by Appellant 1 and Appellant 2, as well as the redacted record and written submissions provided by the City with respect to these two issues.

[45] Both revocations were based upon a single document, a redacted statutory declaration form prepared by the City and affirmed by Neighbour A. The City explained that due to Sections 17 and 33 of the *Freedom of information and Protection of Privacy Act (Freedom of Information and Protection of Privacy Act,* RSA 2000, c F-25), its policy is not to disclose any personal information about neighbours residing within the perimeter of concern who execute the City's statutory declaration form.

[46] However, based on: the submitted information from the City (some of which did include the neighbour's address); the common wording in the City records and Appellant 1's interactions with this neighbour; Appellant 1's aerial map showing the location of nearby properties; and, the addresses of the surrounding neighbours who provided letters to support of the hives, the Committee is satisfied that the concerned neighbour resides at address #7 identified in the aerial map in Appellant 1's submission. This individual will be named Neighbour A in this decision.

Proximity of Resident with the Allergy

[47] The Committee first considered the proximity of Neighbour A to the approved hives. While the bees which leave the hive travel several kilometers daily, the likelihood of encountering a bee increases as people come closer to the hive. The bees are not generally aggressive, but will become more aggressive to defend the hive. The Appellants both agree with the City that if a person lives in very close proximity to the hive and has a severe and deadly bee allergy, then the only solution would be to move the hive.

[48] Based on submitted information:

a) The two licenced properties face 65 Avenue and back onto a common lane. They are separated by a single lot.

b) Appellant 1 provided letters of support from both of the abutting neighbours who share a side property line and from the neighbour from the lot directly across the lane to the rear of their property.

c) Appellant 2 provided a letter of support from one abutting neighbour who shares a side property line.

d) Both Appellants stated the only other abutting neighbour who shares the other side property line with Appellant 2 initially provided a letter of support, but asked for it to be removed from the submitted documents after Neighbour A became aware of their support.

e) Neighbour A's property is located directly across the lane from Appellant 2.

f) Neighbour A's property is located across the rear lane and over one lot and across an additional lane from Appellant 1's property.

[49] The City's revocation letters refer to the level of proximity that tipped the balance on the constellation of factors at issue toward revocation of the two licences. First, the decision

states a concern has been discovered "in proximity to your Urban Bees licence." Then it quotes from the Beekeeping Guidelines "Permission for a Licence can be revoked due to documentation of medical concerns from residents of neighbouring properties," adding the comment 'including those attached to your property or across an alleyway.' Finally, the revocations point out the difficulty in controlling bees or mitigating health risks "where neighbouring residents advise the City of an allergy to bees."

[50] The language used in the revocations is unclear and inconsistent. Adding to this difficulty, the wording of the Beekeeping Guidelines has changed substantially between the date of the revocations and the date of this decision. The City did not explain the interpretation of the provisions in the version in effect at the time of this decision, nor the impact of the changes to the Beekeeping Guidelines on the perimeter of concern.

[51] The Committee reviewed the current Beekeeping Guidelines that were in effect as of the date of this decision. The Guidelines now speak to notification of the site's approval to adjacent neighbours and not neighbours being owners of each abutting property including those who live across an alleyway, but not across a street. They do not mention a two week response period, nor do they say permission can be revoked due to documentation of medical concerns from residents of neighbouring properties. The Guidelines in effect at the issuance of the Committee's decision, currently state:

a) "NEIGHBOUR NOTIFICATION - Every beekeeping applicant shall inform all adjacent neighbours in writing of the site's approval, and provide that information to Animal Control. This requirement is a **notification** to neighbours, not a request for neighbour permission."

b) "REVOCABLE PERMISSION - Should Animal Control find a site, hive or beekeeper to be unsuitable at any time, the permission may be revoked and the site owner shall work with Animal Control to relocate to the hive and bees to a location outside of the City of Edmonton. All costs and associated expenditures related to the removal are the sole responsibility of the site or property owner."

[52] The City's two written submissions reference a variety of revocation-triggering perimeters of concern ranging from abutting properties with shared property lines or fences to any properties where neighbours see an increase in bees at their location due to a hive. The submitted materials fail to clearly define the radius that should trigger revocation in these two appeals. Unfortunately, this key point could not be clarified as the City did not attend the hearing.

[53] In the City's initial submissions, Neighbour A or their property is described as

a) "abutting" both 9111 and 9115 (paragraphs 3 in both submissions)

b) "within the radius of concern stated in the program guidelines" (paragraph 9).

c) "an immediately surrounding neighbour" (paragraph 11).

[54] Based on an aerial photo presented by Appellant 1, only one property abuts both of the properties containing hives. The neighbour at that property provided a glowing letter of support indicating no concerns with the hives.

[55] Also, based on the evidence before the Committee from Appellant 1, it is possible that Neighbour A is within the radius of concern using the definition in the earlier version of the program guidelines with respect to Appellant 2's property, but this cannot be true for Appellant 1's property. Based on the evidence before the Committee it notes that Appellant 2 was required to notify Neighbour A as part of their 2021 application process, Appellant 1 was not required to notify Neighbour A as part of their 2019 application process.

[56] Paragraph 9 of the City's initial submission cites a "Map of Abutting properties as Tab 3, Record". As noted by Appellant 1 at the hearing, no such document was provided.

[57] The City's rebuttal submission does not clarify the issue of requisite proximity. In it, Neighbour A is described as an "immediate neighbour" to Appellant 1 and Appellant 2 ; a surrounding neighbour; and simply, a neighbour. In rebuttal, the City also made the following submissions to clarify the impact of the different wording choices and the critical radius of concern applicable in these two appeals:

a) As a point of clarity, abutting neighbour or adjacent neighbour is language that was previously used in the City's program, and regrettably was used in the City's initial submission. This language in the guidelines had previously been updated at the beginning of April of this year due to concerns about clarity on a separate appeal, but the changes in language were not reflected in our initial submission. Where the word "abutting" was used in paragraphs 3 and 18, and the title of Tab 3 of the Record, we would ask that "surrounding" be the substituted word.

b) In the guidelines, there is a difference between the language used in the notification and revocation paragraphs. The guidelines state that for neighbour notification: "Prior to submitting an application, every beekeeping applicant must notify all immediately surrounding neighbours, including those attached to their property or across an alleyway, in writing, of their intent to keep bees." The City does not have any concern that the Appellant would not have properly notified the neighbours he was required to notify when he initially received his licence.

c) However, the guidelines also state "Permission can be revoked due to documentation of medical concerns from residents of neighbouring properties". This language is broader to allow the City to consider an allergy that may fall outside of the notification radius, but still requires that the individual is a neighbour. This does not require that the complaint is a property that shares a fence line. The City cannot confirm the identity of the Complainant or their specific property. Instead, a selection of properties that fall within the radius were provided by the City in the initial submission.

d) The City must regularly balance public concerns with individual concerns, while avoiding overreach in its regulations. Although bees can fly for many kilometers, a radius of surrounding neighbours was chosen in an attempt to balance the existence of allergies with the desired presence of beehives. This general radius was provided to the Government of Alberta apiary team, who agreed that it was "sufficient" as it is the area that one would see the greatest density of bees. Additionally, in the complaints received by the City, the Complainant states that they have experienced an increased number of bees on their property.

e) Duty of care relies on proximity, and an immediate neighbour would likely fall within that proximity while a more distant neighbour may not. An individual who lives a block or more away very likely would not be considered within a reasonable proximity. This is not a clear distinction, as context matters, bees cannot be controlled, and they may fly to many places and in many directions based on any number of factors. Additionally, the allergy risk may differ in severity, which could lead to a higher threshold of concern and a larger radius. In this case, the Complainant has already stated that they have faced an increased number of bees in their yard coming from the appellant's yard. The City has determined that this Complainant likely falls within the proximity requirement that forms the existence of a duty of care.

f) As stated in the literature in the first submission, one of the mitigation measures to reduce allergic reactions is to remove hives "within the immediate vicinity of the patients' home". Since the Complainant is a neighbouring property, who has seen an increase in bees at their property due to the hive, this allergy concern is considered by the City to be within the proximity triggering a duty of care.

[58] The City's rebuttal submission indicates it has made changes to its policy due to another appeal. That decision was released by the Committee on August 6, 2021. In it, the City had agreed with the Applicant for a Beekeeping Licence that for the purposes of notification letters "abutting" meant sharing a fence. The Committee notes that this position could effectively exclude properties from the perimeter of concern which would be located much closer than other properties directly across a lane.

[59] The City compounds the vagueness by asking the Committee to substitute the word "surrounding" for "abutting" without defining that broader concept. No clear definition of reasonable proximity is provided. No information is provided about the Alberta apiary team or their opinion cited in paragraph 9, about sufficiency of radius of concern which also remained undefined. Again, the map that is referenced in the rebuttal submission was not submitted to the Committee.

[60] The City argues that the radius of concern is variable and likely well beyond any of the previously mentioned perimeters. The Committee notes that the City posits that a block or more away, very likely is not within this standard of care. They reason that the radius is variable because context matters, including the severity of the allergy and other unique factors exist which could increase the radius of concern. Then, with no real explanation

or indication of severity of Neighbour A's bee reaction, the City concludes that in these appeals, since Neighbour A has seen an increase in bees at their property due to the hive; the allergy concern is considered by the City to be within sufficient proximity to trigger a duty of care. No mention is made of the factors they cited earlier which led to this conclusion.

