EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10030

Date: August 6, 2021

CSLAC File Number: CSLAC-21-030

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Rohit Handa
Allan Bolstad

DECISION

[1] On July 20, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard an appeal that was filed on June 9, 2021. The appeal concerned the decision of Community Standards and Neighbourhoods to Deny an Application for an Urban Beekeeping Licence. The Denial was dated June 2, 2021 and was mailed on June 3, 2021.

[2] The subject property is located at 22504 - 99 Avenue NW, Edmonton.

[3] The hearing on July 20, 2021 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:

- Copy of the Denial Letter;
- Licensing Record from the Acting Director, Community Standards Peace Officer Section
- The Appellant's written request for appeal, submission and response to Respondent's submissions; and

- The Respondent's written submission and response submission.

Preliminary Matters

[4] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Appellant,

[7] While he has done some research on honey bees, he could not find other beekeeping decisions to present to the Committee.

[8] He was introduced to beekeeping and decided to keep his own beehive. After completing the beekeeping course, he applied for a licence on May 7, 2021.

[9] received an email indicating a neighbour provided information about having an allergy to bee stings and on June 3, 2021 he received a letter indicating his application was denied due to an allergy concern from a neighbour.

[10] argued that honey bees rarely sting and that not many people have allergies to honey bees. Swelling and itching are normal effects if a person is stung by a honey bee, but it is not necessarily an allergy.

[11] He believes that the neighbour who has a concern is misinformed, which impacted the decision regarding his application.

[12] In his opinion, the City should have contacted him to discuss the allergy concern as part of the application review process. In his opinion, the City failed to consider the proper information.

[13] The City was informed that the complainant had previously been hospitalized by bee stings and later that same day his application was denied.

[14] He referred to Paragraph 9 in the Respondents response to his submission which states:

> "When making a discretionary decision, such as licensing, the City's staff are split into 2 groups: administration and the decision maker. The administrative team, including the Community Relations Advisors ("CRA's") named in the Appellant's submission, have no decision making authority, as they are not granted this delegated

> power under the bylaw. Any decision made by them would be considered no decision at all, and instead would only be a recommendation to the decision maker. The administrative team can work to gather the information necessary, and advise either party of the process, and provide the Decision Maker with all evidence collected to make a decision. This allows the decision maker to be impartial in making their decision."

[15] Section 47b of City of Edmonton, Bylaw 13145, *Animal Licensing and Control Bylaw* (The *"Bylaw*") states:

> Without restricting any other power, duty, or function granted by this bylaw the city manager may delegate any powers, duties, or functions under this Bylaw to an employee of the City.

[16] stated that the Respondent did not provide any evidence or records stating that the authority to grant licences has been delegated to the Director of the Department, but the *Bylaw* allows for decisions to be made by any City employee as designated by any City Manager.

[17] The Appellant believes that the decision was made on May 10, 2021, shortly after the City received a phone call from the neighbour with the allergy concern, without any consideration to the relevant facts. The email showing this was sent two days after the application was denied and three weeks before the decision under appeal was made.

[18] The separation in decision making and information gathering between the Director and Administration constitutes that lack of impartiality.

[19] The Respondent acknowledged in paragraph 8 of their response to his submission, that his right to be heard is a procedural fairness owed to him.

[20] reiterated that while the neighbour was diagnosed with an allergy to bees, not all bee allergies are equal as there are several types of bees in Alberta.

[21] The original complaint alleges that the neighbour was stung and hospitalized several times as a result of bee stings. Unless this individual is involved in beekeeping, it is unlikely that the three bee stings were from honey bees as honey bees are non-aggressive.

[22] He is concerned that the statutory declaration was anonymous and may not be valid without all the proper information concerning allergies or the legal consequences of executing a false declaration. In addition, the neighbour has not provided any supporting documentation or evidence such as a doctor's note to support that claim. The Appellant has no way to scrutinize the claims.

[23] believes that the correct course of action would have been to approve the application, and issue a licence with the information he provided. If the neighbour wants

to file a complaint after he received his licence then that is when the licence should be revoked.

[24] The City erred when making their decision as the complainant did not indicate if they were allergic to honey bees. He doubts that they are in fact, but has not discussed the matter with them out of respect for the process.

[25] The City misled him and really made the decision to deny his application within 38 minutes of receiving the neighbours concern.

[26] He is willing to buy insurance for his bees and will make any reasonable changes to address any concerns. A civil claim against him is unlikely to be successful due to evidentiary challenges.

