



## NOTICE OF DECISION

**FILE NO.:** CSAC 2024-002

**APPEAL:** Approval of a Hen License Application

**LEGAL DESCRIPTION:** Lot 29, Block 1, Plan 3383TR

**CIVIC ADDRESS:** 161 Beaconwood Place, Fort McMurray, Alberta

**IN THE MATTER OF AN APPEAL** filed with the Regional Municipality of Wood Buffalo Community Standards Appeal Committee (“the Committee”) pursuant to section 26 of the Backyard Hen Bylaw No. 23/004 (“the Backyard Hen Bylaw”), the Appeal Hearing was held on Thursday, August 29, 2024, in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

**BETWEEN:**

Greg and Colette Rose (“the Appellants”)

-and-

The Regional Municipality of Wood Buffalo (“the Municipality”)

-and-

Crystal and George Mersereau (“the Hen License Applicant”)

**BEFORE:**

S. Schaffer (Chair)

D. Cleaver

T. Salisbury

**Administration:**

H. Fredeen, Clerk for the Community Standards Appeal Committee

**PROCEDURAL MATTERS**

[1] The parties confirmed that they had no objections to the composition of the Committee or the Committee’s processes.

[2] The Committee confirmed it had no bias in relation to the matters.

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**PRELIMINARY MATTERS**

- [3] The Hen License Applicant submitted an illustration depicting the location of the hen coop on their property.
- [4] There was no opposition from the parties regarding the late submission of the illustration and the Committee marked the illustration as Exhibit No. 6.
- [5] No further preliminary matters were brought forward.

**SUMMARY OF HEARING**

- [6] A hearing was convened on August 29, 2024, in the Regional Municipality of Wood Buffalo in the Province of Alberta to consider an appeal filed by an adjacent property owner against the approval of a Backyard Hen License pursuant to section 26 (a) of the Backyard Hen Bylaw.

*An Adjoining Neighbour may appeal a decision to issue a License within 14 days of the decision by submitting a Notice of Appeal to the Clerk only where the grounds of the appeal are:*

*(a) that the keeping of Hens on the Parcel is likely to have a materially adverse effect on the health of the Adjoining Neighbour or of a person living in the remises of the Adjoining Neighbour.*

***Submission of the Appellant***

- [7] The Committee heard from the Appellant who indicated that he has lived in the neighbourhood for 30 years.
- [8] The Appellant submitted his concerns with the approval of the Backyard Hen License as follows:
  - i. Noise from the backyard hens would be in contravention of section 43 of Community Standards Bylaw No. 21/010;
  - ii. There will be an increase in pests and wild and domestic animals close to his home causing a safety concern for residents and animals in his home;
  - iii. There will be an increase in rodents such as mice and squirrels building nests close to his home with supplies from the coop;
  - iv. The proximity of the hen coop is too close to his home and master bedroom window; and
  - v. There will be odours caused by feces and urine from the hens.

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- [9] The Appellant further submitted that his main concern, is the location of the hen coop which is located within 30 feet from his master bedroom window (Exhibit 6) and will cause a disruption in sleep and relaxation for him and his wife who is a shift worker.
- [10] The Appellant indicated that he discussed his concerns regarding the location of the hen coop with the Hen License Applicant prior to the appeal; however, there was no resolution reached.
- [11] The Appellant submitted he is not opposed to the Backyard Hen License being issued; however, he opposes the location of the coop in the yard.
- [12] When questioned by the Committee what would be an acceptable distance to have the coop, the Appellant indicated that the coop should be located on the opposite side of the yard away from his home where the other adjacent neighbour's kitchen window would back onto the coop. The Appellant further submitted that he would like to see the location of the coop approximately 100 feet away from his property.
- [13] The Appellant referred to backyard hens which were previously located at 153 Beaconwood Drive, directly adjacent to his home on the opposite side, and indicated that there were mice problems and that his backyard grass was ruined by voles even with the previous owner taking precautions.

#### ***Submission of the Municipality***

- [14] The Committee heard from legal representation for the Municipality, who indicated that the approved Hen License, which allows the keeping of three to six hens on the subject property, is not active at this time due to the appeal.
- [15] The Municipality submitted that there are three decisions that the Committee can consider:
- i. confirm the Hen License as is, without any conditions;
  - ii. approve the Hen License with conditions; or
  - iii. deny the Hen License where there is sufficient evidence to determine if there is a materially adverse effect on the health of the adjoining neighbour.
- [16] When making the decision if there is a materially adverse health affect, there must be proof of a relevant or significant negative result, the result must be more than trivial or a mere consequence, and the result is directly caused by the keeping of hens on the subject property. When considering what constitutes something as "adverse" it is a negative or harmful effect.
- [17] The Municipality submitted that hen license applicants must complete an online application which includes a coop licensing application, and they must fulfill the requirements outlined in section 7 of the Backyard Hen Bylaw.



