

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: 1193771 Alberta Ltd. v Business Licensing and Vehicle for Hire (City of Edmonton),
2020 ABECSLAC 10016

Date:	March 23, 2021
Business Licence Number:	303035994-002
CSLAC File Number:	CSLAC-20-016

Between:

1193771 Alberta Ltd.

and

The City of Edmonton, Business Licensing and Vehicle for Hire

Committee Members

Ian Wachowicz, Chair
Kathy Cherniawsky
Rohit Handa

DECISION

- [1] On March 16, 2021, the Community Standards and Licence Appeal Committee (the “Committee”) heard an appeal that was filed on December 7, 2021. The appeal concerned the decision of Business Licensing and Vehicle for Hire to impose conditions on Business Licence 303035994-002 pursuant to section 7(c) of the *Business Licence Bylaw 13138*.
- [2] The subject property is located at 6622 - 104 Street NW, Edmonton.
- [3] The following documents were received prior to the hearing and form part of the record:
- Record from the Program Manager, Business Licensing and Vehicle For Hire
 - The Appellant’s written request for appeal and written submission
 - The Respondent’s written submission

Preliminary Matters

- [4] 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.
- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The Chair raised a preliminary jurisdictional issue regarding when the appeal was filed. The Chair explained that the Committee is constrained by the 14-day limitation period prescribed by section 10 of the Community Standards Bylaw 13138 which states:
- (1) A Person:
- ...
- (c) whose Licence is made subject to conditions, other than conditions imposed by this bylaw;
- may appeal the decision within fourteen days under the provisions of the Community Standards and License Appeal Committee Bylaw.
- [7] The Committee must therefore determine whether the Appellant filed the appeal within the 14-day limitation period. If the appeal was filed late, the Committee has no jurisdiction to hear the matter.
- [8] The Committee has looked at all the materials on file and notes that an email was received dated December 7, 2020 with the word “appeal” in the subject line, although the substance of the email does not necessarily look like an appeal.
- [9] The *Business Licence Bylaw* requires that an appeal must be filed within 14 days of the receipt of the decision and the Committee recognizes that the limitation period is strictly construed. However, the Bylaw does not say the appeal must be in a prescribed format as often seen in legislation. The Committee notes that a more fulsome appeal was submitted later in another communication.
- [10] The Committee invited the City of Edmonton to provide their interpretation regarding the timing of the appeal.

Summary of Preliminary Matter*i) Position of the Decision Maker, Business Licensing and Vehicle for Hire*

- [11] C. Hodgson, Law Branch, appeared on behalf of the City of Edmonton.
- [12] The City understands that there was an intention to appeal by the Appellant and they are taking no position.

[13] In response to a question from a committee member, the Chair confirmed that a copy of the December 7, 2020 email with the word “appeal” in the subject line was received by the Community Standards and Licence Appeal Committee.

[14] The Appellant declined the opportunity to comment.

Decision

[15] The appeal was filed on time and the Committee assumes jurisdiction to hear the Appeal.

Reasons for Decision

[16] The *Business Licence Bylaw* does contain a strict 14 day limitation period for filing of an appeal. The Committee does not find that it has any power to extend that 14 day time period.

[17] However, the Committee notes that it did receive a communication from the Appellant within the 14 day time period entitled “Appeal”. The *Business License Bylaw* does not stipulate the form in which the appeal should be filed and does not stipulate any substantive requirement for the appeal.

[18] This Committee received an intention to appeal from the Appellant within the required 14 day time period. Accordingly, the Committee assumes jurisdiction to hear the Appeal.

Summary of the Hearing

i) Position of the Appellant, 1193771 Alberta Ltd. (also known as Knights Inn or Nice Inn)

[19] C. P., the Appellant, and his legal counsel, Mr. R. Schuldhaus, represented 1193771 Alberta Ltd.

C. P.

[20] Mr. P. has been in Canada for 22 years and took possession of the Nice Inn Motel in 2018. He has also owned a motel in St. Albert since 2013.

[21] Although he was an engineer in South Korea, he was unable to find employment in that field in Canada; therefore, he decided to start a business. The nature of this business requires him to work 365 days a year.