[27] provided the following information in response to questions by the Committee:

a) The beekeeping is for hobby purposes only and as an education opportunity for his children. He ordered the bees in November.

b) The hive will be located in the northwest corner of his yard. He is willing to relocate the hive if needed. Occasionally bees swarm and move. During the summer months the hive will be checked regularly (every five days or so) to ensure it is in good health and there are no signs of swarming and that the bees will remain on his property and in the hive. When a hive outgrows its space, it will raise a new queen and swarm - about half the bees will fly off and find somewhere else to live which could be on his play structure or in a neighbour's tree. That is why you need to go in summer months and constantly check the hive.

c) He attempted to speak with his neighbours. If he gets approved by the Committee he will continue to provide information for the neighbours. New neighbours moved in after he started this process (previously they were empty lots), but he has not spoken with them as he respects the City and CSLAC processes. He may take that step later. People are often shocked by the idea, then quickly that turns to intrigue, especially for gardeners who then love the idea.

d) The City approves up to six boxes. He will have two boxes and a typical colony consists of approximately 40,000 to 60,000 bees. Not all bees leave the colony. 10-20% are drones and cannot leave the hive. The other bees are worker bees that go through life cycles and only leave the hive to forage and return with nectar and pollen in the later stages of their lives.

e) He could not confirm with certainty which neighbour made the complaint, but assumes he knows. The proposed hive location was not based on the impact to the neighbours, it was based on where the sun is in the morning. He is willing to relocate the hives further from his solid 6 foot rear fence if necessary.

f) Bees tend to fly straight up into the air and then disperse. The bees will be directed to go toward the garden in his front yard.

g) The letters he provided to his neighbours did not have the location of the hives, but he could relocate the bees to the south side of the back yard in order to meet the urban beekeeping guidelines.

h) He believes the neighbouring property owner who shares the side lot line would not have an issue if the hives are relocated to the south portion of the yard.

i) He provided the Committee with photographs showing where the bees could be situated.

j) He would be agreeable to a condition imposed by the Committee to limit the number of boxes that he is allowed.

k) He could not provide any information specifically regarding whether there is an increased risk to the abutting neighbours given their proximity to the hive as opposed to the average risk.

ii) Position of the Respondent, C. Hodgson, Law Branch, City of Edmonton, who was accompanied by J. Wilson, Director of Animal Control and Peace Officers, City of Edmonton

J. Wilson

[28] On May 29, 2021, a signed statutory declaration was received from an immediately abutting neighbour, that they were medically diagnosed with an allergy to bee stings.

[29] On June 2, 2021, the licence application was denied and the letter cited the allergy concern.

[30] The City Policy is to revoke the licence application when an allergy is identified. Administration was instructed by Council to focus on the potential effects on surrounding neighbours, including to minimize any health or safety concerns.

[31] The City does not allow for conditions on a licence in these circumstances as it lacks the resources to ensure compliance.

[32] The *Bylaw* permits the City Manager or delegate to revoke a licence at their own discretion.

[33] The City takes the position that the personal information of the neighbour with the allergy cannot be shared pursuant with Section 17 and 18 of the *Freedom of Information and Protection of Privacy Act* ("*FOIP*").

[34] The City followed all the procedural requirements and the decision to deny the licence was reasonable in the circumstances. It aligns with the City and the duties of the decision maker issuing a discretionary licence. All procedural requirements in the *Baker* decision were followed.

C. Hodgson

[35] When the City sets up a program there is a balance between public and private concerns. The City sets up a program and policy as it builds that program and balances the thresholds and risks that it is and is not able to accept as a part of the program.

[36] In this case, that process included an assessment of the benefits of bees to the environment and neighbours, and consideration of the safety concerns of someone with an allergy to bees. The City specifically limited the allergy consideration to abutting neighbours to make the program both accessible and possible, while also reasonable in weighing the risk.

[37] The City recently added the statutory declaration process. Previously, the City simply trusted whatever the complaint said. They did not collect evidence of any sort, nor did they provide any evidence to applicants.

[38] The wording in the email to the complainant is her fault personally as the process was new and instituted to provide more evidence and certainty to both the City and any potential appellant. Now, the decision is not made by the director until the statutory declaration is received as proof of the complaint.

[39] She explained the framework for delegation of powers within the City and that any licensing decision must be made by the Director of that section and not the staff.

[40] There are several types of bees and allergies to bees. There are families of insects and species. Their review of the scientific literature does not speak definitively as to whether there is a link between bee allergies. It just compares families so if you have an allergy to any type of bee in the bee family it could also be a potential indicator that you are allergic to say hornets as well. They have no scientific information about the preponderance of allergies within and across the types of species.

[41] That is why the statutory declaration uses the word bee as opposed to stinging insects or bees and wasps. The word bee is as specific as they felt was possible considering the entire risk that is in the balance.

[42] If conditions were imposed on an approved permit to mitigate an allergy, the Appellant would have to be responsible and Bylaw Enforcement would have to follow up regularly to ensure the conditions are being met which is not practical. The City lacks the resources to ensure compliance.

[43] Conditions are not always met. Even assuming they would be met by a person who goes through the beekeeping process, having beehives in a backyard could be a safety concern that potentially affects someone's life and safety in their own backyard.

[44] They have little information on the available insurance or scope of coverage proposed by the Appellant.

