

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hildebrand v. Kelowna (City)*,
2026 BCSC 71

Date: 20260116
Docket: S247430
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Dennis Axle Hildebrand

Petitioner

And

**City of Kelowna and Graham March in his capacity
as Business Licensing Manager**

Respondents

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Petitioner:

N. Baker

Counsel for the Respondents:

E.A. Anderson
A.J. Scott
N. Ruston

Place and Dates of Hearing:

Vancouver, B.C.
November 4-7 and 18, 2025

Place and Date of Judgment:

Vancouver, B.C.
January 16, 2026

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Introduction

[1] Mr. Hildebrand seeks judicial review of the City’s decisions to: (a) terminate his business licence for failure to renew; and (b) reject his application for a new licence on the basis that the intended use of his property for short-term rentals did not conform with its zoning.

[2] Under s. 2(2) of the *JRPA*, he seeks orders setting aside the decision not to renew his business licence and requiring the City to re-issue his licence upon payment of the outstanding renewal fees.

[3] Since 2010, Mr. Hildebrand has used his three-storey building in Kelowna as a seven-unit rooming house primarily for short-term renters. Having obtained a business licence each year from the City, in 2022 his licence was terminated when he failed to renew. He submits the termination was unreasonable and procedurally unfair, and the subsequent refusal to grant a new licence was unreasonable because his use of the building for short-term rentals was a lawful non-conforming use.

[4] The City’s position is that the termination was not an administrative decision capable of judicial review, but merely proper updating of its records to reflect failure to renew by the stated deadline. Alternatively, if there was a reviewable decision, it was not unreasonable or procedurally unfair but carried out pursuant to the City’s bylaws and procedures. The City says the refusal to issue a new licence was reasonable because the use was not legal non-conforming, as short-term rental units with self-contained kitchens were not a lawful use under the prior zoning.

[5] In my view, Mr. Hildebrand has not demonstrated the City’s decisions to be procedurally unfair or unreasonable. His petition is therefore dismissed.

Background Facts

[6] The City of Kelowna is a municipal corporation incorporated under the *Community Charter*, S.B.C. 2003, c. 26, and *Local Government Act*, R.S.B.C. 2015, c. 1 [LGA].

[7] Mr. Hildebrand is the sole registered owner of the property in issue, located at 911 Bernard Avenue, Kelowna, British Columbia. On the property is a three-storey, apartment-style building built in the early 1900s.

[8] According to City records, in March 1953 the building was converted into a rooming house known as the Bernard Lodge Apartment Building. The plans from that time show nine bedrooms and two bathrooms. Later, it was remodelled to create seven self-contained living units each with its own kitchen. The City's records do not include permits for the kitchens and it is unclear when they were constructed, but the records do indicate major renovations to the building in the 1980s and early 90s.

[9] From 1976-1998, the property was zoned R9, under Bylaw 4500. Permitted uses included "lodging house". Mr. Hildebrand submits that this allowed short-term rental units with individual kitchens, which he submits has continued as a lawful non-conforming use. The City submits that neither self-contained kitchens nor short-term rentals were a lawful lodging house use under Bylaw 4500, and further that Mr. Hildebrand did not rely on this prior zoning in his licensing applications.

[10] From October 1998-2022, Bylaw 8000 rezoned the property "RM4 – Urban Residential Zone". Lodging and boarding houses were permitted uses but were expressly prohibited from having individual kitchens.

Decision #1 – Business Licence Terminated

[11] Mr. Hildebrand purchased the property in 2010. By that time, it had seven rental units located on three floors, each being a one-bedroom or bachelor suite with a self-contained kitchen including a fridge and stove.

[12] Initially, he rented the suites to both short- (i.e. under 30 days) and long-term renters. Since late 2019 or early 2020, he has rented primarily to short-term renters, including through Airbnb, under the name the Kelowna Art Lodge.

[13] In March 2019, Council adopted the City's Short Term Rental Accommodation Bylaw No. 1176, 2019, whereby short-term rental accommodation was added as a

lawful secondary use in the RM4 Zone. It is undisputed that Mr. Hildebrand's use of the property did not conform with this zoning.

[14] Each year from 2010-2021, Mr. Hildebrand obtained a business licence for a seven-unit rooming house. Receiving the City's renewal notice in December, he paid the \$35 annual fee the following January or February through his online business account.

