SUPREME COURT OF NOVA SCOTIA
Citation: *Rector v. Colchester (Municipality),* 2023 NSSC 405

Date: 20231213
Docket: 524919
Registry: Truro

Between:

Lloyd Rector

Applicant

and

Municipality of the County of Colchester

Respondent

DECISION

Judge:	The Honourable Justice Jeffrey R. Hunt
Heard:	November 22, 2023, in Truro, Nova Scotia
Oral Decision:	December 12, 2023
Counsel:	Lloyd Rector, Applicant, Self-Represented Anna-Marie Manley, Solicitor for the Respondent

By the Court:

Introduction

[1] Lloyd Rector is the owner of a property at 136 Guest Drive, Bible Hill, Colchester County. The Municipality of the County of Colchester made an order respecting this property under the dangerous or unsightly premises provisions of the *Municipal Government Act*, SNS 1998, c. 18.

[2] Mr. Rector seeks to have this Court set aside the requirement that he remove a dilapidated structure from the property.

[3] Mr. Rector is self-represented. In summary, his grounds for challenging the Order appear to be the following:

1. The structure in question is not in a dangerous condition. Any issues are cosmetic only (or at least pose no safety concerns). He ought to be provided a further opportunity to continue with efforts to carry out any necessary upgrades.
2. There are many other properties in this neighbourhood that are as bad or worse than 136 Guest Drive. Mr. Rector asserts he is being unfairly targeted by the Municipality and others.
3. The decision-making process was not procedurally fair. The Applicant argues in his Notice of Judicial Review that he was denied an opportunity to meet directly on the matter with the mayor or municipal building inspector.
4. In general, Mr. Rector argues the decision was motivated by bias and is flawed. The structure at 136 Guest Drive is occupied by his son

> and there are no genuine safety concerns. If given some more time, he and his son would continue with the upgrade work they have already been carrying out.

[4] For its part, the Municipality submits that the Order was a fully reasonable and justifiable exercise of authority under the *Municipal Government Act*.

[5] The directive in question was issued by the Municipality acting through its Dangerous and Unsightly Premises Committee. The power exercised by the Committee and Municipality is derived from Part XV of the *Act*.

[6] They say there are no grounds upon which to overturn the decision in this case. The Municipality urges the Court to reject any suggestion of a violation of procedural fairness or natural justice. It seeks the dismissal of Mr. Rector's application for judicial review.

Record

[7] As is required, the Court has before it the Record of the decision as filed by the Municipality. Additionally, the Applicant filed an affidavit which he says is directed to procedural fairness issues.

[8] While not accepting the legitimacy of any procedural fairness concerns, the Municipality opted not to contest the right of the Applicant to file the affidavit (with the exception of two specific references which were removed by agreement).

[9] The Court will consider the affidavit of Mr. Rector, as redacted, only for purposes of weighing whether any procedural fairness or natural justice issues have been made out.

Background

[10] The history of this matter is fully contained within the filed Record. I do not intend to reproduce here the entire factual background. This summary is meant to provide a context for the discussion to follow:

1. The Record discloses a history of issues with this property, including prior Committee involvement back to 2015. While these earlier interactions may be relevant for context, the critical interactions leading to the challenged Order began in 2021.
2. The Municipality received a complaint regarding the condition of the property in August 2021. Upon inspection, Municipal staff considered the site to be both dangerous and unsightly within the meaning of section 3(r) and Part XV of the *Municipal Government Act*. Staff recommended demolition to the Municipality's Dangerous and Unsightly Premises Committee. The staff material relevant to the recommendation is found within the Record.
3. Notice was provided to the property owner, Mr. Rector. The Committee met on December 9, 2021. The hearing proceeded. The Applicant was in attendance and made oral submissions.
4. Following deliberations, the Committee issued an order to, among other things, demolish the dilapidated mobile home on the site, unless a structural report from a Nova Scotia structural engineer was submitted to the Municipality indicating that the building was structurally sound and safe to occupy as a residential dwelling.
5. The Municipality received a report from Malcolm Nemis, P. Eng, of Nemis Engineering. Mr. Nemis' report opined that the main structure

was not in immediate danger of failure but was in very dilapidated condition. It recommended urgent repair before degradation put the structural components in danger of actual failure. The report provided some significant level of detail with respect to specific remedial steps that were required.