[45] C. Hodgson and J. Wilson provided the following information in response to questions by the Committee:

a) With respect to the obligation to exercise discretion in good faith and based on relevant evidence, the policy is set based on the scientific literature outlined in their written submission which indicates one of the mitigation strategies for patients at high risk of adverse reactions is to remove the hive from the area. Here, the City is aware that the neighbouring property owner has a serious allergic response to bees which was medically diagnosed based on their testimony. The City confirmed the allergy based on the requirement of a medically diagnosed allergy to bees specifically and that the individual lives in an abutting property.

b) Past that, they also agreed that the risk is difficult to determine and this person may not ever get stung by a bee or they could be stung multiple times. The City took the scientific literature that exists into consideration and created the policy to minimize the risk while still hopefully allowing as many people as possible to receive a bee licence.

c) Asked about the sufficiency of the declaration and noting the hearsay nature of some of the evidence, the City noted

i) The email from the report in the City's original submission states that the allergy is serious and led to three hospitalizations.

ii) Bee allergies and allergy diagnoses are difficult and diverse, from a rash to something more serious. The allergies are hard to test. Based on the current information from the allergy institute, they know previous reactions are an indication of what will happen in the future.

iii) The immune system is extremely complicated and the City is unable to diagnose allergies, they need to rely on medical professionals and they take those professional responses seriously.

iv) Also the City does not dig into personal sensitive medical information. This would be asking for quite a bit of information in order for a person to protect their safety when a licence is being sought. The City draws boundaries.

d) Relocation of the hive might mitigate risk and due diligence steps can help the situation including the duty that the licence is properly enforced. If the City does not follow up continually, the City would take on liability and the likelihood there could be more chances of getting stung.

e) They weigh the risk versus the benefits and the available resources recognizing there will always be losers who do not get to have the hives they want which is awful for the Appellant here.

f) The only information they have is the 311 transcript and the Statutory Declaration even though the Statutory Declaration only referred to bees in general. They confirmed that the abutting neighbour is a neighbour with whom a portion of the fence is shared. Previously, it was an automatic rejection based solely on a filed concern.

g) They acknowledged the process and the different communications, but emphasised in this case the application was denied because based on the evidence in front of them they did not think it should be issued.

h) Even if the bee guidelines are unclear and the discretion is mentioned only in the revocable portion of the guidelines, they (like the Committee) are stuck and must make the decision in a difficult position based on the risks, privacy concerns, medical concerns and licensing scheme.

i) They confirmed that in terms of neighbours, permission is not required. If a neighbour has a medical concern, the City looks at that information with respect to abutting neighbours only. In fact in this case they agreed with Appellant about the number of abutting neighbours.

j) If there is a medical concern, it is grounds for refusal following the internal policy. The direction of Council in this matter was that the safety of immediate neighbours, especially those with allergies was to be paramount.

iii) Rebuttal of the Appellant,

[46] The Appellant has started the insurance process and will continue if the application is approved.

[47] He questioned whether there has ever been a case where a director approved a licence when a recommendation not to approve it had been sent.

[48] He communicated with the Edmonton District Beekeepers Association and the insurance coverage is intended to cover any injuries from a bee sting. The extremely low rate shows the risk is also extremely low.

[49] The term bees is used in the Statutory Declaration and often bees is used broadly and generically to cover many species and many types of insects.

[50] The Appellant took a five week course in order to get a beekeeping licence.

[51] Other CSLAC decisions show Enforcement Officers go to properties to ensure conditions are being met so that should not be an issue.

[52] The term abutting is insignificant to him as one close neighbour may be abutting and another might not. The City has based their policy and procedure on a very broad policy created for the benefit of allergy positions.

[53] He acknowledged the wording on the website concerning discretion to refuse based on neighbours concerns. However, in his opinion, it is not consistent with the bee guidelines. Further, the rules are rewritten continually so he is uncertain whether he missed it prior to applying or whether it was added to the City website later.

Decision

[54] The decision of Community Standards and Neighbourhoods to Deny an Application for an Urban Beekeeping Licence is **UPHELD**. The appeal is **DENIED**.

Reasons for Decision

[55] This is an appeal of a decision refusing to issue a Specialty Animal Licence to keep bees or have them on a property made under the *Animal Control and Licencing Bylaw* 13145 (the *ACL* Bylaw).

[56] Section 27 of the *ACL* Bylaw deals with licencing of various specific animals, including bees. It provides:

> **Prohibited Animals**
> 27(1) No person shall keep or have any of the following on any premises with a municipal address in the City:
>
> (a) a Large Animal or the young thereof;
>
> (b) poultry;
>
> (c) bees; or
>
> (d) poisonous snakes, reptiles or insects.
>
> unless that person has a Licence issued by the City Manager to do so.
>
> (2) The City Manager may impose terms and conditions on a Licence issued pursuant to this section, including but not limited to terms and conditions regulating:
>
> (a) the location where the animals are to be kept;

(b) the maximum number of animals that may be kept;

(c) the manner in which the animals must be kept;

(d) restrictions on the sale or use of animal products;

(e) the term of the Licence;

(f) mandatory husbandry training; or

(g) any other matter the City Manager determines is in the public interest.

