

SUBMISSION BY THE DESIGNATED OFFICER FOR STURGEON COUNTY

**IN THE MATTER OF A REVIEW BY COUNCIL PURSUANT TO SECTION 547 OF THE
MUNICIPAL GOVERNMENT ACT**

**RESPECTING AN ORDER ISSUED UNDER SECTION 545 OF THE MUNICIPAL GOVERNMENT
ACT TO AARON AND SAMANTHA DOBLER**

SUBMISSION DATE: NOVEMBER 23, 2021

COUNCIL REVIEW DATE: NOVEMBER 30, 2021

Procedural History

1. On September 17, 2021, a designated officer for the County on behalf of the County's Enforcement Services (hereafter, "Administration") issued an order pursuant to section 545 of the *Municipal Government Act*¹ (the "Order") to Aaron and Samantha Dobler (the "Requestors"), relating to their property at 45 – 57108 RR 220, Sturgeon County, AB (the "Lands").
2. The Order indicated that the Requestors were in contravention of section 5.4 of the County's Animal Control Bylaw, Bylaw 1508/20 (the "Bylaw"). It directed the Requestors to remove any/all roosters from their Lands.
3. In accordance with section 547 of the *MGA*, the Requestors submitted a request for Council to review the Order. Council has scheduled a hearing to review the Order on November 30, 2021 at 10:00 a.m. This document is Administration's written submission in respect of that Review.

Justification for the Issuance of the Order

4. The Bylaw was duly passed by Council on October 28, 2020, and has been in force within the County since that date.
5. The Bylaw governs the control of wild and domestic animals within the boundaries of the County, subject to exemptions for certain districts under the County Land Use Bylaw, such as AG – Agriculture.² The Requestors' Lands are districted R1 – Country Residential and are not exempted from the scope of the Bylaw.

¹ RSA 2000, c M-26 [*MGA*].

² Bylaw, s 3.1.1.

6. Section 5.4 of the Bylaw states that “No Owner or Hen Keeper shall keep a Rooster”.
7. “Owner” is broadly defined in section 2.16 of the Bylaw to mean “any person, partnership, association, or corporation... owning, possessing, or having charge or control over any animal; or... harboring any animal; or... suffering or permitting any animal to remain about the Owner’s house, premises or lands”.
8. “Rooster” is defined in section 2.20 of the Bylaw to simply mean “a male chicken”.
9. Section 5.4 accordingly sets out a broad, blanket prohibition against the keeping of roosters on any parcel governed by the Bylaw, including the Requestors’ Lands.
10. In May 2021, Administration began receiving noise complaints in relation to roosters on the Lands. Administration attended at the Lands and confirmed the presence of roosters, and advised the Requestors that this was contrary to the Bylaw and that the roosters must be removed.
11. In the months that followed, Administration received further complaints that roosters were still present on the Lands. Administration followed up with the Requestors on more than one occasion, but the Requestors continued to keep one or more roosters on the Lands. Accordingly, pursuant to section 545 of the MGA, the Designated Officer issued the Order to the Requestors on September 17, 2021.

Section 7 of the Bylaw Does Not Override Section 5.4

12. Administration anticipates that the Requestors will argue that section 5.4 does not apply to them, on the basis that they are permitted to have “Livestock, Poultry or Fowl” on their Lands pursuant to section 7 of the Bylaw.
13. “Livestock” is defined in section 2.12 of the Bylaw to mean “those animals listed in Section 7 of this bylaw”, which includes chickens. “Poultry” is defined in section 2.18 to mean “domestic birds kept in captivity for the production of eggs meat and other by-products”. “Fowl” is defined in section 2.8 to mean “a bird of any kind including domestic and exotic birds.”
14. These are *general* definitions applying to the broad concepts of livestock, poultry, and fowl permitted under section 7. However, as discussed above, the Bylaw also includes a *specific* definition for “Rooster”, which is used in section 5.4.
15. When interpreting a bylaw, the basic legal principle is that specific provisions override general provisions. Section 7 provides a general allowance for “Livestock, Poultry, and Fowl” while section 5.4 provides a specific prohibition against “Roosters”. Accordingly, the proper interpretation of the Bylaw is to read section 5.4 as an *exception* to section 7 in the specific case of roosters. That is, the Requestors are

permitted to keep “Livestock”, “Poultry” or “Fowl” per section 7, so long as they are not Roosters, per section 5.4.