[61] The 2021 Hive had been in operation less than a week, oriented in a different direction with different barriers which was not discussed. The Committee finds it highly unlikely that Neighbour A had observed an increase in bees attributable to Appellant 2's hive. Therefore, if the Committee was to apply the City's proposed test to these facts, Neighbour A would fail to fall within the perimeter of concern for Appellant 2 even though their property is much closer to Neighbour A than Appellant 1.

[62] For the above reasons, the Committee finds the evidence and submissions before it insufficient to define the appropriate perimeter of concern or be persuaded that Neighbour A's property is within sufficient proximity to the hives to warrant revocation of either the 2019 Licence issued to Appellant 1 or the 2021 Licence issued to Appellant 2.

Severity of Allergy

[63] Finally, the Committee considered the evidence about the existence and severity of a medical condition. The City relied on the generic statutory declaration form executed by Neighbour A as evidence of a medically diagnosed allergy sufficiently serious to warrant revocation of the 2021 Licence and the 2019 Licence.

[64] The Statutory Declaration prepared by, and affirmed before, City employees states:

> "I **BLANK**
>
> of **BLANK**
>
> Do solemnly declare that all the following statements are true:
>
> 1. I reside at **BLANK**
>
> 2. I have been medically diagnosed with an allergy to bees;
>
> And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

[65] The City Record indicates Neighbour A requested time to get an allergy test prior to executing this statutory declaration. No test was provided to the Committee; however, Neighbour A provided a doctor's note which states:

> To whom it may concern,
>
> The above is a patient in my practice. **BLANK** has suffered from a severe bee sting reaction in the past.

> It is my understanding that **BLANK's** living beside someone in her neighbourhood with beehives. This is an unsafe situation for the patient.
>
> I have asked **BLANK** to have Benadryl on hand and carry an EpiPen at all times.
>
> Hopefully this is of some use.

[66] The City specifically indicated that the note was provided voluntarily and that it relies solely on the statutory declaration to justify the two revocations.

[67] In the Committee's view, the City's generic statutory declaration form is not persuasive. It lacks any affirmation that the declarant is aware of the perimeter of concern and resides within it (a point which could be made without releasing personal information contrary to Section 17 of *FOIP*). It lacks detail or an indication about the severity of the allergy, which is a key consideration, because the City argues in reply that the perimeter of concern should increase in part, in conjunction with the level of the severity of the neighbour's allergy.

[68] The Committee did not place significant weight on the doctor's note. The Physician's comments are based entirely upon information reported by Neighbour A. It does not state an allergy test has been ordered or performed. It does not state that a bee allergy, let alone a serious bee allergy, has been medically diagnosed. It contains inaccuracies with respect to the location of the hives at issue; neither Appellant 1 nor Appellant 2 own property "beside" Neighbour A.

[69] Furthermore, the Appellants raised compelling evidence documenting actions and comments of Neighbour A which are inconsistent with the claim that the Neighbour A has a medical condition sufficiently serious to warrant revoking either Licence 2019 or Licence 2021.

[70] Appellant 1 stated the 2019 hive had been operational with the knowledge of Neighbour A for two full summer seasons without complaint. Neighbour A accepted honey from their hive and never mentioned any allergies or medical concerns.

[71] Neighbour A first raised concerns with Appellant 1 about the nuisance impacts of the bees on their property in December 2020. No mention was made of allergies during their interchanges.

[72] Appellant 1 provided an 11 minute surveillance video recorded on April 1, 2021 showing Neighbour A standing in the rear lane behind Appellant 1's property within a few meters of the hive discussing the situation at length. Neighbour A is heard complaining about the bees. Appellant 1 cited lengthy quotes from that video to show Neighbour A was concerned about bee excrement on their property, including on a deck, furniture, railings and a vintage truck. At no time is any medical concern or bee allergy or any type of allergy raised.

[73] Appellant 1 submitted a video of Neighbour A in their rear yard taken June 18, 2021 showing them under a hanging basket of flowers and a photo taken July 25, 2021 that

shows flowers in a hanging basket and in pots, which attract bees sitting on the deck and beside their rear door.

[74] The information provided by Appellant 1 is consistent with the City records beginning early in 2021. The records document the complaints made by Neighbour A, related to bee mess, more specifically bee excrement on furniture, deck and a truck. During these communications, Neighbour A indicates that they do not want the bees to have to be removed, as they do not mind them, but they just do not like them messing all over their yard and furniture. There is a request to have the hive rotated so bees will not enter their yard. No allergy or medical concern is mentioned in any of the communications. On April 24, 2021 the Animal Bylaw Complaint notes provided by the City indicated the complaint file had been investigated with the parties and closed as invalid. The final conclusion being there is no valid reason to revoke the 2019 Licence. On April 24, 2021, Appellant 1 was informed that the complaint had no merit and the hives could stay. Appellant 1 was further advised that the invalid complaint would have no impact on his ability to obtain a second hive.

[75] The complaints filed before April 26, 2021 in the City records confirm Neighbour A repeatedly said they did not wish the bees to be removed and their concern was with the state of their property.

[76] There is no mention of an allergy or medical issue in the City records until April 26, 2021 when there is a description of a separate concern having been communicated to a City Councillor regarding an allergy and also a note that Neighbour A does not want to revoke the neighbour's ability to have bees. This medical concern appears after Neighbour A had been informed a complaint based on residue from bees is not considered legitimate and that Appellant 1 had no legal obligation to reorient or move the hive.

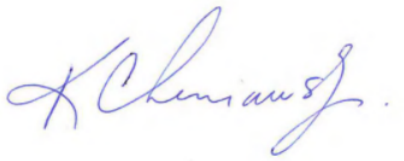
[77] The change in the Neighbour A's concerns were so great that the record shows for a time some City officials erroneously thought that there were two separate complaints from two neighbours residing in neighbouring properties – one a complaint about bee excrement and one a medical concern.

[78] The Committee notes that there is some suggestion, in the record and in the City's initial submission, that Appellant 2 did not inform the Neighbour A of their 2021 application and may have proceeded without authorization, although this concern seems to have been withdrawn. For clarity, the Committee finds this suggestion to be untrue. Appellant 2 provided clear evidence that Neighbour A had been informed, as instructed by the City, in compliance with the Guidelines in place at that time, and that a notification letter issued April 26, 2021 was hand delivered to Neighbour A.

[79] There is no evidence whatsoever on the record that Neighbour A submitted a response to this notification letter or expressed a medical concern regarding the 2021 Licence. The only mention of a hive at Appellant 2's property is a note dated May 3, 2021 with the comment "now there is another one" in a call related to the 2019 License that dealt exclusively with mess from bees.

[80] Regardless of the applicable radius or perimeter of concern, after considering all of the presented materials, the Committee finds there is insufficient credible evidence to establish the existence of a medical condition sufficient to warrant the revocation of the two licences, based on the public interest.

[81] The appeals are allowed, the revocations of Licence #315630226 and Licence #396289565 are cancelled, and the licences are reinstated.



Ms. K. Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

J. Wilson / G. Blaine, Animal Care and Park Rangers Section
C. Hodgson, Law Branch

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards of Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10036

Date:	September 14, 2021
Licence Number:	396289565
CSLAC File Number:	CSLAC-21-036

Between:

and

The City of Edmonton, Community Standards and Neighborhoods

Committee Members

Kathy Cherniawsky, Chair
Allan Bolstad
Chris Samuel

DECISION

[1] On August 17, 2021 the Community Standards and Licence Appeal Committee (the "Committee") heard an appeal that was filed on June 29, 2021. The appeal concerned the decision of Community Standards and Neighbourhoods to revoke licence 396289565 pursuant to Section 27(4) of the *Animal Licensing and Control Bylaw*.

[2] The subject property is located at 9111 - 65 Avenue NW, Edmonton.

[3] The following documents were received prior to the hearing and form part of the record:

- Licensing Record from the Program Manager, Urban Beekeeping
- The Appellant's written request for appeal, written submission and rebuttal
- The Respondent's written submission and rebuttal

[4] The following exhibits were presented during the hearing and form part of the record:

- Exhibit A – Video of a conversation between the Appellant and the Complainant

Preliminary Matters

[5] At the outset of the appeal hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[6] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[7] The appeal was filed on time.

Summary of the Hearing

i) Position of Appellant 1, , CSLAC-21-035

[8] was accompanied by his wife, . They have participated in Urban Beekeeping for three years.

[9] The person who filed the complaint does not meet the definition of an adjacent or abutting neighbour. The City's language refers to "surrounding neighbours" but then clarifies that term to mean owners or tenants of abutting properties including the property across an alleyway. referred to an overhead map (Appendix F in his written submission) which shows his property in relation to the "surrounding neighbours". The Appellant's property is numbered 2 and the "surrounding neighbours" are the properties numbered 1, 3 and 6. The Complainant's property is numbered 7.

[10] While the term "radius" was mentioned several times by the City, the City's documents do not reference a radius nor was one ever provided to the Appellants. The Appellants only had the City Beekeeping Guidelines to rely on.

[11] The original complaint regarding the bee operation was in December, 2020, and a second complaint was made on April 1, 2021. Initially, the Complainant just mentioned that she did not mind the bees and agreed they were not a danger, just extra work cleaning. She stated that the bee defecation covered their truck and yard furniture in the springtime. The Appellants question these comments since the truck is parked inside the garage the majority of the time. The Complainant also mentioned that the bee defecation was black and smelled, but bee defecation is brown and has a sweet smell due to the honey they produce.

[12] was asked by the Complainant to point the hives towards an adjacent property but this is contrary to the City's Beekeeping Guidelines and would be in violation of his licence.