[15] On December 3, 2021, the City sent its business licence renewal notice to Mr. Hildebrand's online email account for the Kelowna Art Lodge. Although Mr. Hildebrand's submissions took some issue with delivery of this notice, as I understood it there was no dispute that it was sent to the email address established for his account in April 2021 by someone using Mr. Hildebrand's username and password.

[16] The renewal notice stated the current licence expired on December 31, 2021, and the due date for the \$35.21 renewal charge was January 17, 2022. It included this warning about licence termination:

PENALTY MESSAGE:

Licence fees that are not paid by the due date will be subject to a penalty fee – please remit your payment by the due date or a \$25 penalty fee will apply and may result in the cancellation of your licence.

[17] Mr. Hildebrand did not pay the renewal fee by the due date. He continued to operate the building as before without realizing he had missed the payment. His evidence is that around this time he was involved in a motor vehicle accident and struggling with health issues and so not monitoring his email.

[18] In mid-2022, the City received a complaint regarding alleged by-law infractions on the property. The complaint referred to: placement of an unpermitted shipping container in the lane; building work such as exterior railing and stair additions being done without permits; and the use of the property for short-term rentals through platforms such as Airbnb.

[19] On September 26, 2022, Council Zoning Bylaw No. 12375, rezoned the property to “MF2 – Townhouse Housing”. Boarding and lodging houses were no longer permitted in this zone. It is undisputed that Mr. Hildebrand’s use of the property did not conform with this new zoning.

[20] As part of the City’s response to the complaint about Mr. Hildebrand’s property, staff noted that the licensing database indicated no renewal of his rooming house licence. On September 27, 2022, staff terminated his licence in the City records for non-payment of the renewal fee by the deadline of January 17, 2022.

[21] In November 2022, the City sent violation notices to Mr. Hildebrand for operating without a business licence. He immediately attempted to pay the renewal fee on the City website. Unable to do so, he emailed the bylaw department to advise he had been unaware of the outstanding renewal fee and wished to pay it. He was told that his licence had been terminated in the City’s system for non-payment, and so he could no longer renew and must apply for a new licence, which he did.

[22] In follow-up calls with staff, Mr. Hildebrand was told his prior rooming house licences should not have been issued because they were incompatible with Bylaw 8000, and Bylaw 12375 did not permit short- or long-term rental of the seven units.

Decision #2 – New Licence Refused

[23] Under the City’s Business Licence Bylaw 7878, the Licence Manager may only grant a licence when satisfied that the applicant has complied with the applicable zoning bylaws.

[24] By letter of December 6, 2022, the City’s Licensing Manager rejected Mr. Hildebrand’s application for a new business licence, stating that “secondary suites cannot be located in a boarding or lodging house”.

[25] This was a reference to the rental units falling within the definition of “secondary suite” in Bylaw 12375, which were not permitted in rooming houses.

Secondary suites were essentially defined as self-contained dwelling units. The letter also said that a building permit was required to remove the extra kitchens.

[26] In this proceeding, Mr. Hildebrand does not challenge Decision #2 but treats it as relevant context for Decision #3.

Decision #3 – New Licence Refused Again

[27] On January 9, 2023, Mr. Hildebrand submitted a second application for a new rooming house business licence. Over the next few months, his lawyer corresponded with the City about the status of this application and the applicable bylaws and zoning history.

[28] On April 24, 2023, the City’s Licensing Manager rejected this second application, repeating that “secondary suites cannot be located in a boarding or lodging house”.

Decision #4 – Reconsideration Refused

[29] On April 27, 2023, Mr. Hildebrand requested reconsideration of Decision #3 by Council. In subsequent correspondence preparing for the reconsideration, he also raised issues regarding Decisions #1 and #2.

[30] In July 2023, staff proposed a compromise to Mr. Hildebrand, by which he could receive a licence for long-term rentals (minimum 30 days), which staff said could be considered a legal non-conforming use of his rental apartment building. Mr. Hildebrand insisted on continuing with short-term rentals.

[31] On January 24, 2024, staff provided Mr. Hildebrand an advance copy of its February 5, 2024 report, responding to his reconsideration application. It recommended that Council uphold the decision of the Licence Inspector to refuse issuance of a licence.