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- [18] The Municipality indicated that the following information was confirmed prior to issuing the Hen License:
- i. The Hen License Applicant is the owner of the parcel of land;
  - ii. The subject property occupies at least 400 square metres which was confirmed through a database that has been created for issuing Hen Licenses (Exhibit 3, page 19);
  - iii. The subject property contains a principal building that is detached (Exhibit 3, page 17). It also has a detached garage located at the back of the property;
  - iv. The Hen License Applicant will reside on the parcel where the hens will be kept;
  - v. The Hen License Applicant has completed a hen training course (Exhibit 3, page 18);
  - vi. Biosecurity measures are covered by the hen training course;
  - vii. Notification of the hen license was circulated to adjoining neighbours (there is no adjoining neighbour to the rear of the parcel);
  - viii. A Premises Identification Number (PID Number) through the Alberta *Animal Health Act* was obtained by the Hen License Applicant;
  - ix. The hen house meets the minimum floor requirement outlined in section 7 (c) of the Backyard Hen Bylaw (Exhibit 3, page 17); and
  - x. Through conversations, it was confirmed that the coop would not be located within 1 metre of the side or rear property line of the parcel or three metres of the property.
- [19] The Municipality submitted that after the above information was confirmed, the Hen License was approved on July 17, 2024. With the approval, the Hen License Applicant was advised that Bylaw Services would be circulating notification of the approval to adjacent property owners which also provides information on how to file an appeal with the Community Standards Appeal Committee.
- [20] The Municipality reiterated that while the Hen License is approved, it is not active until after the appeal period, or until after an appeal is finalized.
- [21] Upon questioning from the Appellant, the Municipality indicated that when considering adjacent property owners and the location of the coop, the Backyard Hen Bylaw sets the criteria that the Licensing Authority must follow, such as distance requirements from property lines and dwellings.
- [22] When asked by the Appellant what he could do to change the legislation regarding the distance requirements for coops, the Municipality indicated that it was not within the scope of the appeal and could be addressed outside of the appeal process.

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- [23] In response to the Hen License Applicant's question regarding the building of the coop after the 14-day appeal deadline, the Municipality indicated that there would not be another avenue for an appeal by an adjacent property owner.
- [24] The Municipality further submitted that should there be a complaint by an adjacent property owner regarding coop setbacks following the appeal period, it would be investigated by Bylaw Services to ensure compliance with the Backyard Hen Bylaw.
- [25] In response to the Committee's questioning regarding enforcement actions regarding the Backyard Hen Program overall, the Municipality indicated that since 2021 there has been only one call for an unkept coop, one call for three hens at large, and two complaints of roosters being with the hens which was unfounded.

***Submission of the Hen License Applicant***

- [26] The Committee heard from the Hen License Applicant who indicated that they have resided at the subject property, 161 Beaconwood Place since November 2023 and began the hen license application process in April 2024 by notifying neighbours of their plans to participate in the Backyard Hen Program. It was submitted that at the time of notifying the neighbours there was no opposition from the adjoining neighbours.
- [27] As there was no opposition from the adjoining neighbours, the Hen License Applicant submitted that she proceeded with the application process such as participating in the Urban Hen Course and obtaining a PID number.
- [28] The Hen License Applicant indicated that the safety of pets, children and neighbours was a primary concern when planning the coop. If the coop was built too close to the rear fence line, it might invite wildlife and could be a slipping and tripping hazard in the winter. Precautions such as lowering horizontal boards along the bottom of the interior and exterior fence and buried hardware cloth will assist in preventing animals who try and breach the run.
- [29] The Hen License Applicant further submitted that the chosen location of the coop allows for a power source, nesting boxes to be further away from neighbors, and exceeds the Backyard Hen Bylaw distance requirements.
- [30] The Hen License Applicant addressed the Appellant's concern regarding feral cats included in the Notice of Appeal (Exhibit 1, page 2) and indicated that this is already an issue in the neighbourhood without the existence of the coop.

[31] The Hen License Applicant submitted that conversations with the Appellant earlier on in the process provided them with confidence that they had the support of their adjoining neighbours however, while constructing the coop, the Appellant communicated concerns with the coop being next to his bedroom window. The Hen License Applicant further submitted that he assured the Appellant that the run was the closest structure to the fence and that the coop would be further away from the fence and insulated to reduce potential noise. As there was no further conversation with the Appellant, the Hen License Applicant submitted that they felt the concerns were addressed until the notification of the appeal was received.

#### ***Submissions in Favor of the Appeal***

[32] There were no verbal or written submissions received in favor of the appeal.

#### ***Submissions in Opposition to the Appeal***

[33] The Committee received written commentary from Leanne McAmmond (Exhibit 2, page 3), an adjacent property owner who wrote in support of the approved Hen License.