[13] When the initial complaints failed, it escalated to a bee allergy. According to City records no mention of a bee allergy was brought up until May 5, 2021. On May 11, 2021 C. Hodgson of the City of Edmonton, Law Branch, said she had read the Posse file (electronic file) and did not see any mention of an allergy.

[14] While the City's website states that a licence can be revoked due to a neighbouring allergy, the doctor's note provided by the Complainant is inconclusive. It only states that the Complainant suffered from a severe bee reaction in the past. This doctor's note was based on information provided by the Complainant, and there is no proof that it was based on medical evidence. The Complainant also provided false information to the doctor in saying that she lived beside the Appellants.

[15] The Appellants have gone through extensive steps and expense to acquire their beekeeping licence and find it absurd that a licence can be revoked upon word of mouth after operating for three years. While they understand that a licence can be revoked due to an allergy and that a bee allergy can be quite severe, in this case the validity of the allergy is concerning due to the progression of the complaint.

[16] They are frustrated that they had to take time off of work to attend the meeting today while neither the City nor the Complainant had to show up.

[17] Proper evidence has not been provided by the other parties and they do not believe this to be a valid complaint.

[18] An 11 minute video taken by a garage camera on April 1, 2021 (Exhibit A), shows a conversation between the Complainant and the Appellant regarding the concerns with the bees. The Appellant quoted extensively from this interchange. At no time during this conversation or during the last three years was there ever any mention of a bee allergy.

[19] The Appellants provided the following responses to questions from the Committee:

a) There have been no further conversations with the Complainant since the April 1, 2021 conversation (Exhibit A).

b) The Complainant has a vintage truck which is stored in her garage and has concerns that the truck is being destroyed from the bee defecation.

c) After being cooped up in a hive all winter there is a six week period in the spring (April to mid May) during which the bees take cleansing flights and defecate. This appears as little brown dots on the snow and is easily washed off from vehicles when it rains. They have personal knowledge as their vehicles are parked in their driveway next to their hive.

d) A volunteer tree that has grown in the corner of their yard is in the path of the bees which acts to divert the direction the bees fly. The Appellants would be happy to

add more trees if required. They are also willing to rotate the hives if the City would allow it.

e) Letters of support were received and submitted from all of their adjacent neighbours. They were never advised by the City to expand the notification radius or to provide any other information prior to receiving the revocation letter dated June 10, 2021.

f) If the licence is revoked, the bees would have to be moved out of the city. Bees can travel between 7 to 10 kilometres from their hives and may return to their original home if not relocated out of the City. Should the Appellants be required to move the hives they request that this be delayed until Thanksgiving as the hives are quite heavy and dangerous to move right now. The bee population is much lower in October.

g) The Appellants believe this decision should be reviewed on a standard of correctness. All of their submissions have been based on fact. No facts have been provided by the Complainant and the City has not required that. The process needs to be more fair.

h) The Appellants had a conversation with J. Cotnam, an Animal Control Peace Officer, on April 24, 2021. She advised them that the April complaint was deemed to be invalid and to go ahead with a planned application for a second hive.

i) No further discussions were had with the City nor was further information requested by the City prior to the letter of revocation being issued.

j) The Appellants have concerns about the validity of the Statutory Declaration signed by the Complainant as no proof to back it up has been submitted.

k) Another neighbour had a similar issue with the Complainant last year but it had to do with birds rather than bees. The Complainant asked them to remove all of their bird feeders and stop feeding the birds.

ii) Position of Appellant 2, , CSLAC-21-036

[20] The Appellant agrees with all of the submissions made by the previous Appellant, , who is her next door neighbor and mentor when it comes to beekeeping.

[21] If a person has a severe and deadly bee allergy the only solution would be to move the hive; however, as presented by , this may not be the case here.

[22] Bee allergies have different levels of severity ranging from mild to moderate to systemic (severe). Only a severe allergy can cause anaphylaxis. There has been no evidence presented that the Complainant has a systemic allergy and this is not clarified by the Doctor's note.

[23] The Doctor's note also does not speak to the probable identity of the insect. Stings can be caused by wasps, hornets, bumblebees and honey bees and the allergic reactions from the various types of bees can differ. A blood test or skin prick test would help to determine what type of insect a person is allergic to and the extent of the allergy.

[24] It does not appear that any allergy test was performed when reading the Doctor's note and it is not clear if the sting was from a honey bee or another type of bee. It appears that the Doctor's diagnosis was taken from the words of the Complainant.

[25] There is a history of complaints regarding the bees starting with the mess they cause. When the Complainant was advised that the complaint was not relevant, it escalated to a bee allergy. It is doubtful that a severe, deadly allergic reaction exists otherwise it would have been brought up during the initial complaints. Her neighbour has operated his hive for three years and no allergy complaint has arisen until very recently.

[26] She requests the Committee to reconsider the revocation of her licence. She does not think this behaviour should be encouraged and be allowed to set a precedent for other people.

[27] The Appellant provided the following responses to questions from the Committee:

a) The Appellant has never physically met the Complainant. She moved into her property in mid December and due to the cold temperatures and Covid, she has not had an opportunity to speak with her.

b) She only had her hive for five days when she received the revocation letter.

c) While most people in the neighbourhood get along very well she is aware that there have been other issues with this particular Complainant.

d) She cannot plant additional trees in her yard due to the presence of a power line. She is prepared to rotate the hive if necessary.

e) She referred to Appendix F which was included in written submission. Her house is labelled No. 4 and she provided letters to the houses labelled No. 3, 5 and 7 on April 26, 2021. No response was received to any of these letters. She also spoke directly to the neighbours in the properties labelled 3 and 5. She used the guidelines provided on the City's website to determine who to contact and also used the template letter from that website.

f) She believes the City's decision should be reviewed on the basis of correctness. More facts and evidence should be required from the Complainant and the Respondent.

g) She received her approval letter on May 28, 2021 but it took her a while to source the bees. The revocation letter, dated June 10, 2021, was received 5 days after she purchased the bees.

h) After receiving her approval letter, she did not receive anything from the City, until the revocation letter arrived.

i) She followed all the instructions required to acquire her licence. All the other party has is a signed statement about an allergy without any evidence to back it up.

iii) Position of the Respondent, J. Wilson, Acting Director of Animal Control and Peace Officers, City of Edmonton

[28] The Respondent did not attend the hearing and the Committee relied on their written submissions.

Decision

[29] The appeal is **ALLOWED** and the decision of Community Standards & Neighbourhoods is **CANCELLED**.

Reasons for Decision

[30] These are appeals of two decisions revoking specialty animal licences to keep bees made by the Acting Director of the Community Standards Peace Officer Section (the duly appointed delegate of the City Manager). The Committee heard the revocation appeals, CSLAC 21-035 (Appellant 1) and CSLAC 21-036 (Appellant 2), jointly for the following reasons:

a) The appeals raise common legal and factual issues.

b) A significant amount of the supporting evidence was relevant to both appeals.

c) A joint hearing was supported by the parties in attendance. Both Appellants appeared in person and adopted one another's submissions for the consideration by the Committee.

d) The revocation letters are substantially identical and the City's submissions and disclosure show that the licences were both revoked under section 27(4) of the *Animal Licensing and Control Bylaw,*

> The City Manager may refuse to issue or may revoke a Licence issued pursuant to this section by providing written notice to the Licensee

for the same reason – a concern from the resident of a neighbouring property ("Neighbour A"). A single statutory declaration with accompanying physician's note was presented in both cases.

e) The Appellants' properties are in close proximity to one another and to the concerned neighbour. The Appellants' properties face 65 Avenue, back onto a common lane and are separated by a single subdivided lot. The neighbour is directly across a common rear land from Appellant 2's property.

[31] Unless specifically indicated to the contrary, these reasons apply to both appeals.

Background Information

[32] Licence 315630226 (the "2019 Licence," CSLAC File 21-035 for the hive located at 9115 - 65 Avenue, the "2019 Hive") was issued to Appellant 1 on June 17, 2019. It was revoked almost two years later on June 10, 2021. The decision revoking the 2019 licence provides the following reasons for the revocation:

> "An allergy concern has been reported to the City of Edmonton's Animal Control Peace Officers in proximity to your Urban Bees Licence number #315630226. According to the City of Edmonton's Urban Bees Guidelines, "Permission for a Licence can be revoked due to documentation of medical concerns from residents of neighbouring properties," including those attached to your property or across an alleyway.
>
> Additionally, pursuant to section 27(4) of the *Animal Licensing and Control Bylaw*, this Licence may be revoked if at any time there is reasonable cause to believe that revoking the Licence is in the public interest. As there is limited ability to control bees or mitigate the health risk they pose to citizens with allergies, even by responsible permit holders, the City has determined it is in the public interest to revoke Licences where neighbouring residents advise the City of an allergy to bees."

[33] Licence 396289565 (the "2021 Licence," CSLAC File 21-036 for the hive located at 9111 - 65 Avenue, the "2021 Hive") was issued to Appellant 2 on May 28, 2021 and revoked 12 days later by letter dated June 10, 2021.

[34] The decision revoking the 2021 licence states identical reasons for the revocation:

> "An allergy concern has been reported to the City of Edmonton's Animal Control Peace Officers in proximity to your Urban Bees Licence number #396289565. According to the City of Edmonton's Urban Bees Guidelines, "Permission for a Licence can be revoked due to documentation of medical concerns from residents of neighbouring properties," including those attached to your property or across an alleyway.
>
> Additionally, pursuant to section 27(4) of the *Animal Licensing and Control Bylaw*, this Licence may be revoked if at any time there is reasonable cause to believe that revoking the Licence is in the public interest. As there is limited ability to control bees or mitigate the health risk they pose to citizens with allergies, even by responsible permit holders, the City has determined it is in the

public interest to revoke Licences where neighbouring residents advise the City of an allergy to bees."