6. The report of Mr. Nemis took the position that certain necessary safety work could not be delayed. This included the immediate removal of the decks and porch. Relying on the 2021 Order, this work was performed by the Municipality in April 2022.

7. It was the position of the structural engineer that he would only stand by his assessment of the structural stability of the main structure for a period of one year from the date of the report.

8. Mr. Rector was advised on September 14, 2022, that repairs to the structure would need to be completed and approved by an engineer by no later than March of 2023, failing which Municipal staff would be referring the matter to the Committee with a recommendation for demolition.

9. This notice was again put to Mr. Rector on March 1, 2023. It was confirmed that March 15, 2023, was the deadline to complete the work and have it signed off.

10. Mr. Rector did not carry out the required work to repair the structural deficiencies, as recommended by Mr. Nemis. There was no further structural engineer report produced.

11. On March 20, 2023, the Municipality served the Applicant with a notice of hearing before the Dangerous and Unsightly Premises Committee. The hearing was set for April 6, 2023.

12. Mr. Rector attended the Committee hearing on April 6. He presented evidence and made submissions to the Committee. He was questioned by and engaged with the members. It was confirmed the property did not have power or water. The Court has reviewed the detailed notes of this hearing together with the photographic material and staff reports presented to the Committee.

13. On April 17, 2023, the Committee produced an Order containing its conclusion that the premises were dangerous or unsightly within the meaning of section 3(r) and Part XV of the *Municipal Government*

Act. The Order contained specific deadlines and requirements for action, as follows:

1. Demolish the existing dilapidated mobile home within 30 days;
2. Remove the derelict vehicle within 30 days;
3. Clean up and remove all garbage, junk and demolition debris on the property within 30 days; and
4. Dispose of all materials and debris to an approved landfill site.

14. The Applicant did not carry out the work mandated by the Order. This application was filed. The Municipality agreed that it would not undertake the enforcement of the Order so long as Mr. Rector advanced the Judicial Review in an expeditious manner.

15. The Record discloses that at each stage the Applicant was provided notice of hearings. The property was posted with physical copies of the Notices.

Standard of Review

[11] The applicable standard of review in this case is not in serious contention. The Municipality was interpreting and applying provisions of the *Municipal Government Act*. Where an administrative decision maker is applying its enabling statute, the presumptive standard is one of reasonableness: see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Halifax (Regional Municipality) v. Rehberg*, 2019 NSCA 65.

[12] There are specific factual circumstances which may lead to the displacement of the presumptive standard. None of these unusual circumstances leading to a different standard of review are present here.

[13] Mr. Rector has raised issues of procedural fairness or natural justice. On these points there is no standard of review, per se. The Nova Scotia Court of Appeal recently made the following comments, in the case of *Sandeson v. Nova Scotia (Attorney General)*, 2023 NSCA 81:

> 23 Questions of procedural fairness do not attract a standard of review (*Morin v. Royal Bank of Canada*, 2023 NSCA 26 at para. 36; *P.N. v. Nova Scotia (Community Services)*, 2020 NSCA 70 at para. 68). The judge was tasked with considering procedural fairness afresh.
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> ….
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> 26 In *Jono Developments Ltd. v. North End Community Health Association*, 2014 NSCA 92 (leave to appeal refused [2014] S.C.C.A. No. 527) this Court identified what the judge was to do:
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> > [41] The reviewing judge correctly identified the principle that no standard of review analysis governs judicial review, where the complaint is based upon a denial of natural justice or procedural fairness. (See for example, *T.G. v. Nova Scotia (Minister of Community Services***)**, 2012 NSCA 43, leave to appeal refused, [2012] S.C.C.A. No. 237, at ¶90).
> >
> > [42] Instead, a court will intervene if it finds an administrative process was unfair in light of all the circumstances. This broad question, which encompasses the existence of a duty, analysis of its content and whether it was breached in the circumstances, must be answered correctly by the reviewing judge [citations omitted].