(3) The City Manager may not issue a Licence pursuant to this section unless satisfied that:

(a) the Licensee is at least 18 years of age;

(b) all applicable fees have been paid;

(c) all required information has been provided to the City Manager.

(4) The City Manager may refuse to issue or may revoke a Licence issued pursuant to this section by providing written notice to the Licensee.

[57] On May 7, 2021 the Appellant applied for the licence and submitted the required documentation, including copies of notification letters dated April 22, 2021 that had been sent to abutting neighbours.

[58] By written decision dated June 2, 2021, Grant Blaine, Acting Director Community Standards Peace Officer Section (as the delegate of the City Manager) refused the Appellant's application, The written decision states:

Dear ,

The City is denying your application for an Urban Beekeeping Licence as an allergy concern has been reported to the City of Edmonton's Animal Control Peace Officers in proximity to your address 22504 99 Ave NW. According to the City of Edmonton's Urban Bees Guidelines, an application "may be denied due to documentation of medical concerns from residents of neighbouring properties," including those attached to your property or across an alleyway.

You may appeal this decision pursuant to Section 8 of the *Community Standards and Licence Appeal Committee Bylaw* 19003, and the associated Committee procedures by June 24, 2021. You can find more information at **https://edmontontribunals.ca/community-standards-licence-appeal-committee/filing-appeal.**

Please contact me if you have any questions or concerns related to the denial of this application or about the City of Edmonton's Urban Bees Guidelines.

[59] The Appellant asks the Committee to issue the licence arguing that the refusal was improper based on the following procedural and substantive grounds.

[60] First, the application and denial process lacked procedural fairness as:

a) Submitted City documents provided, prove that the decision to deny was made by administration based only on a single phone call from the Complainant, with supporting documentation sought after the fact - suggesting a lack of impartiality by the City.

b) The City did not follow its own guidelines.

c) Preserving the complainant's identity creates an inequity and fails to satisfy the principles of due process.

[61] Second, the refusal was based on incomplete and/or inaccurate information, specifically:

a) The City did not properly consider the benefits of having a greater prevalence of pollinators and bees in the community despite outwardly professing such;

b) The City greatly overestimated the risk to neighbours of being stung by a honey bee in my charge; and

c) The City did not properly scrutinize claims from the Complainant regarding an allergy to bee stings.

[62] The City argued that the decision was made on June 2, 2021 for the reasons stated in the letter by the duly appointed delegate in accordance with City Bylaws and practices. The City also confirmed its current policy is to refuse applications if a notified neighbour indicates a medically diagnosed bee allergy. Prior to this case, the policy was to take notified neighbours' concerns at face value, neither a statutory declaration, nor any other proof of medically diagnosed allergy were required to deny a bee licence.

[63] Per section 47 of the *ACL* Bylaw, the City Manager may delegate any powers, duties or functions under the bylaw.

[64] Based on information provided by the City, the Committee is satisfied that Grant Blaine as Acting Director Community Standards Peace Officer Section was a duly authorized delegate of the City Manager when the letter of refusal was issued June 2, 2021.

[65] However, the Committee shares some of the Appellants' concerns related to procedural fairness. In particular, the record shows: information provided to the Appellant and the Complainant in May, 2021 were inconsistent; internal emails and the email to the Complainant seeking a statutory declaration as evidence in the event of an appeal clearly suggest that the refusal decision was either made or was a foregone conclusion as of May 10 or May 12, 2021 as soon as the department became aware of the complainant's phone call and well in advance of the June 2, 2021 letter.

[66] The Committee considered the evidentiary shortcomings identified by the Appellant. The Committee was also mindful of legal privacy issues associated with the collecting, disclosing or publicly testing of more detailed medical information from neighbours. The Committee is not bound by rules of evidence or procedural rules of fairness applicable in a criminal trial, but it does owe a duty of fairness to the Appellant. It has taken account of the generality of the statutory declaration, that the City drafted the statutory declaration, and that the identity of the neighbour has not been disclosed and there has been no opportunity for any examination of the declarant or any City employees. These issues have gone to the weight that the Committee has placed on the Statutory Declaration and the hearsay City records.

[67] The Committee's authority comes from the *CSLAC* Bylaw which provides:

a) Per section 8(1)(a) of the *CSLAC* Bylaw, CSLAC may decide appeals of "licensing decisions."

b) The refusal is a "licencing decision" as defined in the *CSLAC* Bylaw section 2(2)(e)(i).

c) Section 8(2) of the *CSLAC* Bylaw states that when deciding an appeal of a licensing decision, *CSLAC* has the same authority as granted to the City Manager under the applicable Bylaw.