Procedural Fairness and Standard of Review

The City's Position

[35] The Committee first considered the City's written submissions with respect to procedural fairness of the initial revocation and the appropriate standard of review to be applied by the Committee in these appeals:

a) The hearing before the Community Standards and Licensing Appeal Committee is a de novo hearing, where the board has the ability to take all of the evidence available to the City at the time of the original decision, as well as all of the evidence presented by both parties to make a new decision. Pursuant to the *Society for Promotion of Alternative Aris & Music v Edmonton* case, an appeal in this forum affords an "adequate alternative remedy to a party who is dissatisfied with the decision made" by the City. Although not argued by the appellant, any procedural fairness issues that could be alleged would also be solved by the de novo hearing process and are therefore moot.

b) Generally in an appeal, the standard of review is reasonableness at default and following the Supreme Court direction in *Vavilov*, the presumption of reasonableness will apply to discretionary decisions. The standard of reasonableness does not require correctness or perfection, but only that the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law. To be reasonable, the reasons must meet the standard of justification, transparency and intelligibility. On the other hand, reasons are inadequate where there is no line of analysis within them that could reasonably lead the delegate from the evidence to the conclusion it arrived at.

c) The City submits that the decision to revoke the Appellant's Beekeeping Licence was reasonable in the circumstances. Although the Appellant has shown himself to be a diligent and responsible licence holder and beekeeper, the City adhered to its internal policy that an allergy concern by an immediate neighbour requires rejection or revocation of a beekeeping licence. The potential of revocation based on a medical concern from a neighbour was clearly stated on the City's website. As such, the City argues that CSLAC should also find it reasonable to revoke the Appellant's Beekeeping Licence.

d) Pursuant to section 8(2) of the *Community Standards and Licensing Appeal Committee Bylaw* (*CSLAC Bylaw*), the Committee has the same powers under the *Animal Licensing and Control Bylaw* (*ALC Bylaw*) as the City Manager. This includes the power to issue, reject or revoke a beekeeping licence, or to impose any terms and conditions on a licence deemed necessary in the public interest, pursuant to Section 27 of the *ALC Bylaw*.

e) The City respectfully submits that the question to be determined by the Committee in this appeal is whether the City's decision was reasonable in the circumstances and should stand, or if the decision should be replaced by a new Committee decision. The City has provided all of the information that was available to the City when they made the initial decision for the Committee's consideration. For this reason, the City does not intend to attend the appeal hearing, and instead will allow our written submissions and evidence to speak for the City's position.

The Appellant's Position

[36] When asked to comment on fairness and the appropriate legal standard of review, the unrepresented Appellants answered that they were entitled to fairness at the CSLAC hearing. They argued that the decision should be correct and that a correct decision is one based on all the evidence before the Committee. Appellant 2 added that more facts and evidence should be required from the complainant neighbour.

Procedural Fairness

[37] In the Committee's view, procedural fairness applies to this appeal hearing and to the process involved in the initial revocation decisions. When the Committee decides on a question of procedural fairness there is no standard of review analysis - the question to be asked is whether the person challenging the revocation received the degree of procedural fairness to which they were entitled.

[38] In any event, no procedural fairness issues were raised by Appellant 1 or Appellant 2 as a reason for the Committee to cancel the initial revocations. To the contrary, the Appellants asked that the revocations be overruled based on the novel, previously unconsidered evidence they submitted to this Committee and based on the redacted record produced by the City which shows inconsistencies that bring the veracity of the medical complaints into question.

The Applicable Standard of Review is Correctness

[39] With respect to the standard of review, the Committee disagrees that the applicable is reasonableness. The City's position was that the Committee should apply the reasonableness standard of review and defer to the City Manager's delegate by upholding the revocation based on *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65 (*Vavilov*) and the predecessor foundational decision *Dunsmuir v New Brunswick* 2008 SCC 9. *Vavilov* applies to determine the external standard of review to be applied by a court to administrative decisions on a judicial appeal or an application for judicial review. The appeal before CSLAC is an internal appeal from the City Manager's delegate to this quasi-judicial Committee.

[40] As the Alberta Court of Appeal noted in *Moffatt v. Edmonton (City) Police Service,* 2021 ABCA 183*,* a case not cited in the City's written arguments, *Vavilov* does not apply to the internal standard of review which this Committee must apply to the original administrative decision maker.

[41] The proper standards of review or levels of deference applicable to internal appeals has been addressed by the Alberta Court of Appeal in many cases decided prior to *Valvilov,* including *Newton v. Criminal Trial Lawyers' Association*, 2010 ABCA 399. Earlier this year, *Newton* and the cases cited in that decision were upheld post-*Vavilov* by the Court of Appeal in *Moffatt*. Following these cases, decisionmakers like this Committee are instructed that the standard of review must be decided on a case-by-case basis. They must consider several factors to determine the appropriate standard: the effective roles of the tribunal of first instance and the appellate tribunal as determined by the enabling legislation; the nature of a question in issue; the interpretation of the statute as a whole; the relative expertise of the tribunal of first instance; the need to limit the number, length and cost of appeals; preserving the economy and integrity of the proceedings in the tribunal of first instance; and any other relevant factors.

[42] An analysis of these factors suggests that, on balance, a standard of review of correctness is appropriate for these two appeals. Section 9(2) of the *CSLAC Bylaw* delegates this Committee all the authority granted to the City Manager (or delegate) under the applicable bylaw. That is, the Committee conducts a hearing *de novo*. It can hear evidence from the parties which was not before the City Manager (or delegate) when the initial revocation decisions were made. Further, the Appellants were not given a hearing before the revocation decisions were made. They did not know the decision process was underway and they had no opportunity to put forward their case or refute the Statutory Declaration prior to having their licences revoked. With respect to relative expertise, the Committee notes that in *Society for Promotion of Alternative Arts and Music v. Edmonton City*, 2008 ABQB 629 (cited by the City), the Court commented that both the first level decision maker and the equivalent of this Committee were owed deference in licensing matters by a court on judicial review. There was no distinction made with respect to relative expertise as between the two non-judicial levels.

Proximity & Severity of Allergy

[43] In these appeals, the Committee weighs the public interest in facilitating the benefits of urban bee hives while remaining mindful of the public interest in maintaining health and safety in making license revocation decisions with respect to beekeeping. This involves balancing the larger public good on both sides, as well as the rights and interests of the specific licensees and their neighbours. The City has identified the two key issues central to determining an appropriate balance, when one neighbouring resident raises objections to another neighbour's beekeeping licence: proximity of the resident to the licenced bee hive, particularly the "perimeter of concern" and the existence and severity of the resident's allergy or medical reaction to stings attributable to bees from the licenced beehive.

[44] The Committeecarefully reviewed the evidence provided by Appellant 1 and Appellant 2, as well as the redacted record and written submissions provided by the City with respect to these two issues.

[45] Both revocations were based upon a single document, a redacted statutory declaration form prepared by the City and affirmed by Neighbour A. The City explained that due to Sections 17 and 33 of the *Freedom of information and Protection of Privacy Act (Freedom of Information and Protection of Privacy Act,* RSA 2000, c F-25), its policy is not to disclose any personal information about neighbours residing within the perimeter of concern who execute the City's statutory declaration form.

[46] However, based on: the submitted information from the City (some of which did include the neighbour's address); the common wording in the City records and Appellant 1's interactions with this neighbour; Appellant 1's aerial map showing the location of nearby properties; and, the addresses of the surrounding neighbours who provided letters to support of the hives, the Committee is satisfied that the concerned neighbour resides at address #7 identified in the aerial map in Appellant 1's submission. This individual will be named Neighbour A in this decision.

Proximity of Resident with the Allergy

[47] The Committee first considered the proximity of Neighbour A to the approved hives. While the bees which leave the hive travel several kilometers daily, the likelihood of encountering a bee increases as people come closer to the hive. The bees are not generally aggressive, but will become more aggressive to defend the hive. The Appellants both agree with the City that if a person lives in very close proximity to the hive and has a severe and deadly bee allergy, then the only solution would be to move the hive.

[48] Based on submitted information:

a) The two licenced properties face 65 Avenue and back onto a common lane. They are separated by a single lot.

b) Appellant 1 provided letters of support from both of the abutting neighbours who share a side property line and from the neighbour from the lot directly across the lane to the rear of their property.

c) Appellant 2 provided a letter of support from one abutting neighbour who shares a side property line.

d) Both Appellants stated the only other abutting neighbour who shares the other side property line with Appellant 2 initially provided a letter of support, but asked for it to be removed from the submitted documents after Neighbour A became aware of their support.

e) Neighbour A's property is located directly across the lane from Appellant 2.

f) Neighbour A's property is located across the rear lane and over one lot and across an additional lane from Appellant 1's property.

[49] The City's revocation letters refer to the level of proximity that tipped the balance on the constellation of factors at issue toward revocation of the two licences. First, the decision

states a concern has been discovered "in proximity to your Urban Bees licence." Then it quotes from the Beekeeping Guidelines "Permission for a Licence can be revoked due to documentation of medical concerns from residents of neighbouring properties," adding the comment 'including those attached to your property or across an alleyway.' Finally, the revocations point out the difficulty in controlling bees or mitigating health risks "where neighbouring residents advise the City of an allergy to bees."