[22] He has complied with all requests made by the Edmonton Police Service including improving the lighting in the parking lot, creating a ban list of over 250 people, creating incident reports, and keeping a copy of the ID of all registered guests.

[23] The Appellant did not understand the difference between on-call and on-site security and hired on-call security instead of the requested on-site security.

- [24] The cost of hiring on-site security from 9:00 p.m. to 5:00 a.m. would be approximately \$100,000.00 annually, which is prohibitive. No other motel in Edmonton could cover this expense.
- [25] Since the beginning of November, 2020, on-call security has been sufficient to cover their needs; the Appellant had to call security 10 to 15 times per month. The majority of problems are trespassers and excessive noise and most issues are solved within 10 to 15 minutes. This means that on-call security is required approximately three hours per month. On site security, at 8 hours per day, would be required for 240 hours per month which is unreasonable and a total waste of money.
- [26] There are seldom any customers at the front desk after midnight. Staff are present during the night and patrol the premises hourly to check for any suspicious activities and to protect the safety of their customers. If necessary, security is called and they arrive within five minutes.
- [27] An email was sent to the City of Edmonton on November 15, 2020, about the on-call security. At that time, the Appellant was not advised that on-site security was required instead.
- [28] The police report submitted shows 217 occurrences (an average of 24 per month) from January, 2020 to September, 2020. Since hiring on-call security at the beginning of November, 2020, there has been a significant drop in occurrences to an average of 13.6 per month. Of the 41 occurrences since November, 2020, only 13 of the 41 occurrences involved violence and 4 out of the 13 had nothing to do with the business or their customers as the calls were initiated by visitors.
- [29] Violent occurrences happened about three times per month. When problems arise, security is called who will in turn call police if the situation warrants.
- [30] The majority of the cases on the police report involved customers contacting 911 themselves. These calls were not initiated by the front desk.
- [31] The business cannot refuse to register new patrons if they are not on the ban list. They cannot ask clients if they use illegal drugs, have mental issues or if they are alcoholics. Staff regularly patrol the premises and any unregistered guests are evicted after 9:00 p.m.
- [32] Staff cannot investigate what goes on inside the guest rooms, unless the customer inside contacts the staff and asks for assistance, as this would be an invasion of privacy. If troublemakers are evicted from the premises, they will simply find another motel and cause the same issues. The only effective solution is for the Edmonton Police to find a way to reduce the number of troublemakers who are drug addicts, alcoholics and people with mental issues. As long as these individuals exist on the streets, the number of crimes will not decrease.

- [33] Despite the motel being over fifty years old, this is the first time a request was made to hire security.
- [34] The business is currently struggling due to the declining economy caused by COVID-19. The Appellant is doing everything possible to maintain a safe and peaceful environment and requests the Committee to allow him to operate using on-call security.
- [35] In response to a question from the Committee, C. P. confirmed that he is not opposed to any of the other conditions outlined in the decision letter.

R. Schuldhaus

- [36] The majority of the cases where police are called do not come from the motel - these calls are from people inside the rooms who call 911. Motel staff are not able to enter the rooms once they have been privately rented. Patrons have been calling 911 despite being told to call the front desk.
- [37] When the on-call security was initially hired, they were aggressive in dealing with situations and in one instance had subdued a person and put them in handcuffs. When the police arrived, security was advised not to do that so the on-call security backed off.
- [38] Now when security shows up and a situation gets out of hand, police are called because security personnel are not allowed to deal with any situation in a physical way. Once people find out police are coming they tend to dissipate.
- [39] The great majority of cases are property type crimes and occur during the day. Only a smaller amount of situations occur in the evenings where violence or overdose situations are involved. These types of situations would require police to be called even if on-site security were present.
- [40] As previously stated, the number of incidents has decreased since on-call security has been in place. On-call security can deal with the bulk of situations, reducing the need for police to respond.
- [41] Since most of the cases occur during the daytime hours, having on-site security from 9:00 p.m. to 5:00 a.m. would not really provide much significant change. The Appellants propose providing on-call security for 24 hours a day instead of just 8 hours a day. The customer base would get the message that security is available at all times. There has already been a reduction in incidents by having on-call security present for 8 hours per day; having them available 24 hours per day would further reduce incidents.
- [42] Front desk staff will be more aggressive when checking people in and will stress that guests are to call the front desk if they have a problem in their room. This will also reduce the calls to police.