[32] On June 21, 2024, Mr. Hildebrand submitted his response package to the City in support of reconsideration (exhibit GGG to his first affidavit). It included:

- Written submissions;
- Correspondence between him, his lawyer and the City;
- An appraisal of the Property as of October 2018;
- Kelowna city directory information for the Property including before 1998;
- The contract of purchase and sale;
- A property report prepared by the City dated June 2024;
- Copies of building permits issued by the City; and
- Copies of Zoning Bylaws 8000 and 12375.

[33] The written submissions focussed on his personal issues, the historical permitting of renovation works in the Building, past licensing of his rooming house use, the licence termination, procedural fairness, and Bylaws 8000 and 12375.

[34] On June 24, 2024, City staff again extended the offer of a business licence for long-term rentals. Mr. Hildebrand again declined.

[35] On July 10, 2024, City staff provided Mr. Hildebrand with an advance copy of its further staff report of July 22, 2024, which was virtually identical to its first report.

[36] On July 22, 2024, the Reconsideration occurred before Council. In the end, Council unanimously resolved to uphold the decision of the Licence Inspector to refuse the issuance of licence for Mr. Hildebrand's rooming house business.

[37] During the hearing, I was told that Mr. Hildebrand continues to use the property for short-term rentals despite the absence of a business licence.

Governing Law

Standard of Review

[38] The parties agree that the standard of review for the decisions is reasonableness. For procedural fairness, the question is whether, in all the

circumstances, the decision-maker acted fairly (*Blanke v. West Vancouver (District)*, 2025 BCCA 90, para. 86).

[39] In judicial review, the court must take a “reasons first” approach, which evaluates the administrative decision-maker’s justification for its decision rather than the conclusion the court itself would have reached in the decision-maker’s place. Reasons must be read “in light of the record and with due sensitivity to the administrative regime in which they were given”. Absent exceptional circumstances, a reviewing court will defer to an administrative decision-maker’s factual findings (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para. 103; *Mason v. Canada (Citizenship and Immigration)*, 2023 SCC 21, para. 73).

[40] When it comes to a municipality’s interpretation of its own bylaws, the reasonableness standard is to be applied broadly and within the specific administrative context (*Blanke*, paras. 82-83):

The appellant’s arguments throughout this dispute have focused on narrow and highly technical legal issues arising out of the zoning and procedures bylaws. This approach fails to appreciate the importance of assessing reasonableness in the context of the applicable legislative framework and the specific circumstances surrounding the District’s decision-making process. ...

And

These very technical issues are precisely why reviewing courts assess the administrative decisions of local governments in accordance with the reasonableness standard. ...

[41] The decision-maker’s specialized knowledge and experience are relevant considerations, calling for an understanding of the institutional limitations of the court and a correspondingly respectful measure of judicial deference. A decision-maker “may draw on its institutional expertise and experience and rely on considerations that a court would not have thought to employ, but which ‘enrich and elevate the interpretive exercise’”. At the same time, a decision-maker’s statutory interpretation must be justified against, and consistent with, among other things, the modern principle of statutory interpretation (*Mason*, paras. 69-70).

[42] A reasonableness review must not be a mere “rubber-stamping” process that shelters administrative decision-makers from accountability. It must remain a “robust form of review” that highlights “the need to develop and strengthen a culture of justification in administrative decision making” (*Vavilov*, paras. 31, 75, 93; *Mason*, paras. 63-70).

[43] Two types of “fundamental flaws” indicate the unreasonableness of an administrative decision: (i) a failure of rationality internal to the reasoning process; or, (ii) a failure of justification given the legal and factual constraints bearing on the decision (*Vavilov*, para. 101).

[44] A failure of rationality in the reasoning process arises if a decision is not rational or logical. A decision is unreasonable if: (a) the reasons, read as a whole, fail to reveal a rational chain of analysis; or (b) the conclusion cannot follow from the analysis undertaken. For example, a decision’s internal rationality may be questioned if the reasons exhibit logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations, or an absurd premise (*Vavilov*, paras. 103-104).

[45] A failure of justification in light of legal and factual constraints arises if a decision is not “justified in relation to the constellation of law and facts that are relevant to the decision”. The legal and factual context “operate as constraints on the decision maker in the exercise of its delegated powers” and is contingent on, among other things: the governing statutory scheme; the relevant statutory and common law provisions; applicable precedents; the evidence; and the submissions of the parties. These factors “are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context” (*Vavilov*, paras. 105-106).