[68] The procedural objections, while concerning, are not determinative of the outcome of this appeal. The Committee has the same broad discretion as the City Manager in section 27 of the *ACL* Bylaw quoted above. Licence appeals before the Committee are full de novo hearings. Here, both parties have been afforded the opportunity to make their case. Like the original decision maker, the job of the Committee is to render a decision about the licence based on all the submitted material.

[69] Section 27 of the *ACL* Bylaw does not specify reasons or criteria for exercising discretion to refuse or revoke a requested licence for special animals. The Beekeeping Guidelines and the materials found on the City of Edmonton website dealing with beekeeping licence applications are more specific and address the balance of rights and interests at issue.

[70] The Urban Beekeeping Guidelines do not mention that a licence may be declined based on documentation of medical concerns from residents of neighbouring properties. However, the guidelines do mention this issue under the heading Revocable Permission. They state "Permission can be revoked due to documentation of medical concerns from residents of neighbouring properties." Neighbours are defined quite broadly in this document as owners or tenants of each property abutting the applicant's property, including those who live across an alleyway, but not across a street.

[71] The City website dealing with Beekeeping applications (https://www.edmonton.ca/city_government/initiatives_innovation/food_and_agriculture/beekeeping-pilot-project) includes the following information:

Things to Know Before You Apply:

a) The intention of the program is to support urban beekeeping as a hobby and non-commercial activity. You cannot sell your bees, honey, wax, or any beekeeping products.

b) An application is not a guarantee that you will get a licence.

c) It is in your best interest not to invest in bees, equipment, etc. until you get your licence.

d) **The City of Edmonton has the discretion to not approve licences due to documentation of medical concerns from neighbouring properties.** [Emphasis added]

[72] In the Committee's view, it is appropriate to balance the Appellant's rights and interests and those of his abutting neighbours in a dense urban context such as the City of Edmonton. These competing rights and interests include: the safe use and the enjoyment of one's own property including to fully occupy and pursue activities and hobbies within one's own rear yard.

[73] Based on the submitted record, the Committee also recognises that the City has adopted a strict policy to the effect that if an abutting neighbour indicates a serious medical concern associated with bees, the application will be automatically denied. The Committee has not adopted this policy and will consider each appeal on its own merit and based on the evidence and submissions of the Appellant and the City.

[74] Here, both parties made extensive submissions to support their positions and the Committee considered all of these materials in making this decision about the licence under appeal. In particular the Committee took note:

a) Keeping bees can contribute positively to the urban environment. Over 250 beekeeping licences have been approved across the City.

b) There are many different types of stinging insects, including bees, wasps and hornets. The term bees is somewhat generic as there are many types of bees and they have different behavioural habits.

c) Western honey bees, which the Appellant proposes to keep, are less aggressive than many other types of stinging insects. All the materials submitted by both parties confirm that the chance of an individual being stung by bees such as those the Appellant proposes to keep is very small, but it is not nonexistent.

d) The submitted materials also indicate that reactions to bee stings can be mild or serious, even life threatening. It can be difficult to determine what insect has caused a medical reaction and allergic reactions to stinging insects may be related, but a reaction to one type of stinging insect is not necessarily indicative

that an individual will also have an allergic reaction to another type of stinging insect

e) Bees freely roam throughout the City and may come into contact with all residents of Edmonton. In the Committee's view, common sense dictates that the chances of an encounter are significantly increased in comparison with the average chances of an encounter when a fence line along a rear yard is shared with a property containing a hive.

f) Materials submitted by the Appellant and cited by the City confirm that the presence of a nearby hive leads to a higher concentration of honey bees and a greater potential for negative interaction. According to one article, there are three tenants of treatment for those at risk of systemic reaction: avoidance, keeping emergency medication on hand and removing the hive from the immediate vicinity of the home of the individual at risk of serious reaction.

[75] The Committee considered the Appellant's application, supplemental submissions and the physical environment:

a) The Appellant seeks a licence for a two drawer hive and typically hives will have 40,000 to 60,000 bees.

b) Part of good beekeeping practice involves regular checks of the health of the hive. At these times stings are most likely as his bees are not aggressive but they will actively defend the hive.

c) He expects that most bees will remain inside the hive, unless they swarm. In the normal course mature worker bees, which are a small minority of the colony, exit the hive daily to forage and then return.

d) The Site Plan submitted with the application shows that the rear yard is 11.15 meters by 11.96 meters with a perimeter fence that is solid and 1.83 meters in height. There is no rear lane and the subject property shares a side or rear fence with four other properties.

e) To take advantage of early morning sunshine and optimize conditions for the bees, the hive will be located 3 meters from the rear lot line shared with two other properties and approximately 1 meter from the abutting property which shares a side lot line. It could be moved closer to the house to a less optimal location.