[50] The language used in the revocations is unclear and inconsistent. Adding to this difficulty, the wording of the Beekeeping Guidelines has changed substantially between the date of the revocations and the date of this decision. The City did not explain the interpretation of the provisions in the version in effect at the time of this decision, nor the impact of the changes to the Beekeeping Guidelines on the perimeter of concern.

[51] The Committee reviewed the current Beekeeping Guidelines that were in effect as of the date of this decision. The Guidelines now speak to notification of the site's approval to adjacent neighbours and not neighbours being owners of each abutting property including those who live across an alleyway, but not across a street. They do not mention a two week response period, nor do they say permission can be revoked due to documentation of medical concerns from residents of neighbouring properties. The Guidelines in effect at the issuance of the Committee's decision, currently state:

a) "NEIGHBOUR NOTIFICATION - Every beekeeping applicant shall inform all adjacent neighbours in writing of the site's approval, and provide that information to Animal Control. This requirement is a **notification** to neighbours, not a request for neighbour permission."

b) "REVOCABLE PERMISSION - Should Animal Control find a site, hive or beekeeper to be unsuitable at any time, the permission may be revoked and the site owner shall work with Animal Control to relocate to the hive and bees to a location outside of the City of Edmonton. All costs and associated expenditures related to the removal are the sole responsibility of the site or property owner."

[52] The City's two written submissions reference a variety of revocation-triggering perimeters of concern ranging from abutting properties with shared property lines or fences to any properties where neighbours see an increase in bees at their location due to a hive. The submitted materials fail to clearly define the radius that should trigger revocation in these two appeals. Unfortunately, this key point could not be clarified as the City did not attend the hearing.

[53] In the City's initial submissions, Neighbour A or their property is described as

a) "abutting" both 9111 and 9115 (paragraphs 3 in both submissions)

b) "within the radius of concern stated in the program guidelines" (paragraph 9).

c) "an immediately surrounding neighbour" (paragraph 11).

[54] Based on an aerial photo presented by Appellant 1, only one property abuts both of the properties containing hives. The neighbour at that property provided a glowing letter of support indicating no concerns with the hives.

[55] Also, based on the evidence before the Committee from Appellant 1, it is possible that Neighbour A is within the radius of concern using the definition in the earlier version of the program guidelines with respect to Appellant 2's property, but this cannot be true for Appellant 1's property. Based on the evidence before the Committee it notes that Appellant 2 was required to notify Neighbour A as part of their 2021 application process, Appellant 1 was not required to notify Neighbour A as part of their 2019 application process.

[56] Paragraph 9 of the City's initial submission cites a "Map of Abutting properties as Tab 3, Record". As noted by Appellant 1 at the hearing, no such document was provided.

[57] The City's rebuttal submission does not clarify the issue of requisite proximity. In it, Neighbour A is described as an "immediate neighbour" to Appellant 1 and Appellant 2 ; a surrounding neighbour; and simply, a neighbour. In rebuttal, the City also made the following submissions to clarify the impact of the different wording choices and the critical radius of concern applicable in these two appeals:

a) As a point of clarity, abutting neighbour or adjacent neighbour is language that was previously used in the City's program, and regrettably was used in the City's initial submission. This language in the guidelines had previously been updated at the beginning of April of this year due to concerns about clarity on a separate appeal, but the changes in language were not reflected in our initial submission. Where the word "abutting" was used in paragraphs 3 and 18, and the title of Tab 3 of the Record, we would ask that "surrounding" be the substituted word.

b) In the guidelines, there is a difference between the language used in the notification and revocation paragraphs. The guidelines state that for neighbour notification: "Prior to submitting an application, every beekeeping applicant must notify all immediately surrounding neighbours, including those attached to their property or across an alleyway, in writing, of their intent to keep bees." The City does not have any concern that the Appellant would not have properly notified the neighbours he was required to notify when he initially received his licence.

c) However, the guidelines also state "Permission can be revoked due to documentation of medical concerns from residents of neighbouring properties". This language is broader to allow the City to consider an allergy that may fall outside of the notification radius, but still requires that the individual is a neighbour. This does not require that the complaint is a property that shares a fence line. The City cannot confirm the identity of the Complainant or their specific property. Instead, a selection of properties that fall within the radius were provided by the City in the initial submission.

d) The City must regularly balance public concerns with individual concerns, while avoiding overreach in its regulations. Although bees can fly for many kilometers, a radius of surrounding neighbours was chosen in an attempt to balance the existence of allergies with the desired presence of beehives. This general radius was provided to the Government of Alberta apiary team, who agreed that it was "sufficient" as it is the area that one would see the greatest density of bees. Additionally, in the complaints received by the City, the Complainant states that they have experienced an increased number of bees on their property.

e) Duty of care relies on proximity, and an immediate neighbour would likely fall within that proximity while a more distant neighbour may not. An individual who lives a block or more away very likely would not be considered within a reasonable proximity. This is not a clear distinction, as context matters, bees cannot be controlled, and they may fly to many places and in many directions based on any number of factors. Additionally, the allergy risk may differ in severity, which could lead to a higher threshold of concern and a larger radius. In this case, the Complainant has already stated that they have faced an increased number of bees in their yard coming from the appellant's yard. The City has determined that this Complainant likely falls within the proximity requirement that forms the existence of a duty of care.

f) As stated in the literature in the first submission, one of the mitigation measures to reduce allergic reactions is to remove hives "within the immediate vicinity of the patients' home". Since the Complainant is a neighbouring property, who has seen an increase in bees at their property due to the hive, this allergy concern is considered by the City to be within the proximity triggering a duty of care.

[58] The City's rebuttal submission indicates it has made changes to its policy due to another appeal. That decision was released by the Committee on August 6, 2021. In it, the City had agreed with the Applicant for a Beekeeping Licence that for the purposes of notification letters "abutting" meant sharing a fence. The Committee notes that this position could effectively exclude properties from the perimeter of concern which would be located much closer than other properties directly across a lane.

[59] The City compounds the vagueness by asking the Committee to substitute the word "surrounding" for "abutting" without defining that broader concept. No clear definition of reasonable proximity is provided. No information is provided about the Alberta apiary team or their opinion cited in paragraph 9, about sufficiency of radius of concern which also remained undefined. Again, the map that is referenced in the rebuttal submission was not submitted to the Committee.

[60] The City argues that the radius of concern is variable and likely well beyond any of the previously mentioned perimeters. The Committee notes that the City posits that a block or more away, very likely is not within this standard of care. They reason that the radius is variable because context matters, including the severity of the allergy and other unique factors exist which could increase the radius of concern. Then, with no real explanation

or indication of severity of Neighbour A's bee reaction, the City concludes that in these appeals, since Neighbour A has seen an increase in bees at their property due to the hive; the allergy concern is considered by the City to be within sufficient proximity to trigger a duty of care. No mention is made of the factors they cited earlier which led to this conclusion.

[61] The 2021 Hive had been in operation less than a week, oriented in a different direction with different barriers which was not discussed. The Committee finds it highly unlikely that Neighbour A had observed an increase in bees attributable to Appellant 2's hive. Therefore, if the Committee was to apply the City's proposed test to these facts, Neighbour A would fail to fall within the perimeter of concern for Appellant 2 even though their property is much closer to Neighbour A than Appellant 1.

[62] For the above reasons, the Committee finds the evidence and submissions before it insufficient to define the appropriate perimeter of concern or be persuaded that Neighbour A's property is within sufficient proximity to the hives to warrant revocation of either the 2019 Licence issued to Appellant 1 or the 2021 Licence issued to Appellant 2.

Severity of Allergy

[63] Finally, the Committee considered the evidence about the existence and severity of a medical condition. The City relied on the generic statutory declaration form executed by Neighbour A as evidence of a medically diagnosed allergy sufficiently serious to warrant revocation of the 2021 Licence and the 2019 Licence.

[64] The Statutory Declaration prepared by, and affirmed before, City employees states:

> "I **BLANK**
>
> of **BLANK**
>
> Do solemnly declare that all the following statements are true:
>
> 1. I reside at **BLANK**
>
> 2. I have been medically diagnosed with an allergy to bees;
>
> And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

[65] The City Record indicates Neighbour A requested time to get an allergy test prior to executing this statutory declaration. No test was provided to the Committee; however, Neighbour A provided a doctor's note which states:

> To whom it may concern,
>
> The above is a patient in my practice. **BLANK** has suffered from a severe bee sting reaction in the past.

> It is my understanding that **BLANK's** living beside someone in her neighbourhood with beehives. This is an unsafe situation for the patient.
>
> I have asked **BLANK** to have Benadryl on hand and carry an EpiPen at all times.
>
> Hopefully this is of some use.

[66] The City specifically indicated that the note was provided voluntarily and that it relies solely on the statutory declaration to justify the two revocations.

[67] In the Committee's view, the City's generic statutory declaration form is not persuasive. It lacks any affirmation that the declarant is aware of the perimeter of concern and resides within it (a point which could be made without releasing personal information contrary to Section 17 of *FOIP*). It lacks detail or an indication about the severity of the allergy, which is a key consideration, because the City argues in reply that the perimeter of concern should increase in part, in conjunction with the level of the severity of the neighbour's allergy.

[68] The Committee did not place significant weight on the doctor's note. The Physician's comments are based entirely upon information reported by Neighbour A. It does not state an allergy test has been ordered or performed. It does not state that a bee allergy, let alone a serious bee allergy, has been medically diagnosed. It contains inaccuracies with respect to the location of the hives at issue; neither Appellant 1 nor Appellant 2 own property "beside" Neighbour A.

[69] Furthermore, the Appellants raised compelling evidence documenting actions and comments of Neighbour A which are inconsistent with the claim that the Neighbour A has a medical condition sufficiently serious to warrant revoking either Licence 2019 or Licence 2021.