[14] In *Burt v. Kelly*, 2006 NSCA 27 the Nova Scotia Court of Appeal directed a two-stage approach to this assessment exercise. First, the reviewing court must

consider the content of the decision maker's duty of fairness, with attention to the entire context of the proceeding. Deference is to be shown to the decision maker's discretion to set its own procedures.

[15] Secondly, the reviewing court will assess whether, in the process actually undertaken, the decision maker lived up to its duty, as identified.

Statutory Regime

[16] The authority exercised by the Municipality in this case is derived from the Nova Scotia *Municipal Government Act.* The definition of "dangerous or unsightly" is set out at section 3(r). It provides, in part:

> (r) 'dangerous or unsightly' means partly demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy, and includes property containing
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> (i) ashes, junk, cleanings of yards or other rubbish or refuse or a derelict vehicle, vessel, item of equipment or machinery, or bodies of these or parts thereof,
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> …
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> (iii) any other thing that is dangerous, unsightly, unhealthy or offensive to a person, and includes property or a building or structure with or without structural deficiencies,
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> (iv) that is in a ruinous or dilapidated condition,
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> …
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> (vi) that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes,
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> …
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> (viii) constituting a hazard to the health or safety of the public,
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> …

> (ix) that is unsightly in relation to neighbouring properties because the exterior finish of the building or structure or the landscaping is not maintained,
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> …

[17] Sections 344 to 353 of Part XV of the *Municipal Government Act* sets out the specific powers of a municipality to regulate the condition of property within its jurisdiction. Included there is a requirement that every property in a municipality shall be maintained so as not to be dangerous or unsightly.

[18] In the case of the Municipality of Colchester, the power to make orders respecting dangerous or unsightly premises has been delegated, pursuant to section 345(1) of the *Municipal Government Act*, to the Dangerous and Unsightly Premises Committee.

[19] The remedial powers and enforcement tools of the Municipality are further delineated within the Part.

[20] I am mindful of the comments of Justice Bryson, then of the trial division, commenting on these sections and the proper approach on judicial review to the consideration of the exercise of these powers.

[21] These comments were delivered in *Delport Realty Limited v. Halifax (Regional Municipality)*, 2010 NSSC 290, a decision which dealt with a challenge to remedial and cost recovery orders made by a municipality. While the facts are

not identical to those in the present case, Justice Bryson provided comment on the scope of the municipal role in assessing issues of dangerous or unsightly premises.

[22] After first noting that the test of "dangerous" or "unsightly" is an objective one, the decision continued, in part:

> [24] … [W]hen interpreting the powers of the Municipality, it is important to ensure that those powers are given proper effect. Municipalities are constrained within the authority provided by the statutes under which they operate. However, that does not mean that these statutes should be narrowly interpreted. To do so would frustrate the purpose of the legislation. Courts now take a broad and "purposive" approach to Municipal powers, (*Halifax Regional Municipality v. Ed DeWolfe Trucking Ltd.*, 2007 NSCA 89).
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> [25] The approach advocated by the applicants would frustrate the purpose of the Municipal legislation. The interpretation of that legislation is a question of law and the standard of review with respect to same is one of correctness. However, the finding that the premises are dangerous or unsightly is a question of fact, attracting a high level of deference, (*Dunsmuir v. New Brunswick* 2008 SCC 19; *Cumberland (County) v. W.B. Wells Ltd.* 2004 NSCA 64). The Municipality's determination that the premises were dangerous and unsightly conformed with the legislature language and was reasonable and amply supported by the evidence.

[23] In *Lloyd v. Municipality of Lunenburg*, 2016 NSSC 149, Justice Chipman quoted and relied on these excerpts in dismissing a claim for review of a municipal order made respecting a dangerous or unsightly property.

[24] too have concluded that the portions of the *Delport Realty* decision set out the correct interpretive approach to be followed in judicial reviews, such as the one presently before this Court.