16. This is the most natural reading of the two sections, and gives the fullest effect to both. An alternative interpretation, whereby section 7 allows the Requestors to keep roosters in spite of section 5.4, would be confusing and contradictory. The statement of section 5.4 that “No Owner... shall keep a Rooster” would be largely misleading as, in fact, many other types of Owners, such as anyone residing on a parcel falling under section 7.1, would be permitted to keep roosters.

Section 5.4 Is Not Limited in Application

17. Administration anticipates that the Requestors will also argue that section 5.4 does not apply to them, based on the notion that the whole of section 5 is intended to solely apply to persons entitled to keep Urban Hens on their property (that is, persons falling under section 6.2 of the Bylaw).
18. This argument would rely on the “Urban Hens” heading of section 5, as well as the repeated references to “Hen Keepers” throughout sections 5.1 to 5.10. An “Urban Hen” is defined in section 2.21 as “a female chicken”. A “Hen Keeper” is defined in section 2.10 as “a person having any right of custody, control, or possession of an Urban Hen(s)”. On this basis, the Requestors would argue that they are not “Hen Keepers” who are required to follow the “Urban Hens” provisions of section 5. Rather, they are Owners that are governed solely by section 7, permitting to own Livestock, Poultry and Fowl including Roosters..
19. This argument is inconsistent with the language of section 5.4, however. The fatal flaw of this argument is that, unlike other provisions in section 5, section 5.4 mentions two types of defined persons; Owners and Hen Keepers. If section 5.4 were intended to apply only to people limited to owning Urban Hens, there is no reason to also specifically reference “Owners”. It would not need to do so; referencing “Hen Keepers” would be sufficient. Accordingly, the fact that the broadly defined term “Owner” is expressly included signals that section 5.4 was meant as a broad, blanket prohibition on the keeping of Roosters.
20. Further, while headings can be useful in interpreting the meaning of a provision falling below the heading, they cannot override the plain words of such a provision. In this case, section 5.4’s statement that “No Owner... shall keep a Rooster” has an obvious meaning: that Owners, in this case the Requestors, cannot keep Roosters on their Lands. This clear meaning cannot be ignored simply because the section is preceded by an “Urban Hens” heading.

The Agricultural Operation Practices Act Does Not Override the Bylaw

21. Administration understands that the Requestors may argue that their keeping of roosters is governed under the *Agricultural Operation Practices Act*³ and so section 5.4 of the Bylaw cannot be enforced against them. Such an argument misunderstands the relationship between the AOPA and the Bylaw.

³ RSA 2000, c A-7 [AOPA].

22. Provincial legislation and municipal bylaws can operate alongside one another in addressing a particular matter. The Bylaw is not invalid simply because it touches on a similar subject matter to the AOPA.
23. Moreover, there is no conflict between the Bylaw and the AOPA. The Bylaw prohibits the keeping of roosters. The AOPA does not address this. It instead provides that a person carrying on an “agricultural operation”, if certain conditions are met, “is not liable to any person in an action in nuisance resulting from the agricultural operation and is not to be prevented by injunction or other order of a court from carrying on the agricultural operation because it causes or creates a nuisance.”⁴
24. In other words, the AOPA puts restrictions on bringing a court action against an agricultural operation on the grounds of nuisance. But Administration is not bringing any court action against the Requestors, nor is it relying on nuisance as a ground for legal action. It is simply enforcing a provision of the County’s Bylaw prohibiting the keeping of roosters by issuing an enforcement order. The AOPA has no application to this situation.
25. The AOPA protections also apply only in respect of an “agricultural operation” which means “an agricultural activity conducted on agricultural land for gain or reward or in the hope or expectation of a gain or reward.”⁵ Administration understands that the Requestors are not keeping chickens for a commercial or business purpose.

Conclusion

26. Administration submits that in issuing the Order, it properly interpreted the Bylaw and acted within the scope of its authority under the MGA. Further, its actions were not inconsistent with other provincial legislation.
27. Administration respectfully asks that Council confirm and uphold the Order.

Submitted this 23rd Day of November, 2021

Per:



Pat Mahoney
Designated Officer
Sturgeon County

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⁴ AOPA, s 2(1) [emphasis added].

⁵ AOPA, s 1(b) [emphasis added].