[70] Appellant 1 stated the 2019 hive had been operational with the knowledge of Neighbour A for two full summer seasons without complaint. Neighbour A accepted honey from their hive and never mentioned any allergies or medical concerns.

[71] Neighbour A first raised concerns with Appellant 1 about the nuisance impacts of the bees on their property in December 2020. No mention was made of allergies during their interchanges.

[72] Appellant 1 provided an 11 minute surveillance video recorded on April 1, 2021 showing Neighbour A standing in the rear lane behind Appellant 1's property within a few meters of the hive discussing the situation at length. Neighbour A is heard complaining about the bees. Appellant 1 cited lengthy quotes from that video to show Neighbour A was concerned about bee excrement on their property, including on a deck, furniture, railings and a vintage truck. At no time is any medical concern or bee allergy or any type of allergy raised.

[73] Appellant 1 submitted a video of Neighbour A in their rear yard taken June 18, 2021 showing them under a hanging basket of flowers and a photo taken July 25, 2021 that

shows flowers in a hanging basket and in pots, which attract bees sitting on the deck and beside their rear door.

[74] The information provided by Appellant 1 is consistent with the City records beginning early in 2021. The records document the complaints made by Neighbour A, related to bee mess, more specifically bee excrement on furniture, deck and a truck. During these communications, Neighbour A indicates that they do not want the bees to have to be removed, as they do not mind them, but they just do not like them messing all over their yard and furniture. There is a request to have the hive rotated so bees will not enter their yard. No allergy or medical concern is mentioned in any of the communications. On April 24, 2021 the Animal Bylaw Complaint notes provided by the City indicated the complaint file had been investigated with the parties and closed as invalid. The final conclusion being there is no valid reason to revoke the 2019 Licence. On April 24, 2021, Appellant 1 was informed that the complaint had no merit and the hives could stay. Appellant 1 was further advised that the invalid complaint would have no impact on his ability to obtain a second hive.

[75] The complaints filed before April 26, 2021 in the City records confirm Neighbour A repeatedly said they did not wish the bees to be removed and their concern was with the state of their property.

[76] There is no mention of an allergy or medical issue in the City records until April 26, 2021 when there is a description of a separate concern having been communicated to a City Councillor regarding an allergy and also a note that Neighbour A does not want to revoke the neighbour's ability to have bees. This medical concern appears after Neighbour A had been informed a complaint based on residue from bees is not considered legitimate and that Appellant 1 had no legal obligation to reorient or move the hive.

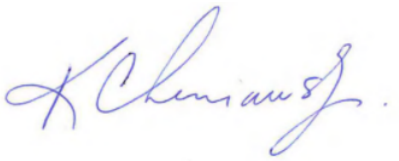
[77] The change in the Neighbour A's concerns were so great that the record shows for a time some City officials erroneously thought that there were two separate complaints from two neighbours residing in neighbouring properties – one a complaint about bee excrement and one a medical concern.

[78] The Committee notes that there is some suggestion, in the record and in the City's initial submission, that Appellant 2 did not inform the Neighbour A of their 2021 application and may have proceeded without authorization, although this concern seems to have been withdrawn. For clarity, the Committee finds this suggestion to be untrue. Appellant 2 provided clear evidence that Neighbour A had been informed, as instructed by the City, in compliance with the Guidelines in place at that time, and that a notification letter issued April 26, 2021 was hand delivered to Neighbour A.

[79] There is no evidence whatsoever on the record that Neighbour A submitted a response to this notification letter or expressed a medical concern regarding the 2021 Licence. The only mention of a hive at Appellant 2's property is a note dated May 3, 2021 with the comment "now there is another one" in a call related to the 2019 License that dealt exclusively with mess from bees.

[80] Regardless of the applicable radius or perimeter of concern, after considering all of the presented materials, the Committee finds there is insufficient credible evidence to establish the existence of a medical condition sufficient to warrant the revocation of the two licences, based on the public interest.

[81] The appeals are allowed, the revocations of Licence #315630226 and Licence #396289565 are cancelled, and the licences are reinstated.



Ms. K. Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

J. Wilson / G. Blaine, Animal Care and Park Rangers Section
C. Hodgson, Law Branch

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10041

Date:	September 3, 2021
Order Number:	399404672-001
CSLAC File Number:	CSLAC-21-041

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Allan Bolstad
Christopher Samuel

DECISION

[1] On August 17, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard a request for a review of an order that was filed on July 22, 2021. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*" or "*Act*"). The Order was dated July 5, 2021, was mailed on July 7, 2021 and required the following action:

> **Remove all GRAFFITI displayed on the building and/or structure that is visible from any surrounding property.**
>
> **YOU MUST COMPLY WITH THIS ORDER BEFORE: July 31, 2021**

[2] The subject property is located at 6524 - 106 Street NW, Edmonton.

[3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Order issued pursuant to the *Municipal Government Act*;
- The Applicant's written request for review and submissions; and
- The Respondent's written submission, including photographs dated June 30, 2021 and August 16, 2021.

Preliminary Matters

[4] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant,

[7] The Applicant does not consider this to be graffiti and neither do his neighbours. Some of the neighbours were not even aware that the tag existed until this action took place. None of the neighbours have filed a complaint regarding the graffiti.

[8] recently took legal action against the City on another matter and won. He firmly believes that the City is targeting his property as a result of this legal action.

[9] He does not understand why he is being targeted when there is so much graffiti on 106 Street, 109 Street and all over Whyte Avenue. He also questioned the definition of graffiti.

[10] The Applicant directed the Committee to numerous photographs of other properties, depicting much more serious violations of the bylaws which need to be addressed. Some of the photographs of bylaw violations are on the same block as his property. He was informed that an officer travelling around can write a ticket without a complaint if they see an infringement and wonders why these other issues have not been dealt with.

[11] The Applicant read excerpts from the "Acknowledgement, Waiver and Indemnity" page of the Professional Graffiti Cleaning Application. After his previous experience with the City he refuses to provide his signature acknowledging these clauses. He feels that being required to provide his signature is an infringement of his civil rights and property rights.

[12] The bylaw relating to graffiti is unconstitutional, erroneous, unjust and the City councillors should be changing it. It is a violation on the part of the City to expect property owners to be held accountable for what the street people do. Even if the

perpetrator is caught he will only get a slap on the wrist as opposed to the $10,000 fine or one year in prison that the property owner is threatened with.

[13] The Applicant has posed numerous questions to the City but his letters have received no response.

[14] provided the following responses to questions from the Committee:

a) He confirmed that the photographs of Tent City were taken from the internet. They were submitted to provide a reflection of what is happening in the City and the changes that are taking place to the bylaws.

b) He disagrees with the bylaw that makes property owners responsible for infractions caused by others. It is much easier for the City to come after law-abiding citizens and it is time that they started coming after the other side.

c) The subject site has been a rental property for 25 to 30 years and he has had no other bylaw type infractions related to it.

d) The graffiti is located on the side of the garage facing the alley. It can only be viewed from one other property. The Applicant does not know when it first appeared on the garage.

e) He is not particularly concerned about the graffiti and feels it is just a person's name and is rather artistic. He has not seen this name painted in any other location.

f) He has already purchased the paint to cover over the graffiti at some point but has not yet had the opportunity to do so.

ii) Position of the Respondent, C. Perizzolo

[15] C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.

[16] On June 11, 2021, the area officer was on a proactive nuisance graffiti blitz and noticed the subject graffiti on the garage. A Notice to Comply was sent to both the owner and tenant as well as information on applying for the Capital City graffiti cleaning grant.

[17] A follow up inspection was conducted on June 30, 2021 and compliance had not been obtained and no application had been received for the graffiti cleaning program. Two photographs were taken on this date.

[18] On July 5, 2021 a 545 *Municipal Government Act* order was issued directing that the graffiti was to be removed by July 31, 2021, pursuant to Section 9(1) of the *Community Standards Bylaw* (No. 14600) which states:

> (1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.
>
> (2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:
>
> . . . . . .
>
> (a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;

[19] Graffiti is defined in Section 4(a.1) of the *Community Standards Bylaw* as:

> "graffiti" means words, letters, symbols, marks, figures, drawings, inscriptions, writings, or stickers that are applied, etched, sprayed, painted, drawn, stained, scribbled, or scratched on a surface without the consent of the owner, and for greater certainty does not include anything authorized by law. (S.2, Bylaw 19690, May 3, 2021)

[20] Section 545(1) of the *Municipal Government Act* states that:

> If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[21] After receiving notification of the appeal as well as the information that the Applicant had no email address, the Municipal Enforcement Officer mailed a letter to the Applicant on July 27, 2021, that included information on how to apply for the grant, the graffiti cleaning application form and the required police report.

[22] A second set of photographs, taken on August 16, 2021, shows the current condition of the property.

[23] Based on the above information and the photographs provided to the Committee, Administration is satisfied that the Applicant has contravened Section 9(1) of the *Community Standards Bylaw* and is asking that the Order be upheld.