[46] A reviewing court need not categorize unreasonableness as falling into one category or another. They are simply a helpful way of describing how a decision may be unreasonable. In each case, “the key question is whether the omitted aspect of the analysis causes the reviewing court to lose confidence in the outcome reached by the decision maker” (*Vavilov*, para. 101; *Mason*, para. 64, 69).

[47] Turning to the duty of procedural fairness, the duty is variable, flexible and context-specific. Its specific requirements depend on the context of the applicable statute and rights affected. Key factors to consider are: (i) the nature of the decision and the process followed in making it; (ii) the statutory scheme and the role of the decision within the scheme; (iii) the importance of the decision to the individual affected; (iv) the legitimate expectations of the person challenging the decision; and (v) the procedural choices made by the tribunal (*Blanke*, para. 91).

Lawful Non-Conforming Use

[48] The statutory concept of lawful non-conforming use protects existing uses that come to be prohibited by a new bylaw. To be a lawful non-conforming use, the use must have been both lawful and occurring at the time the zoning bylaw was changed to make it unlawful.

[49] Section 528(1) of the *LGA* provides:

Subject to this section, if, at the time a land use regulation bylaw is adopted, land, or a building or other structure, to which that bylaw applies is lawfully used, and the use does not conform to the bylaw, the use may be continued as a non-conforming use.

[50] The onus of establishing lawful non-conforming use falls on the property owner. But the evidence of the property owner may be liberally interpreted (*Langley (Township) v. Wood*, 1999 BCCA 260, para. 9; *Duke v. Regional District of Nanaimo*, 1998 CanLII 6721, paras. 32-35).

Analysis

Which Decision to Review?

[51] I agree with the City that the proper decision for judicial review is Council's reconsideration. It represents the final decision, and the alleged errors in Decisions #1 and #3 were raised and considered within it (*Jorgensen v. Surface Rights Board*, 2021 BCSC 396, para. 46).

[52] Since Mr. Hildebrand put much emphasis on the procedural unfairness of Decision #1, however, I will also address that issue.

[53] I would add that both sides objected to various affidavit evidence from the other side for being argumentative or hearsay. In the end, I believe I have given no material weight to the impugned evidence.

Was Decision #1 Unfair or Unreasonable?

[54] The parties agree that the City's Business Licence Bylaw 7878 governed Mr. Hildebrand's application for a licence to use the building for short-term rentals. Section 4.4 of that bylaw prohibits carrying on any business for which a licence is required without a valid licence.

[55] The parties also agree that the effect of termination of a business licence for failure to renew is that the former licence holder must apply for a new licence. They agree that such a termination does not result in the loss of a lawful non-conforming use. Loss of a business licence does not affect the lawful status of a land use.

[56] Mr. Hildebrand says the City's approach was procedurally unfair and unreasonable because, under Bylaw 7878 s. 12.1(g), only Council can revoke a licence, and can do so only after giving the licensee notice and opportunity to be heard, neither of which occurred here. He also points to s. 60(3) of the *Community Charter*, which has similar terms regarding suspending or cancelling a business licence.

[57] The City's position is that the termination was not an administrative decision capable of judicial review. Rather, it was merely the updating of its records to reflect Mr. Hildebrand's non-renewal by the deadline. Alternatively, if there was a reviewable decision, the City says it was not procedurally unfair.

[58] The City did not provide applicable authority in support of its argument that the termination was not a decision capable of judicial review. I do not accede to that argument. In my view, the termination on September 27, 2023 for non-renewal was

an exercise of a “statutory power of decision”, defined under the *JRPA* to include “a power or right conferred by an enactment to make a decision deciding ... eligibility to receive, or to continue to receive, a benefit or licence”.

[59] I agree with the City, however, that the termination was not procedurally unfair. The City followed a reasonable process, applicable to all such licence holders, in accordance with the *Community Charter* and its Licencing Bylaw 7878. Further, the renewal notice itself provided Mr. Hildebrand with all reasonably necessary information regarding the requirements and deadlines for renewal, and the potential consequences of failing to do so. There is also no evidence that, by this termination, he was treated differently than anyone else in a similar position.

[60] I agree with the City that it is s. 15(1) (d) of the *Community Charter*, not s. 60(3), that addresses the terms and conditions of business licence renewals, and that the City’s termination of Mr. Hildebrand’s licence was in accordance with s. 15(1)(d) as notice and an opportunity to be heard were not required. Licence renewals are the express subject matter of the former, whereas the latter does not refer to renewals and, read in context, addresses instead cancellation of a licence for cause.