[76] The Committee carefully reviewed the available information before it about a neighbour who has raised a concern about the proposed licence:

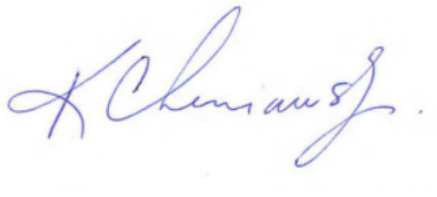
a) The neighbour lives on an abutting property. The property is not across a street or alleyway; it is located closer and shares a common property line along the rear yard with the Appellant.

b) The City documented a call noting "Citizen was calling regarding the letter they received **[BLANK]** about the beekeeping license, they don't agree with the application but they have concern with the bees as [**BLANK]** has severe allergy and got hospitalized for three times regarding the Bee Stung. They are very concern on this application."

c) The City provided a standardized statutory declaration form which it had prepared for the neighbour. The statutory declaration has been declared before a Commissioner for Oaths in and for the province of Alberta. Personal identifying information has been redacted. The declaration is entitled, "In the matter of this Statutory Declaration being used as proof of an allergy to bees" and states that the declarant solemnly declares two statements are true: the first is their residence (redacted) and the second is "I have been medically diagnosed with an allergy to bees." No further detail is provided.

d) The City also indicated that the discussion with the neighbour included discussion of the different types of stinging insects and the serious legal consequences of executing a false statutory declaration.

[77] Based on the totality of the evidence given in particular the proximity to the hive and the documented serious medically diagnosed allergy to "bees" necessitating three prior visits to the hospital, the Committee concludes that the licence should be refused. In reaching its conclusion, the Committee balanced the Appellant's desire to pursue a hobby and maintain a beehive that contributes to the densely populated urban environment against the concerns of an abutting neighbour residing in very close proximity to the hive about the impact on their use and enjoyment of their own property and particularly their health and safety within their own rear yard.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

City of Edmonton, Law Branch, Attn: C. Hodgson
Director of Animal Control and Peace Officers, Attn: J. Wilson
City of Edmonton, Law Branch, C. Barlow
City of Edmonton, ELT Committee, Attn: C. Hammett

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10031

Date:	August 6, 2021
Order Number:	396862723-001
CSLAC File Number:	CSLAC-21-031

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Rohit Handa
Allan Bolstad

DECISION

[1] On July 20, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard a request for review of an order that was filed on June 14, 2021. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 546(1)(c) of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*"). The Order was dated May 28, 2021 and was mailed on May 31, 2021 and required the following action:

> Remove the wood pieces, metal pieces, wooden pallettes, concrete chunks, plastic pieces, tarps, wood shavings, plastic fencing, plastic bins, and all other loose litter, debris, and assorted nuisance materials from the entire property. Cut all long grass and weeds over 10 cm from the entire property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: June 17, 2021

[2] The subject property is located at 226 - Lee Ridge Road NW, Edmonton.

[3] The hearing on July 20, 2021 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:

- Copy of the Order issued pursuant to the *Municipal Government Act*;
- The Appellant's written request for review and submission; and
- The Respondent's written submission, including two sets of photographs taken May 28, 2021 and July 19, 2021.

Preliminary Matters

[4] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] As the Applicant raised the issue of timeliness, the Committee noted that the Order was dated May 28, 2021 and based on submitted written evidence:

i) it was mailed to the Applicant on May 31, 2021 and as the *Interpretation Act* presumes that the Order would have been received in 7 days (June 7, 2021).

ii) The request was received on June 14, 2021

[7] The Chair asked the Respondent to comment on timeliness as the written request appears to have been received in time in accordance with Section 547 of the Municipal Government Act.

[8] The Respondent responded that they had no objections regarding the timing of the appeal.

Summary of Hearing

i) Position of the Applicant,

[9] The City of Edmonton encourages citizens to reduce waste and to recycle and reuse materials whenever possible. The materials in question are designated to be reused in the Applicant's landscaping project. They were on the property for less than two days when the Order was issued.

[10] Nothing has been removed from the property since the Order was issued and the majority of the materials have already been integrated into the landscaping as per the photographs taken on July 19, 2021. The tall grass was sprayed on the morning of May 28, 2021.

[11] A violation ticket was also issued at the time of the inspection, prior to the Order being issued. The Applicant attempted to contact the Municipal Enforcement Officer regarding the ticket and a voicemail was left from her indicating she had the right to issue a ticket at her discretion due to the history of the property.

[12] She also stated that she would not like to be his neighbour. The Applicant believes that each violation should be treated as a new case and should be subject to the same guidelines. Municipal Enforcement Officers should not be permitted to make decisions based on their own personal bias.

[13] A load of material such as fencing boards could be delivered to a property in the morning and if a neighbour decided to call in a complaint that afternoon, an officer would be sent out. While the material may have been just sitting there for a day or two, as was the case here, the officer could decide it looks like a nuisance and can issue an Order.

[14] If a Notice to Comply had been issued the Applicant would have immediately contacted the Municipal Enforcement Officer and requested her to come back to review the property. Instead, a ticket was issued followed by an Order and the Municipal Enforcement Officer was almost rude in the voicemail that she left.