Analysis

[25] I intend to first address the procedural fairness matter before moving on to the remaining issues advanced by Mr. Rector.

Did the Municipality Meet its Procedural Fairness Obligations?

[26] The starting point for this component of the analysis is the identification of what comprised the specific obligations of procedural fairness in this case.

[27] We must pay careful attention to the context of the particular proceeding when determining the content of the decision maker's duty of fairness: See *Halifax (Regional Municipality) v. Rehberg*, supra., paragraph 52.

[28] A review of caselaw tells us that the Supreme Court of Canada has outlined several factors to consider when determining the scope of the fairness duties. These include:

1. Nature of the decision in the decision making process;
2. Provisions of the relevant statutory scheme;
3. Importance of the decision to the individuals affected by it;
4. Legitimate expectations for the party challenging the decision; and
5. The nature of the deference accorded to the decision maker.

See: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, paras 21-27; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, para 77.

[29] Applying these factors in the context of this case leads me to the conclusion that the duty of fairness that was owed in this case was a high one. I will explain why this is the case.

[30] On any reasonable view of the circumstances, the Municipality, through its decision-making arm for these purposes, the Dangerous and Unsightly Premises Committee, was making a highly significant administrative decision impacting individual rights, privileges, and interests.

[31] Moreover, the decision was intended to be final in nature with serious consequences to the impacted party.

[32] I have considered the enabling legislation. The Committee must act within the scope of the powers and limitations imposed by Part XV of the *Municipal Government Act*. I have assessed what I have before me regarding the policies that were employed by the Municipality in considering and deciding these matters through the Committee.

[33] Given the stakes involved in a demolition order scenario, the property owner is entitled to expect a high degree of procedural fairness with full statutory compliance and due care paid to the notice requirements. There must be a full

opportunity for the impacted party to make meaningful submissions to unbiased decision makers.

[34] Moving forward from this assessment of the scope of the duty owed, the caselaw next directs an inquiry into the specific factual circumstances for the purpose of assessing whether the fairness duty was breached.

[35] I have carried out this assessment. In this case the decision maker appears to have possessed a sound understanding of the basis for its authority and the constraints within which it operated. I say this because the Record discloses compliance with the notice, posting and hearing requirements. In many of these cases the reviewing court will face suggestions that notice was ineffective or hearings proceeded without regard to the need to give the homeowner a reasonable opportunity to be present. These are not factors in this case.

[36] Mr. Rector was present at the relevant hearings. He had reasonable notice. The material reviewed by the Court suggests he made meaningful submissions to the Committee. There was obvious engagement and back and forth exchange with the decision makers. With greatest respect to any contrary view that may be held by Mr. Rector, there is no hint in this Record of bias, targeting or malice directed at Mr. Rector by the decision makers.

[37] I have assessed Mr. Rector's position that he was prevented from further direct engagement on this issue with the mayor or chief building inspector. Essentially, he wanted to continue to make his case.

[38] It is not a breach of procedural fairness that the Applicant was unable to continue to make ongoing or post-decision argument to the mayor or building inspector for the Municipality. There is a defined process for submissions, consideration, and decision. That reasonable process was followed on these facts.

[39] It is my view that no issues of procedural fairness or due process have been demonstrated on these facts.

[40] If the question the Court is to ask itself is whether the decision maker conducted a fair process, the answer to this question is yes.

[41] It is my conclusion that the procedural fairness argument advanced by Mr. Rector is without merit and must be dismissed.

[42] This, of course, is not the end of the matter. This decision will next consider Mr. Rector's core allegation that the decision itself was unreasonable and must be overturned.

Was the decision unreasonable?

[43] We have previously noted the appropriate standard of review on this issue. In the leading case of *Canada v. Vavilov*, supra., the Supreme Court of Canada provided clear direction to reviewing courts, such as this one, on the conduct of a reasonableness review of an administrative decision-maker.

[44] A judicial review is not a hearing *de novo.* The process is confined to an examination of the decision made and its rationale.