[24] The Respondent provided the following responses to questions from the Committee:

a) The Notice to Comply was mailed on June 14, 2021 and expired on June 29, 2021. The Order was dated July 5, 2021 and had a compliance date of July 31, 2021.

b) The tag on the garage was determined to be graffiti because it meets the definition provided in section 4(a.1) of the *Community Standards Bylaw.* It was not artistic in any way and appears to be the tag of someone who did not have permission to paint

it on the building. C. Perizzolo was not able to confirm if this particular tag has been found in other locations in the City.

c) This Order was a result of a one day proactive enforcement blitz and the Respondent confirmed that other enforcement actions were also taken as a result of this blitz. Typically the officer will travel up and down the alleys in the particular neighbourhood he or she has been assigned to.

d) Any presence of graffiti, regardless of the amount, can lead to a notice being issued. It is very common for a compliance notice to be issued for a single tag.

e) The goal is to have the graffiti removed through the use of the free program. If the homeowner does not take advantage of the program and the Order is not complied with, the City's next action would be to remove the graffiti and bill the owner.

f) In 2020, just under 500 graffiti infractions were complied with, either through the professional cleaning program or at the owner's expense. Only 31 proceeded to remedial action. These statistics include both Notices to Comply as well as Orders since they are both part of the same file.

g) She has no objection to the Committee granting an extension to the compliance date of the Order.

h) When a graffiti professional cleaning application is received it is responded to within 10 days and a contractor usually reaches out to the property owner within a week after that. While the clean-up program runs all year it is difficult to clean up the graffiti if the temperature drops to below minus 10 degrees.

i) The contractor will come to the site for an initial inspection and will have a discussion with the property owner as to the best method of removal so as not to cause any damage to the structure (e.g. chemical removal or paint cover-up). If the property owner indicates they do not want the contractor to proceed, no work would be carried out.

j) If the owner has not given permission it is considered to be graffiti. In this case the graffiti has no artistic value and the owner was not sure when it went up so it appears the artist did not have permission.

iii) Rebuttal of Applicant

[25] The definition of graffiti in the Oxford dictionary is anything obscene engraved in a body of work. It does not say anything about a name. The Applicant believes it is a nice looking signature and much better than some people's signatures that cannot be read.

[26] The tag is not visible to the general public - only the neighbours and street people who go down the alley.

[27] It has been difficult to apply paint due to the recent high temperatures in the 30s. The paint would not take and would just peel right off.

[28] The Applicant does not use any chemicals on that house and garden as they may not be environmentally friendly.

[29] He believes this whole thing is way out of proportion. A drive down the alley would show many actions that should have been addressed by now such as long grass and garbage removal.

Decision

[30] The Order is **UPHELD** with the compliance date varied to **December 31, 2021**.

Reasons for Decision

[31] This is a review of an Order dated July 5, 2021 and issued to the Applicant pursuant to Section 545(1) of the *Act.*

[32] The Order required the Applicant to:

> Remove all GRAFFITI displayed on the building and/or structure that is visible from any surrounding property.

[33] The Applicant argued that the Order should be cancelled because

a) The "joker" tag painted on his garage does not fit a proper definition of graffiti, it is not particularly visible or offensive; and,

b) The Order unfairly targets him. The photos he submitted to the Committee show many public and private properties exist in the area in serious states of disrepair and with much worse garbage and graffiti in plain sight.

[34] The Committee's authority comes from section 547(2) of the *Act*. In accordance with that section, the issue before the Committee is quite narrow – it must decide if the Order issued against the subject property should be confirmed, varied, substituted or cancelled. The Committee has no authority with respect to the deployment of enforcement resources or the revision of bylaws.

[35] The Committee acknowledges the Applicant's frustration. However, the states of other properties, including property owned by the City, are not relevant to the validity of the Order under review.

[36] The relevant portions of section 9 of the *Community Standards Bylaw* states

> (1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.

> (2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:
>
> . . . . . .
>
> (a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;

[37] Section 4(a.1) of the *Community Standards Bylaw* defines "graffiti" for the purposes of that bylaw as:

> words, letters, symbols, marks, figures, drawings, inscriptions, writings, or stickers that are applied, etched, sprayed, painted, drawn, stained, scribbled, or scratched on a surface without the consent of the owner, and for greater certainty does not include anything authorized by law. (S.2, Bylaw 19690, May 3, 2021).

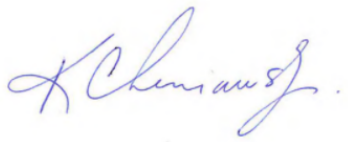
[38] Based on a review of the photograph of the Applicant's garage provided by the City, the Committee finds that a nuisance in the form of graffiti as defined in the *Community Standards Bylaw* exists on the property in contravention of section 9(1).

[39] Section 545(1) of the *Act* states:

> If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[40] Having found that section 9(1) of the *Community Standards Bylaw* has been contravened, the Committee finds that the Order was validly issued.

[41] However, based on the submissions of the Applicant concerning his objections to participation in the City's graffiti cleaning program and noting the City did not object to an extension for compliance, the Committee has decided to extend the date for compliance to December 31, 2021.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

Community Standards and Neighbourhoods – J. Lallemand, C. Perizzolo

Important Information for the Applicant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10042

Date:	September 1, 2021
Order Number:	401792404-001
CSLAC File Number:	CSLAC-21-042

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Allan Bolstad
Christopher Samuel

DECISION

[1] On August 17, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard a request for review of an order that was filed on July 28, 2021. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*" or "*Act*"). The Order was dated July 14, 2021 and was mailed on July 19, 2021 and required the following action:

> **Cut all long grass and weeds to below 10 centimeters in height. Remove all damaged, dismantled or derelict vehicles, appliances, windows, garbage bags, cardboard, wood, metal, tools, loose litter, and other assorted materials from the entire property, and take any actions or remove any other items that are contributing to the unsightly condition of the property**
>
> **YOU MUST COMPLY WITH THIS ORDER BEFORE: August 7, 2021**

[2] The subject property is located at 11915 - 69 Street NW, Edmonton.

[3] The following documents were received prior to the hearing and form part of the record:

- A copy of the Order issued pursuant to the *Municipal Government Act*;
- The Applicant's written request for review and submission; and
- The Respondent's written submission, including a series of photographs taken on July 14, 2021 and August 13, 2021.

Preliminary Matters

[4] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Preliminary Hearing

i) Position of the Applicant,

[7] The Applicant requested a postponement of the hearing for the following reasons:

a) His hearing was scheduled for 1:00 p.m. and he only budgeted two hours of time. He did not realize that other people would be scheduled at the same time and he would have to wait his turn.

b) He only received photographs and documents from the Respondent today. He would like additional time to gather photographs showing City property with weeds and vehicles with similar damage to his that people are driving around.

c) He required more time to review the documents he just received.

ii) Position of the Respondent, C. Perizzolo

[8] C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.

[9] It is the City's position that the hearing should proceed today. There are no disclosure requirements and the photographs the Applicant wishes to obtain have no bearing on this file.

iii) Rebuttal of the Applicant

[10] The photographs provided by the Respondent are of his property, but they do not show the efforts he has made to pull out the long grass. Also it is difficult to tell if the photograph with the ruler is actually his property.

[11] The hearing notice is not clear and he feels that he was not properly informed that his hearing may not start right at 1:00 p.m. He made prior arrangements to meet a mechanic out of town in the afternoon.

Decision

[12] The Postponement request is denied and the hearing will proceed.

Reasons for Decision

[13] The Committee balances the public interest in dealing with nuisance conditions in a timely manner and the Appellant's interests in his own property and must provide fairness to both parties in the conduct of the review.

[14] The Committee is not persuaded that the Applicant has raised a valid reason to postpone the hearing or that he will be prejudiced if the hearing proceeds today.

[15] Photographs of other properties owned by the City have no bearing on the validity of an Order issued against the subject property.

[16] In any event, this review was brought at the Applicant's request. He received notice of the time and date of this hearing in accordance with Committee practice and therefore was afforded ample opportunity to bring whatever evidence he desired to make his case, including photographs of his property.

[17] The Applicant agreed that the photographs submitted by the City show portions of his property.

[18] While the Applicant may be inconvenienced by the scheduling of commencement of the hearing, he presented no evidence of prejudice due to a delay of approximately 90 minutes.

Summary of Hearing

i) Position of the Applicant,

[19] The grass is totally insignificant and the photographs taken by the Respondent make it difficult to distinguish the difference between the irises and the grass. The grass is only a very small portion of the front yard (less than 10 percent of the 50 by 150 size lot).

[20] The Applicant plans to take the windows and appliances that are in the driveway to be sold at an auction. He is in the process of renovating the property and is getting rid of items he does not need.

[21] He did not know that the City would no longer be collecting black garbage bags. There is not enough room in the new garbage carts and they are only being collected every two week. Creatures have started ripping the garbage bags apart. He is slowly putting the black garbage bags into the cart for collection.

[22] While he may be getting rid of a vehicle or two, there are many vehicles currently on the road in worse condition than his.

[23] The majority of his property is surrounded by a six foot high fence with privacy slats. The portion of the chain link fence that is four feet high is completely covered by a 50 year growth of Virgina Creeper which creates a privacy screen.

[24] He agrees that the items in the driveway are not a pleasant sight but everyone's driveway is in this condition from time to time. He has been doing renovations on the house for 40 plus years. Ongoing maintenance is required for items like a deck unless a person can afford to use maintenance free materials right from the beginning.

[25] He anticipates the majority of the clean-up will be done by November although the vehicle will still be on the driveway unless he is able to put it back into the garage. He should be able to park a vehicle on his own property - that is the whole idea of owning property rather than living in an apartment.

[26] It is unclear what plants are considered weeds as some of the plants the City identifies as weeds are sold at Home Depot. He wanted to show the Committee photographs of the grass that he has ripped up and is now being composted.

[27] He would like the compliance date of the Order to be extended by two months and wants the vehicles removed from the Order. Other than that they are not insured, they are not different from many similar vehicles currently on the road. Not everyone can afford the most modern vehicles.