- [43] This type of business does not have the means to hire on-site security like the more upper end hotels in downtown Edmonton. The solution offered would provide his client the ability to deal with the situation within his means and get the desired results.
- [44] All other conditions have been complied with.
- [45] While the ban list allows repeat offenders to be evicted, all this does is send them to another facility. The Appellant will do his best to solve the problems in his premises but he cannot solve the larger issue of problem patrons coming to medium priced hotels.
- ii) Position of the Respondent, Edmonton Police Service*
- [46] Cst. N. Dehaas appeared on behalf of the Edmonton Police Service. He was the Constable who originally requested that the City consider imposing operating conditions on the business licence of 1193771 Alberta Ltd.
- [47] He has been working with the Nice Inn and Mr. P. quite intentionally since the fall of 2019. The Edmonton Police Service spent about a month and a significant amount of money in assisting the business to encourage good business practices and to make lasting changes to create a better environment for both the public and the employees.
- [48] There have been a very high number of calls to police for such situations as drug use, overdoses, property crime and threats to staff. Calls for service during 2020 increased by 20 percent. About 60 events occurred between December 2020 and February 2021 as outlined in the second affidavit package submitted on March 7, 2021.
- [49] Continuous public safety issues still occur and the clientele of the Nice Inn consistently ignore policies and bans. There have been numerous incidents where previously banned people show up in the middle of the night, enter the rooms of friends and acquaintances and engage in drug use and prostitution. The Nice Inn continues to be a central location for stolen property, trafficking and consuming illegal narcotics including fentanyl. Many incidents go unreported.
- [50] Cst. Dehaas understands that on-site security is more expensive; however, on-call security is not a deterrent and does not prevent people from wandering in off the street and engaging in the above noted illegal activities.
- [51] A night of surveillance would show that there are significant employee and public safety concerns which are out of hand.
- [52] It is crucial that all requested conditions are upheld. Mr. P. is a leader in the Allendale community and can be instrumental to positive changes. The community is hurting and the Nice Inn is enabling people to engage in a destructive lifestyle.
- [53] Cst. Dehaas provided the following responses to questions from the Committee:

- a) Often when the front desk calls security, police should be called instead. The on-call security does not have the proper protocols for dealing with all situations. He provided an example where security found a room barricaded so they smashed windows, entered through the broken window and brought the occupants out that way. When police arrived, the security company told the police to leave because they were agents acting for the owner.
- b) Many incidents occur between 9:00 p.m. and 5:00 a.m. due to people coming off the street and illegally entering guest rooms. If there is no on-site security, management is not aware of what is happening.
- c) On-site security would result in a substantial decrease in calls for service related to drug use, trafficking, prostitution and property crime. It is too late to call in security once an incident is already occurring. At that point police usually need to be called.

iii) Position of the Decision Maker

- [54] V. Ghomashchi issued the decision with conditions and is the Program Manager of Business Licensing and Vehicle for Hire
- [55] When doing a business licence review, Mr. Ghomashchi relies on the recommendations of the Edmonton Police Service.
- [56] The proposed conditions were sent to Mr. P. for review and no objections were received; therefore, the conditional licence was subsequently issued.
- [57] It is important to prevent crime before it happens. On-site security is preventative. On-call security is after the fact and not as effective as on-site security.
- [58] On-site security is required due to the many incidents reported by the police.
- [59] Mr. Ghomashchi provided the following responses to questions from the Committee:
- a) His focus is on public safety and he is not in a position to discuss the cost of the security.
 - b) It may be possible to limit on-site security to weekends (maybe Thursday to Sunday) if the Edmonton Police Service feels that would be appropriate.
 - c) He was not able to provide comparable crime statistics for other motels in the City and is not aware of any other motel that is operating with a condition that requires on-site security.
 - d) He confirmed that he relied solely on the police report which included statistics.