[61] Section 15(1)(d) says Council may establish “terms and conditions of, or terms and conditions that must be met, for... renewing... a licence... or providing that such terms and conditions may be imposed, the nature of the terms and conditions and who may impose them.”

[62] Section 60, by contrast, does not refer to renewals, and says:

(2) In addition to the authority under section 15 (1) (e) [*licences, permits and approvals — suspension and cancellation*], a business licence may be suspended or cancelled for reasonable cause.

(3) Before suspending or cancelling a business licence, the council must give the licence holder notice of the proposed action and an opportunity to be heard.

[63] Sections 10.1 and 10.22 of Bylaw 7878 are a valid exercise of the s. 15(1)(d) powers. Section 10.1 says the annual renewal fee must be paid before the renewal due date. Section 10.2 provides for termination:

If a licence is not renewed as required by this bylaw, the licence shall be terminated and the licensee who wishes to continue to carry on business shall submit an application form and supporting documentation in the same manner as an application for an initial licence for a business ...

[64] Mr. Hildebrand makes three additional unfairness arguments based on the lack of a renewal reminder notice: (i) such a notice was provided in February 2021 but not February 2022; (ii) City policy is to send such notices for renewal fees of \$50 or more; and (iii) in response to an FOI request, the City produced a policy indicating notice should be given.

[65] In my view, none of these considerations makes the licence termination procedurally unfair or unreasonable. Mr. Hildebrand provided no authority for finding these types of approaches or distinctions procedurally unfair or unreasonable. In these circumstances, I see no basis for imposing obligations on the City which do not appear in their governing statutes or licensing bylaws.

[66] The renewal notice clearly spelled out the renewal due date and potential consequences of failing to meet it. Given that paying the renewal fee is straightforward, and that one can re-apply for the licence if terminated for non-renewal, in my view it is not unreasonable or unfair to forego a reminder notice in the case of minimal renewal fees, or to terminate the licence if not renewed in time.

[67] Further, regarding arguments (i) and (iii), the uncontested evidence, which I accept, is that the 2021 notice was provided only because of the COVID-19 pandemic, and the policy to which Mr. Hildebrand points was a mere draft that was never implemented or followed.

[68] Finally, I do not agree with Mr. Hildebrand that the termination of a business licence for non-renewal is unreasonably disproportionate. Renewal is straightforward, and the evidence is that, when a licence has been terminated for

non-renewal, the City will grant a new licence unless there are reasons for refusal. Thus, if termination occurs, replacement is not an onerous or uncertain process.

Was the Reconsideration Decision Unreasonable?

[69] As mentioned above, the staff report to Council in preparation for the Reconsideration hearing recommended upholding the decision not to issue a new business licence to Mr. Hildebrand.

[70] The report was submitted by the Manager, Community Planning and Development, and reviewed by the Licensing & System Improvement Supervisor and approved by the Divisional Director of Planning & Development Services. It attached excerpts from Zoning Bylaws 8000 and 12375.

[71] The report explained that boarding or lodging houses were permitted under Zoning Bylaw 8000 but not Bylaw 12375:

The property owner had been issued an annual business licence for a Rooming House, Private business on the subject property from 2010 when he purchased the property until the end of 2021. This type of business was permitted under the principal use of “boarding or lodging houses” in the former Zoning Bylaw No. 8000, RM4 zone. When Zoning Bylaw No. 12375 came into effect on September 26, 2022, the property was rezoned to MF2 and “boarding or lodging houses” were no longer permitted, except as a lawful non-conforming use in a case where such a business had commenced prior to the zoning change and continues.

[72] The report went on to explain that it was the alleged bylaw infractions that alerted staff to the individual kitchens, which were not permitted in a boarding or lodging use under Bylaw 8000, and so there was not a lawful non-conforming use when Bylaw 12375 was introduced:

The Rooming House business licence was not renewed by the owner for the 2022 calendar year. As a result, Bylaw staff began investigation and enforcement steps to determine if the business was continuing to operate without a licence, and through these investigations discovered that each of the boarding units had been unlawfully converted into individual apartments with their own kitchens, without building permits. It was also determined that the owner had been using the units for short-term rentals since 2010, contrary to the terms of the business licence which only allowed a boarding or lodging house use. Sleeping units in boarding or lodging houses may not contain kitchens and short-term rentals are not permitted in boarding or

lodging houses. Since no lawful boarding or lodging house use was actually occurring at the time the Zoning Bylaw was updated in September 2022, the property does not have lawful non-conforming status for this use and is fully subject to Zoning Bylaw No. 12375.