[15] The Community Standards's approach is flawed. It operates on the basis of enforcement first and engagement second. If a property has received a single prior violation it is deemed to be a repeat offender and if it has received two or more prior violations it is considered a problem property. If a complaint is received an Order can be issued immediately while a neighbour's property, that might be in worse condition, is ignored.

[16] requested that the Committee cancel the Order and that all records of it be removed from the file.

[17] The Chair clarified that the Committee only has jurisdiction to review the Order and has no jurisdiction regarding the ticket that was issued - that is a separate process.

[18] The Applicant provided the following responses to questions from the Committee:

a) The material shown in the photographs taken on May 28, 2021 was delivered on May 26 and May 27, 2021 for the purpose of landscaping his own private property. They were recycled materials which he had purchased on Kijiji and had nothing to do with his home based business. He had just removed the pieces of concrete shown in the photographs from his property.

b) The small shed in the photo is in the process of getting siding and a roof put on. No permit is required for this shed due to its small size.

c) Nothing on the property has anything to do with his business. It is all personal material which was acquired on May 26 and May 27 - two days prior to the inspection.

d) As per the July 19, 2021 photographs, the majority of the material has already been incorporated into the landscaping.

e) The Applicant confirmed that the photographs are of his front yard as he had no access to the rear of his property. The subject site backs onto a City boulevard and 34 Avenue.

f) does not have any photographs of the front of his property prior to the materials being delivered on May 26 and May 27, 2021.

ii) Position of the Respondent, C. Perizzolo

[19] Ms. C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton. She provided a summary of the investigation.

[20] On May 28, 2021 a Municipal Enforcement Officer attended the property in response to a citizen's complaint regarding the untidy and unsightly condition. The Officer observed a nuisance condition at the front of the property which included scrap wood, metal, wood pallets, concrete pieces, plastic, fencing, and other debris, including long grass in excess of 10 centimeters. Four photographs were taken.

[21] Section 6(2) of the *Community Standards Bylaw* defines nuisance on land as

> land, or any portion thereof, that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area,

For further clarification, the *Bylaw* lists examples of nuisance conditions which include excessive accumulation of material including building materials, appliances, household goods, boxes, garbage or refuse, whether of any apparent value or not as well as any unkempt grass or weeds higher than 10 centimeters.

[22] Due to the extensive history with this property, the Municipal Enforcement Officer proceeded directly with the issuance of a bylaws violation ticket as well as a 546 Municipal Government Act Order.

[23] Section 546(1) of the *Municipal Government Act* states that if, in the opinion, of a designated officer, a property is detrimental to the surrounding area, because of its unsightly condition, the officer, may by written order, require the owner of the property to improve its appearance in the manner specified.

[24] The Municipal Enforcement Officer spoke with on June 9, 2021 and advised that the ticket was issued for the violation of Section 6 of the *Community Standards Bylaw*. At that time the Applicant was provided with information on how to contest the ticket. The 546 *MGA* Order was issued in order to have the nuisance material removed from the property.

[25] There is a Development Permit in place at this location allowing for a Home Based Business. Conditions on this permit stipulate that no outdoor storage of materials associated with the business is permitted and no aspects of the business operations should be detectable from outside the property. At the time of the inspection it was unknown if the material was part of the business or simply personal material.

[26] Two sets of photographs are before the Committee today. The first was taken on May 28, 2021 and the second was taken yesterday, July 19, 2021. During yesterday's inspection the Municipal Enforcement Officer spoke with and confirmed that partial compliance of the *MGA* Order had been achieved. The grass had been trimmed and the materials on the driveway were organized and the driveway had been swept. However, there were still some nuisance materials that had not yet been removed.

[27] Ms. Perizzolo provided the following responses to questions from the Board:

a) She clarified that the ticket was issued as a result of a contravention of section 6 of the *Community Standards Bylaw* and this ticket is not before the Committee today. Only the 546 *MGA* Order is before the Committee today which requires the owner of the property to improve the appearance of the property in the manner specified as per section 546 of the *MGA*.

b) The citizen's complaint was filed on May 20, 2021, and the officer inspected the property on May 28, 2021 and verified a nuisance condition. At that time it was difficult to know what the materials were going to be used for.

c) In this case, due to the previous bylaw history and previous warnings given, it was decided to proceed directly to a 546 *MGA* Order. The nuisance was at the front of the property and detrimental to the surrounding area and showed a serious disregard for general upkeep and maintenance.

d) It is not the City's standard approach to issue a ticket each and every time just because there is a history with the property. Each case is investigated on its own merit and information received from a citizen, the state of the property, and recent history are evaluated.

e) Ms. Perizzolo confirmed that there are still concerns with the property as of yesterday although there has been significant improvement. It is the City's position that the Order was validly issued on May 28, 2021, as a result of an inspection on that date.

iii) Rebuttal of the Applicant

[28] It is hard to believe that the complaint was received on May 20, 2021, and it took eight days to inspect the property. He adamantly states that the material was delivered on May 26 and May 27, 2021.