[60] C. Hodgson, Law Branch, did not have anything further to add but suggested that Cst. Dehaas could provide further information regarding crime statistics.

[61] Cst. Dehaas provided further information to the Committee:

- a) He did not have crime statistics for other motels of a similar size.
- b) During 2017 and 2018, there were approximately 63 calls for service which is average. There are a few other motels along Gateway Boulevard with similar numbers. However, in 2019, there was a jump in calls to 170 and in 2020 another jump to over 200 hundred calls.
- c) He was requested by the southwest intelligence unit to pay attention to this premises because it was identified as the hottest spot in the division. There are a few other motels that are busy but they do not have the same numbers and crime statistics as this one.
- d) He is not aware of a requirement for on-site security as a condition of any other motel licence. However, another motel in Edmonton bypassed the condition route entirely and was shut down for 3 or 4 months.
- e) The goal of on-site security is to stop crime before it happens. People in this type of lifestyle look for the easiest path. If a security vehicle is present and people know that a security guard will approach them they will take the path of least resistance and will go elsewhere. On-site security would prevent 80 to 95 percent of people coming in off the street and carrying out their illicit activities. Police will still have to be called sometimes but calls would substantially drop.
- f) Employees are afraid of the clients. One night manager asked if he could take a bat with him to evict people.

iv) Rebuttal

[62] Mr. Schuldhaus described a prior situation at the Gateway Motel in Edmonton where the prior owner was actively involved with the full blown sale and storage of stolen property, drugs and prostitution. He did not allow anyone to phone police.

[63] In comparison, Mr. P. is trying to cooperate as much as he can. 2020 has been a year unlike any other and due to the economic and pandemic situation, motels of this nature are getting more incidents than normal.

[64] The Appellant feels the on-call option is working, is cost effective and safer. There are always two people that come when on-call security is called as opposed to only one person for on-site security. On-site security does not necessarily have a vehicle that says security on it.

- [65] Most of the instances of violence and drugs occur behind closed doors and you do not find out about the bulk of calls that come in to police until one to two days later.
- [66] The Appellant believes that time is required for the on-call security to get traction. Incidents have already come down since they have been hired.
- [67] Many other motel owners close their front desk overnight and that is not the case here. People are encouraged to call the front desk and are advised that security is available.
- [68] In a response to a question from the Committee, Mr. Schuldhaus confirmed that he is getting his statistics from the report that was submitted by Cst. Dehaas.

Decision

- [69] The appeal is dismissed and the decision of the Program Manager, Business Licensing and Vehicle for Hire is upheld.

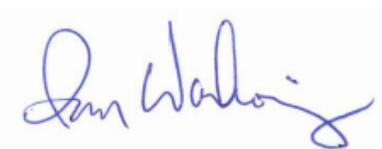
Reasons for Decision

- [70] Section 10 of the *Business Licence Bylaw (Bylaw 13138)* allows a person to appeal conditions placed upon a business licence by a delegate of the City Manager pursuant to Section 7 of the *Business Licence Bylaw*.
- [71] Section 7(c) of the *Business License Bylaw* authorizes the City Manager to impose such conditions that:
- in the opinion of the City Manager based on reasonable grounds it is in the public interest to do so.
- [72] The delegate of the City Manager imposed several conditions on the business licence obtained by 1193771 Alberta Ltd., an entity which operates as the Nice Inn at 6622 - 104 Street NW.
- [73] The primary condition that concerned the Appellant was the condition that the Appellant obtain and pay for on-site security between the hours of 9:00 p.m. and 5:00 a.m.
- [74] Pursuant to section 10 of the *Business License Bylaw*, 1193771 Alberta Ltd. appealed this condition to this Committee. The powers of this Committee, upon hearing an appeal, are set out in the *Community Standards and Licence Appeal Committee Bylaw (Bylaw 19003)*. Section 8(1)(a) of that *Bylaw* states that this Committee may decide appeals of licensing decisions. Section 8(2) of that *Bylaw* states when deciding an appeal of a licensing decision or a written notice under section 29.2 of the City's Community Standards Bylaw, Bylaw 14600, CSLAC has the same authorities granted to the City Manager under the applicable bylaw.
- [75] As such, this Committee has to determine whether or not the condition of on-site security is based on reasonable grounds and is in the public interest.