[73] At the Reconsideration hearing, staff explained that the business licence was not renewed in 2022, and in 2023 the application for a new licence was denied which was the issue for reconsideration.

[74] Mr. Hildebrand then made his submissions about the termination of his licence for non-renewal and the two decisions not to grant him a new licence. He asked Council to order the issuance of his business licence. His submissions included that:

- His investigations showed the kitchens were not illegally installed, and they had passed the City and the Fire Department’s safety inspections.
- The City had licensed his rooming house from 2010-2021.
- The cost of alterations was prohibitive, and the loss of this business would have large impact on his family.
- The change in zoning from Bylaw 8000 to Bylaw 12375 was without notice to him and meant that: “Overnight, my business that I was in that day turned into an illegal operation without any notice.”
- In addition to the rejection of his new licence, he also wanted Council to consider the termination of his prior licence for non-renewal. He explained that his licence was terminated without notification at a time when he was dealing with a motor vehicle accident and health issues and not monitoring his email. He also explained that he had received a reminder notice in February 2021 but not in 2022.

[75] Staff then proceeded to answer questions from Council members.

[76] Staff explained that the business licence was initially terminated for non-renewal some months after payment was due, and that it was staff policy not to send reminder notices for renewal fees of less than \$50.

[77] They explained that, when Zoning Bylaw 12375 was introduced in 2022, it had been a rezoning of the entire City, and so there had in fact been community-wide advertising and consultations about the proposed changes.

[78] They explained that it was the individual kitchens which made the use of the building as a boarding or lodging house for short-term rentals not a lawful non-conforming use. They explained that the business licence had been issued to Mr. Hildebrand previously because the City records did not indicate the individual kitchens in the units. They described their offer to Mr. Hildebrand of a licence for long-term stays as a seven-unit apartment building, and his refusal and insistence on short-term rentals.

[79] One staff member incorrectly indicated that termination of the business licence for non-renewal had terminated any legal non-conforming use:

R. CANNAN: By the applicant. Okay.

And then prior to the new bylaw that came into effect, bylaw 12375, which came in effect September 26th, what was the actual zoning on the property?

D. STRACHAN: It had a previous zoning, but it was changed to the bylaw. So there was -- a legally nonconforming status carries on as long as your business is annually renewed. You still carry that legally nonconforming status. Unfortunately, because the licence was not renewed, it carried forward into the new bylaw, and it's not allowable use anymore.

[80] This was corrected however by another staff member, who explained that the lack of a lawful non-conforming use was unrelated to the termination of the business licence for non-renewal:

L. BENTLEY: Thank you, Your Worship.

And just to summarize some of staffs' comments which are the reasoning for the recommendation, that regardless of the cancellation or a non-renewal of a business licence, the use of a boarding and lodging house or rooming house is not considered lawful non-conforming because of the existence of kitchens in the building. So that's not consistent with that -- that use.

[81] As mentioned above, in the end Council unanimously carried the recommendation to uphold the decision of the Licence Inspector to refuse issuance of a business licence for a rooming house.

[82] I disagree with Mr. Hildebrand’s written submissions that staff “failed to explain why [they] had departed from the City’s longstanding practice of licensing the Building for rooming house use” or were guilty of “ignoring the role of lawful non-conforming use”.

[83] In my view, looking at the record and transcript as a whole – which included the staff report, Mr. Hildebrand’s materials and submissions, and the discussion during the hearing – Mr. Hildebrand’s position was fully and fairly aired, and the ultimate decision was rational and justified.

[84] That is, it was reasonable for staff to conclude, and Council to accept, that the process of termination for non-renewal was valid and fair, and that a new licence should not be granted because a lodging house with individual kitchens was not a lawful use under Bylaw 8000, and so not a lawful non-conforming use under Bylaw 12375.

[85] I have dealt with the fairness and reasonableness of the termination in the context of Decision #1.