[45] In particular, *Vavilov* directed that the focus of the reviewing court must be on the decision in question: both the decision-maker's process and the outcome. The reviewing court does not ask whether it would have reached the same decisions (paragraph 83). Nor should a standard of perfection, or a treatment equivalent to what would be found in court decisions, be required - a specialized decision-maker will often use technical language appropriate to their expertise (paragraphs 91-93).

[46] Rather, the court is to consider first whether the decision was a product of internally coherent reasoning:

> 102 To be reasonable, a decision must be based on reasoning that is both rational and logical. It follows that a failure in this respect may lead a reviewing court to conclude that a decision must be set aside. Reasonableness review is not a "line-by-line treasure hunt for error"… However, the reviewing court must be able to trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic, and it must be satisfied that "there is [a] line of analysis within

> the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived"...
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> 103 While, as we indicated earlier (at paras. 89-96), formal reasons should be read in light of the record and with due sensitivity to the administrative regime in which they were given, a decision will be unreasonable if the reasons for it, read holistically, fail to reveal a rational chain of analysis or if they reveal that the decision was based on an irrational chain of analysis . . . A decision will also be unreasonable where the conclusion reached cannot follow from the analysis undertaken . . . or if the reasons read in conjunction with the record do not make it possible to understand the decision maker's reasoning on a critical point . . .
>
> 104 Similarly, the internal rationality of a decision may be called into question if the reasons exhibit clear logical fallacies, such as circular reasoning, false dilemmas, unfounded generalizations or an absurd premise. This is not an invitation to hold administrative decision makers to the formalistic constraints and standards of academic logicians. However, a reviewing court must ultimately be satisfied that the decision maker's reasoning "adds up".
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> [internal citations omitted]

[47] The decision "must be justified in relation to the constellation of law and facts" that are relevant to it (paragraph 105). To assist in this aspect of the analysis, the Supreme Court set out "a number of elements that will generally be relevant in evaluating whether a given decision is reasonable":

> 106 . . . namely the governing statutory scheme; other relevant statutory or common law; the principles of statutory interpretation; the evidence before the decision maker and facts of which the decision maker may take notice; the submissions of the parties; the past practices and decisions of the administrative body; and the potential impact of the decision on the individual to whom it applies. These elements are not a checklist for conducting reasonableness review, and they may vary in significance depending on the context. They are offered merely to highlight some elements of the surrounding context that can cause a reviewing court to lose confidence in the outcome reached.

[48] Thus, the discretion exercised by the decision-maker must fall within the statutory purposes for which it was granted and must be guided by any other relevant statutory regimes or binding court decisions that may have dealt with the language or issue in question (paragraphs 108, 111-112).

[49] While the decision maker does not have to engage in a formal process of statutory interpretation, its application of the governing legislation "must be consistent with the text, context and purpose of the provision" (paragraph 120).

[50] The reviewing court ought not reweigh or reach its own conclusions as to the evidence that was before the decision maker. The facts continue to be the purview of the decision maker. However, "[t]he reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it" (paragraphs 125-126).

[51] The Supreme Court of Canada is instructing this reviewing court that it is to regard specialized decision makers, such as we are dealing with here, with a measure of deference. I am not entitled to assume that I have a greater insight into their proper role and function than the one possessed by the Committee itself.

[52] This is the case, in any event, up to the point at which the reviewing court concludes that the decision or process has fallen into the type of error set out in

Vavilov, for instance at paragraph 103, where the Supreme Court delineates the sorts of errors that will lead a reviewing court to lose confidence in the decision maker and process.

[53] I have considered Nova Scotia caselaw which provides direction on the manner in which the review ought to proceed and elements that the reviewing court must be alert to.

[54] These cases include:

- *Halifax (Regional Municipality) v. Rehberg*, 2019 NSCA 65
- *Lloyd v. Municipality of Lunenburg*, 2016 NSSC 149
- *Colchester v. Spencer*, 2005 NSCA 50
- *Hill v. Halifax*, 2007 NSSC 348
- *Delport Realty Limited v. Halifax (Regional Municipality)*, 2010 NSSC 290
- *White v. Amherst (Town)*, 2019 NSSC 225

[55] A court reviewing an administrative decision can lose confidence in the reasoning pathway followed by the decision-maker where the reasons are incapable of being followed logically.