- [76] The submissions from the Edmonton Police Service were that the Nice Inn, since some time in 2019, experienced a significant increase in incidents which generated numerous calls to the Edmonton Police Service.
- [77] The City of Edmonton could not recall precise evidence as to how the numbers of calls generated by the Nice Inn compared to the average calls for motels of this size. However, the Committee did hear the evidence of Cst. Dehaas that the number of calls generated by the Nice Inn were somewhere between three to four times the average calls generated by similar businesses and that it was the hotel or motel in the southwest portion of the City that generated the most calls.
- [78] The City supports the imposition of on-site security as a condition of the business licence on the ground of prevention. On-call security is reactive in that it is called when an incident has already occurred. The evidence provided by the Edmonton Police Service was that once an incident has occurred it is often preferable for the Edmonton Police Service to deal with that incident rather than private security.
- [79] The Appellant objects to the imposition of this condition primarily on the grounds of cost. The submission from the owner of 1193771 Alberta Ltd. was that the on-site security could cost up to \$100,000.00 annually and that this cost was too onerous.
- [80] Submissions were also made on behalf of the Appellant indicating that the number of incidents has in fact declined in the last three to four months since the on-call security service was put in place.
- [81] The Committee makes the following findings.
- [82] The Committee finds that although it does not have precise evidence on the point that the incidents at the Nice Inn are extraordinary when compared to incidents at other motels or similar hotels, an increase has occurred sometime after 2018, generating complaints from the community, which resulted in police intervention and discussions with the Owner.
- [83] The Committee acknowledges that evidence indicates a recent decline in calls to the police but is cognizant of the fact that this decrease has yet to be shown on an annual basis and the Committee is unsure as to whether calls are seasonal or not.
- [84] The Committee also finds that even if the number of calls in the last two months remains indicative of the future, that number of calls is still significantly elevated compared to other similar businesses.
- [85] This brings the Committee to decide as to whether the imposition of the condition requiring on-site security is based on reasonable grounds and is in the public interest.
- [86] While the Appellant has complied with other conditions, including creating a ban list, keeping a log and identification of its customers; evidence is that such steps have been

imposed by the Appellant for some time and that the imposition of those steps has not been as effective as ownership may have liked.

- [87] The Committee agrees with the police that preventative steps are needed to cause the decline of potentially violent incidents from occurring at this location. The Committee is cognizant that a cost is involved with on-site security. However, the Committee was not presented with evidence to show the precise cost nor was it presented with evidence to show that the cost is excessively onerous.
- [88] The Committee does not have any estimate from a private security company of the cost. They did hear evidence of one large, rounded number but this was not backed up by an estimate from a security firm.
- [89] The Committee further notes that it is open to the City Manager to impose even more restrictive conditions. The City Manager did not impose 24 hour on-site security, rather 8 hour on-site security. An attempt was made to strike a balance between the value of on-site security and cost. It is also open to the City Manager to impose even harsher responses to the increase in police calls including and up to revocation of the business license.
- [90] The Committee also notes that business licences are reviewed on an annual basis. Ownership may be able to convince the City Manager, at the time the licence is up for renewal, that this condition is no longer necessary. Should a disagreement occur at that point, the decision could again be appealed to this Committee.
- [91] For the above reasons, the Committee finds on-site security between 9:00 p.m. and 5:00 a.m. is based on reasonable grounds and is in the public interest.
- [92] Therefore the appeal is dismissed.



Mr. I. Wachowicz, Chair
Community Standards and Licence Appeal Committee

cc: 1193771 Alberta Ltd.
Cst. Neil Dehaas, Edmonton Police Service
V. Ghomashchi, Program Manager, Business Licensing and Vehicle for Hire
A. Adetunji, Business Licensing and Vehicle for Hire
C. Hodgson, Law Branch
R. Schuldhuis, Doherty Schuldhuis LLP

Important Information for the Appellant

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.