[86] Regarding lawful non-conforming use, Bylaw 8000 permitted boarding or lodging houses as principal uses:

BOARDING OR LODGING HOUSES means a building in which the owner or manager may supply accommodation for their family, and sleeping unit accommodation, for remuneration. It may or may not include meal service. It includes lodges for senior citizens but does not include hotels, motels, temporary shelter services, congregate housing, or bed and breakfast homes.

[87] However, by definition, the sleeping units which could be supplied in these boarding or lodging houses could not include self-contained kitchens:

SLEEPING UNIT means a habitable room, or a group of two or more habitable rooms, not equipped with self-contained cooking facilities, providing accommodation for guests.

[88] Thus, it was not unreasonable to reject Mr. Hildebrand’s position that it was Bylaw 12375 that had made his business unlawful. It was already unlawful under

Bylaw 8000. It was therefore not unreasonable for staff to recommend upholding the decision not to grant the licence, and for Council to do so.

[89] In this petition hearing, counsel for Mr. Hildebrand argued that short-term rentals with kitchens were in fact a lawful use before Bylaw 8000, under Zoning Bylaw 4500. Thus, even if Bylaw 8000 did not permit individual kitchens, this use has been lawful non-conforming under Bylaw 4500 since 1998. On this position, under Bylaw 8000 the property was in lawful use as a lodging house with lawfully non-conforming kitchens, and under Bylaw 12375 was lawful as a lawfully non-conforming lodging house with lawfully non-conforming kitchens. He argued that the City's decision not to grant a new licence was unreasonable for failing to consider if a rooming house with individual kitchens was lawful under Zoning Bylaw 4500 and had remained a lawful non-conforming use ever since.

[90] The City counters, firstly, that this is a new argument from Mr. Hildebrand. Secondly, it says that short-term rentals, each in separate dwelling unit with a kitchen, were not permitted under Bylaw 4500.

[91] I agree with the City that being a lawful use under Bylaw 4500 is a new issue not raised by Mr. Hildebrand in his applications or submissions to the City. From my review of this large record, I do not see Mr. Hildebrand making this argument to the City, apart from one indirect comment during his oral submissions during the Reconsideration. Rather, he repeatedly refers to, and attaches, Bylaws 8000 and 12375, and accordingly those are the Bylaws considered and addressed by the City.

[92] As *Vavilov* tells us, reasonableness of a decision depends on, among other things, the evidence and submissions of the parties. In my view, looking at the record before the City in Mr. Hildebrand's applications for a new licence, and before Council in the Reconsideration, it was not unreasonable not to address whether Mr. Hildebrand's use was lawful non-conforming since Bylaw 4500 because this was not raised.

[93] In any event, I agree with the City's submissions that seven self-contained short-term rental units, each with their own kitchens, would not have been a conforming use under Bylaw 4500. It is inconsistent with the wording and purpose of the lodging house use in Bylaw 4500, which focusses on a single-family unit with whom lodgers reside.

[94] In addressing Bylaw 4500, and its references to "residence", and where someone "resides", the City points to case law holding that these terms connote an intended permanent or usual home and preclude short-term rental usage (*Nanaimo (Regional District) v. Saccomani*; 2018 BCSC 752, paras. 41-51; *Mailloux v. Tofino (District)*, 2018 BCSC 2298, paras. 115, 126-128).

[95] Bylaw 4500 included the following definitions, by which a lodging house is where lodgers reside with a single family unit or with others living together as a single housekeeping unit using common cooking facilities:

Lodging house means a dwelling of more than two (2) lodgers, with or without meals.

Lodger means a person who resides with a family, is not related, and receives room, or room and board.

Dwelling means a building or a portion thereof other than a hotel, motor hotel, motel or boarding house providing one or more dwelling units and used principally for residential purposes.

Dwelling unit means one or more habitable rooms (used or intended for use as a residence by one or more persons living as a single family unit) with self-contained sleeping, living, cooking and sanitary facilities and direct access to the open air without passing through any other similar unit.

Family means

- i) an individual or two (2) or more persons related by blood, marriage, adoption; or
- ii) five (5) or fewer persons, not necessarily related by blood or marriage all living together as a single housekeeping unit and using common cooking facilities.

[Emphasis added.]

[96] Short-term rentals of individual suites with kitchens do not fall within this definition of lodging house.

Conclusion

[97] Mr. Hildebrand has not demonstrated the decisions that he challenges to be unfair or unreasonable. His petition is therefore dismissed with costs to the City at Scale B.

“Coval J.”