[28] The Applicant provided the following responses to questions from the Committee:

a) The white van in the driveway has been there for about three months and is currently not driveable. He does not want to sell it because it is easy to fix the cosmetic issues; he has spent a lot of money rebuilding the engine. When he pulled it out of the garage someone decided to smash the window.

b) He has one window left to change in the basement. The window frames sitting in the driveway have been sitting there for a month or two and are going to be sold at auction. He also plans to sell construction materials that are stored in the garage,

basement and under the deck. He did have an auction date arranged but it had to be rescheduled because the person he was dealing with decided to go on vacation.

c) The vehicle should be removed from the Order as it should be a person's prerogative to store it on their personal property. It should make no difference if the vehicle is insured or not. If this was an insured vehicle which was regularly driven there would not be a problem.

d) There is no room to put the vehicle in the garage as it is filled with construction materials which he is in the process of inventorizing.

e) The photographs of the front of his property are over or under exposed and do not show the grass that was pulled out and which will be used for compost in the garden.

f) The only turf he has is on the boulevard. It does not grow because it has not been watered so there is no point in mowing it. His yard contains many ornamental shrubs, apple trees, cherry trees, flowers, herbs and rhubarb. What some people call weeds are useful herbs such as the camomile. If he had received the original inspection photographs with the order he would have brought photographs today of the Canada thistle growing on City property. It seems like the City should deal with its own property before it starts complaining about homeowners' properties.

g) The black fridge and stove were removed from the house approximately four weeks ago.

h) The items that do not fit into the garbage carts will be hauled away to the eco station or landfill.

i) There is a 1988 Ford truck in the backyard that is not visible to the public. This vehicle is operable. It has been in the back yard for more than a year.

ii) Position of the Respondent, C. Perizzolo

[29] On July 14, 2021, a Municipal Enforcement Officer attended the property in response to a citizen's complaint.

[30] He observed a nuisance condition including long grass, noxious weeds such as creeping bellflower and tansy, a damaged white van, appliances, windows, garbage bags, cardboard, wood, metal, tools and other loose litter and debris.

[31] The white van had damage to the passenger side, a rear window was boarded up with plywood, it had no plates and was surrounded by other debris - all of which indicated it has not recently moved.

[32] Section 6 of the *Community Standards Bylaw* states:

(1) A person shall not cause or permit a nuisance to exist on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of land, means land, or any portion thereof, that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:

(a) excessive accumulation of material including but not limited to building materials, appliances, household goods, garbage or refuse, whether of any apparent value or not;

. . . . . .

(b) damaged, dismantled or derelict vehicles or motor vehicles, whether insured or registered or not;

. . . . . .

(d) unkempt grass or weeds higher than 10 centimetres;

[33] Eleven photographs were taken on July 14, 2021 and a 545 *Municipal Government Act* Order was issued requiring the applicant to

> cut all long grass and weeds to below 10 centimeters in height. Remove all damaged, dismantled or derelict vehicles, appliances, windows, garbage bags, cardboard, wood, metal, tools, loose litter, and other assorted materials from the entire property, and take any actions or remove any other items that are contributing to the unsightly condition of the property by August 7, 2021.

[34] Section 545(1) of the *Municipal Government Act* states that:

> If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[35] Based on this information and photographs dated July 14, 2021 and August 13, 2021, which were provided to the Committee, Administration is satisfied that the Applicant has contravened Section 6(1) of the *Community Standards Bylaw* and is asking that the Order be upheld.

[36] The Respondent provided the following responses to questions from the Committee:

a) The City is hosting several big bin events where citizens can dispose of large items free of charge. She feels an extension of the compliance date to the end of September would be reasonable.

b) While there is no definition of derelict vehicle in the bylaw, the City is looking to see if a vehicle is in operable condition and if it could be moved should Fire Services require this. The Municipal Officer makes a visual assessment to

determine if the vehicle has been dismantled or taken apart making it inoperable and judges the length of time it has been sitting there by the amount of debris surrounding it.

c) The initial inspection was as a result of a complaint submitted on July 7, 2021. This would have been received as a nuisance property complaint. The Order only covers anything the officer saw at the time of the inspection. The photographs were taken from the rear lane and front street and do not include anything within the fence as he did not enter the property.

d) The City started rolling out its new waste management cart program in this area at the beginning of June. Education material was provided to property owners ahead of time and a two week grace period was allowed for the pick up of material left outside of the bin. After this grace period the City will not collect garbage not placed into the carts.

iii) Rebuttal of the Applicant

[37] While the City cannot deal with its own weed problem it has to come after him because he has a small area where weeds have sprouted up. Not all of these are weeds and some are edible plants or used in traditional medicine.

[38] Blue bells grow all over the United Kingdom and are not considered a weed. It does not make sense that they are considered to be a weed here. The Order is too vague and does not give a detailed breakdown of what are considered to be weeds.

[39] If he would have been given the opportunity he would have brought photographs of properties that have been in disarray for years and never targeted.

[40] The community standards in this neighbourhood are not the same as in the rest of Edmonton. This is a low income neighbourhood and people do not have the money.

Decision

[41] The Order is **UPHELD** and the compliance date is varied to **October 15, 2021**.

Reasons for Decision

[42] This is a review of a Stop Order requested by the recipient (Applicant) per section 547 of the Municipal Government Act.

[43] The Order is dated July14, 2021 states in part:

As a result of an inspection of the property on July 14, 2021.

> Being an employee of the City of Edmonton having the delegated power, duties, and functions of a designated officer for the purposes of section 545, I find that you are in contravention of The City of Edmonton's Community Standards Bylaw #14600, Section 6(1), Nuisance on Land.
>
> YOU ARE THEREFORE ORDERED TO:
>
> Cut all long grass and weeds to below 10 centimeters in height. Remove all damaged, dismantled or derelict vehicles, appliances, windows, garbage bags, cardboard, wood, metal, tools, loose litter, and other assorted materials from the entire property, and take any actions or remove any other items that are contributing to the unsightly condition of the property.

[44] The Applicant has requested the review for the following reasons:

a) Only a small portion of the yard has grass and the Applicant has removed some of the weeds as he is able and, in any event, the term weeds is vague;

b) The Applicant placed his garbage in bags, but the new City garbage removal program is inadequate as it does not remove any garbage that is not inside the new garbage bins.

c) He is renovating and planning to deal with many of the items over the coming months;

d) He is entitled to store his property including his vehicles because it is his property;

e) There are many other public and private properties in the City in worse shape; and,

f) The neighbourhood is low income and so the community standards are lower.

[45] Section 545(1) of the MGA provides:

> If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[46] Section 6(1) of the *Community Standards Bylaw* states "A person shall not cause or permit a nuisance to exist on land they own or occupy."

[47] Section 6(2) of the *Bylaw* clarifies the meaning of nuisance and provides examples. The relevant portions of 6(2) provide:

> (2) For the purpose of greater certainty a nuisance, in respect of land,

> means land, or any portion thereof, that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, some examples of which include:
>
> > (a) excessive accumulation of material including but not limited to building materials, appliances, household goods, boxes, tires, vehicle parts, garbage or refuse, whether of any apparent value or not;
> >
> > (a.1) any loose litter, garbage or refuse whether located in a storage area, collection area or elsewhere on the land;
> >
> > (a.2) any loose building or construction materials, any accumulation of construction-related garbage or refuse, or any untidy work or storage areas on the land;
> >
> > (b) damaged, dismantled or derelict vehicles or motor vehicles,
> > whether insured or registered or not;
> >
> > …...
> >
> > (d) unkempt grass or weeds higher than 10 centimetres;

[48] Based on a review of the ten photographs dated July 14, 2021, the Committee finds a nuisance as defined in the *Community Standards Bylaw* was occurring on the property at the time of the issuance of the Order. In the Committee's view, even if the Applicant has addressed some of the weeds and grass on portions of his yard, a nuisance continues to exist at the subject property as shown in the twelve photographs taken August 13, 2021. The Applicant is obliged to comply with the *Community Standard Bylaw* regardless of the state of other properties, regardless of the socio economic characteristics of the neighbourhood and regardless of the City's new garbage removal policy.

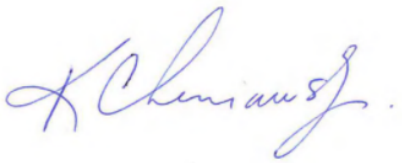
[49] The Applicant asked the Committee to vary the Order by removing the white van shown on the rear driveway from the scope of the Order. The Committee declines. In its view the white van falls within the definition of nuisance in section 6(2)(b) because it is obviously damaged at minimum along the passenger side, the smashed rear window has been replaced with plywood which renders it currently undriveable, and it has been left on the driveway for approximately three months.

[50] Accordingly, the Committee finds the Order to have been validly issued and confirms it.

[51] The Committee considered that the compliance date for the Order was August 7, 2021, and the August 13, 2021 pictures show that the state of the property has not changed substantially since the first inspection. The City indicated that it would be reasonable to extend the date of compliance to the end of September to enable the Applicant to take advantage of upcoming Big Bin Events to resolve the nuisance. The Applicant asked the Committee for additional time (two months) to arrange for the order distribution, recycling and disposal of the items listed in the Order.

[52] Given the parties' submissions, the Committee finds it reasonable to extend the compliance date from August 7, 2021 to October 15, 2021.

[53] For these reasons the decision of the Committee is to confirm the Order and to substitute October 15, 2021 as the deadline for compliance.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

Community Standards and Neighbourhoods – J. Lallemand, C. Perizzolo

Important Information for the Applicant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.