[56] In the present case I can identify no failures of internal rationality in the decision. Neither have I encountered issues that render the decision untenable in light of the relevant legal and factual elements that bear on the process. The

decision-making pathway is discernible and intelligible. In other words, the rationale is clear and the manner in which the reasoning process unfolded can be followed and understood. This is a necessary component of effective review.

[57] Confidence in a decision can be undermined where the decision-maker fails to account for material evidence before it. The reason for this is clear. The reasoning engaged in by a tribunal has to remain fundamentally tethered to the material facts.

[58] I cannot conclude that the Committee failed to account for the evidence before it in this case. Of necessity I have reviewed the full factual record the Committee had before it. A reviewing court does this not because it is considering what decision it would have made, but because this is a necessary component of assessing whether the decision-making process became, in some fashion, divorced from the facts and circumstances.

[59] I have conducted judicial reviews in the past where this was my conclusion. That is not the case here. Simply put, the material before the Committee amply supports its view that these premises fell within the definition contained in section 3(r) of the *Municipal Government Act*.

[60] I have assessed the Applicant's position as to whether he should have been provided with additional time to continue to attempt to carry out upgrades. This is a common feature of challenges to municipal demolition orders under the *Municipal Government Act.*

[61] In the case of *White v. Amherst (Town)*, 2019 NSSC 225, Justice Jamieson had the following to say:

> [31] The definition of dangerous or unsightly specifically includes "a building or structure with or without structural deficiencies" (s. 3(r)).
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> [32] There is no prohibition on demolition if there is a possibility of repair. For example, the definition of dangerous or unsightly includes a building "that is unsightly in relation to neighbouring properties because the exterior finish of the building or structure or the landscaping is not maintained" (s.3(r)(ix)). The definition also includes a building "that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes" (s. 3(r)(vi)). Clearly these definitions contemplate buildings that are capable of repair being designated as dangerous or unsightly and being subject to remedy by removal, demolition or repair under s.346(1). The choice of remedy resides with the decision maker under the *MGA.*
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> [33] In assessing reasonableness, one must consider both the process of reasoning and the outcome in the context of the entire Record. ….
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> (emphasis in original)

[62] There are a number of other decisions which make essentially the same point. Persons subject to section 346(1) orders are not entitled to extensions as of right. The decision-making function of the Committee covers matters of timing

and forbearance. In this case, given the history and status of the matter, the Committee obviously opted not to delay the operation of the Order.

[63] On the basis of the same reasoning as was employed by Justice Jamieson in the *White* case, I have concluded that the Municipality in this case was acting within the scope of its authority and in accord with the requirements of the statute. The reasons the Order was not stayed or delayed are understandable and justified on these facts.

Conclusion and Disposition

[64] At its core, this application for judicial review in this case is a request by Mr. Rector that I reconsider the decision of the Municipality, re-weigh the circumstances and substitute my own conclusion.

[65] The caselaw I have reviewed takes great pains to warn reviewing courts against such an approach.

[66] I have concluded that the decision of the Municipality in this case was a reasonable one. Substantively and procedurally the decision is lawful and reasonable. The reasoning pathway is clear, and the decision is intelligible and justifiable in light of the pertaining facts and circumstances.

[67] In the wording of *Vavilov*, the decision is justifiable in relation to the relevant factual and legal constraints that bear on the decision.

[68] For all these reasons, I must dismiss the application.

Order and Costs

[69] I ask that the Respondent produce a draft order reflecting this disposition. It should be sent to Mr. Rector for his comments, if any. In the event Mr. Rector chooses not to respond, the draft can be forwarded to court administration in accordance with Civil Procedure Rule 78.04(3).

[70] If the matter of costs cannot be resolved by agreement, I ask that the parties provide their written positions to the Court within 30 days of this decision. [NOTE: The Municipality subsequently confirmed they would not be seeking costs.]

Hunt, J.