[34] The Committee received written commentary from Cassidy and Jamie Muehling (Exhibit 5, page 29), the adjoining neighbour, who wrote in support of the approved Hen License.

[35] Upon conclusion, the Chair asked the parties present if they felt that the hearing was conducted in a fair manner. No issues were brought to the Committee's attention.

#### **FINDINGS OF FACT**

[36] The Committee makes the following findings of fact:

- i. The subject property to which the approved Hen License Application applies is located at 161 Beaconwood Place, Fort McMurray;
- ii. The Appellant resides at 157 Beaconwood Place, Fort McMurray, and is the adjoining neighbor to the subject property; and
- iii. The Hen License Applicant has met all requirements of the Backyard Hen License Bylaw.

#### **DECISION**

[37] It is the decision of the Community Standards Appeal Committee to uphold the decision of the Licensing Authority and confirm the Hen License as issued.



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**REASONS FOR THE DECISION**

[38] The Committee notes that its jurisdiction can be found in section 26 of the Backyard Hen Bylaw No. 23/004 as follows:

*26. An Adjoining Neighbour may appeal a decision to issue a Licence within 14 days of the decision by submitting a Notice of Appeal to the Clerk only where the grounds of the appeal are:*

*(a) that the keeping of Hens on the Parcel is likely to have a materially adverse effect on the health of the Adjoining Neighbour or of a person living in the premises of the Adjoining Neighbour; or*

*(b) a reason or factor listed in clauses 9 (a) or (c) of this Bylaw.*

*9 The Licensing Authority may revoke a Licence or refuse to issue or renew a Licence, without refund or compensation to the applicant or Licence Holder, for any of the following reasons:*

*(a) the applicant does not meet the requirements of this Bylaw....*

*(c) the Licence was issued based on incorrect information or a misrepresentation by the Licence Holder....*

[39] Although the Appellant submitted concerns with the possibility of noise and odours affecting sleep and relaxation for himself and his wife, there was no evidence submitted by the Appellant that the “*keeping of hens on the parcel is likely to have a materially adverse effect on the health*” of himself and the residents in his home.

[40] The Committee placed considerable weight on the Appellant’s submission that he was not against the Hen License Application; and he would like the coop to be resituated on the subject property away from his bedroom window; however, the Board was not convinced that moving the coop on the subject property would have a substantive change to the Appellant’s overall concerns for safety, noise, odours, etc.

[41] The Committee placed considerable weight on the Municipality’s submission that all requirements of the Hen License Bylaw have been met by the Hen License Applicant, including setback requirements.

[42] The Committee reminds the Appellant that any concerns with infractions to the Community Standards Bylaw No. 21/010, such as noise, odours, etc. or incorrect information or misrepresentation of the Hen License holder, can be addressed through enforcement by calling the PULSE line at 780-743-7000.

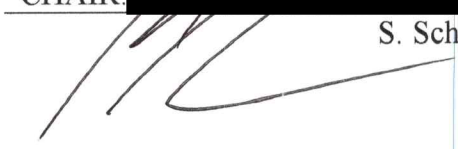
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- [43] In response to the Appellant's inquiry regarding what he can do to change the distance requirement legislation regarding hen coops, the Committee encourages the Appellant to work with the Regional Municipality of Wood Buffalo, to communicate concerns and ideas.
- [44] It is so ordered.
- [45] The decision of the Community Standards Appeal Committee is final and binding on all parties, subject only to appeal to the Court of King's Bench under section 548 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 12<sup>th</sup> day of September 2024.

CHAIR:

**FOIP section 17(1)**

S. Schaffer





**APPENDIX "A"**

**DOCUMENTS RECEIVED AND CONSIDERED BY THE CSAC:**

<b>EXHIBIT NO.</b>	<b>ITEM</b>	<b>DATE FILED</b>
1.	Notice of Appeal (1 page)	2024-07-23
2.	Letter in Support of Hen License – L. McAmmond (1 page)	2024-08-06
3.	Evidence Disclosure – Municipality (20 pages)	2024-08-21
4.	Evidence Disclosure – Hen License Applicant (5 pages)	2024-08-21
5.	Letter in Support of Hen License – Muehling (1 page)	2024-08-22
6.	Coop Illustration – Hen License Applicant (1 page)	2024-08-29

**APPENDIX "B"**

**REPRESENTATIONS**

<b>PERSON APPEARING</b>	<b>CAPACITY</b>
1. George Rose	Appellant
2. Erin Wells	Student at Law Regional Municipality of Wood Buffalo
3. Camille Goodheart	Municipal Legal Counsel Regional Municipality of Wood Buffalo
4. Julie Murphy	Supervisor, Bylaw Services Regional Municipality of Wood Buffalo
5. Greg and Crystal Mersereau	Hen License Applicant