[29] The past history of this property also includes the previous home owner who had run-ins with Community Standards because they do not properly engage with citizens.

[30] He disputes that he had a conversation with the Municipal Enforcement Officer after the Order was issued. The Officer only left a voicemail.

[31] The July 19, 2021 photographs clearly show that the majority of the materials have already been incorporated into the landscaping and the remaining materials are in a tidier position. There is clear evidence that improvements have been made to the property.

[32] If each incident is supposed to be treated as an individual case, as stated by Ms. Perizzolo, how does past history play into it? Incidents in the past included not being able to get to weeds or long grass in the springtime, a truck which was purchased for restoring and garbage bags laying near the truck he was cleaning out while he took a break. Ninety percent of the time the issue was rectified before the City sent out a notice.

[33] The steps outlined by Ms. Perizzolo regarding a nuisance condition, the inspection process and the process of issuing tickets do not make sense.

[34] provided the following responses to questions from the Committee:

a) He expects to have all of the landscaping work completed by July 31, 2021.

b) He cannot explain why a complaint would have been made on May 20, 2021, as the materials were not dropped off until May 26 and May 27, 2021. Materials dropped off on those dates include mulch, wood and an old window well. The small pile of road crush was already there as well as an oil pan and a couple of plastic pails. The tools and wheelbarrow were not put out until after May 27, 2021 as he intended to use them for the landscaping work.

iv) Rebuttal of the Respondent

[35] Ms. Perizzolo declined the opportunity for further comments.

Decision

[36] The Order is confirmed and the compliance date is varied to July 31, 2021.

Reasons for Decision

[37] This hearing is to review an Order dated May 28, 2021 and issued to the Applicant pursuant to section 546(1)(c) of the *Municipal Government Act* (the *Act*). Section 546 of the *Act* states:

> (0.1) In this section,
>
> > (a) "detrimental to the surrounding area" includes causing the decline of the market value of property in the surrounding area;
> >
> > (b) "unsightly condition",
> >
> > > (i) in respect of a structure, includes a structure whose exterior shows signs of significant physical deterioration, and
> > >
> > > (ii) in respect of land, includes land that shows signs of a serious disregard for general maintenance or upkeep.
>
> (1) If, in the opinion of a designated officer, a structure, excavation or hole is dangerous to public safety or property, because of its unsightly condition, is detrimental to the surrounding area, the designated officer may by written order
>
> > (a) require the owner of the structure to
> >
> > > (i) eliminate the danger to public safety in the manner specified, or
> > >
> > > (ii) remove or demolish the structure and level the site;
> >
> > (b) require the owner of the land that contains the excavation or hole to
> >
> > > (i) eliminate the danger to public safety in the manner specified, or
> > >
> > > (ii) fill in the excavation or hole and level the site;
> >
> > (c) require the owner of the property that is in an unsightly condition to
> >
> > > (i) improve the appearance of the property in the manner specified, or
> > >
> > > (ii) if the property is a structure, remove or demolish the structure and level the site.
>
> (2) The order may
>
> > (a) state a time within which the person must comply with the order;

> (b) state that if the person does not comply with the order within a specified time, the municipality will take the action or measure at the expense of the person."

[38] The Order under review states in part

> As a result of an inspection of the property on May 28, 2021.
>
> In my opinion, being an employee of the City of Edmonton having the delegated power, duties and functions of a designated officer for the purposes of section 546, the property, because of its unsightly condition, is detrimental to the surrounding area.
>
> YOU ARE THEREFORE ORDERED TO:
>
> Remove the wood pieces, metal pieces, wooden pallettes, concrete chunks, plastic pieces, tarps, wood shavings, plastic fencing, plastic bins, and all other loose litter, debris, and assorted nuisance materials from the entire property .
>
> Cut all long grass and weeds over 10 cm from the entire property.
>
> YOU MUST COMPLY WITH THIS ORDER BEFORE: June 17, 2021

[39] Per section 547 of the *Act* and section 8(1)(b) of the *Community Standards and Licence Appeal Committee Bylaw*, the Committee is authorized to conduct reviews of Orders issued under section 546 of the *Act* and to then confirm, vary, substitute or cancel them if a written request for review is filed with the Committee, 7 days after the date the order is received by the Applicant.

[40] Based on the information presented by the Applicant and the Respondent, the Committee finds that the request for review was filed within the time frame required in section 547(1)(b) of the *Act.*

[41] The Applicant asked the Committee to set aside the section 546 Order for two reasons. First, each incident should be considered a new matter and the City should have contacted the property owner and allowed him the opportunity to comply, rather than acting unilaterally on an alleged neighbour complaint and issuing an order and tickets. Second, the cited materials on his property were designated for reuse in his personal landscaping and had been on the property only for 2-4 days prior to the order being issued. The City encourages waste reduction, recycling and reuse and that is exactly what the Applicant was doing as demonstrated by the fact submitted photos show that most of the materials have been incorporated into his landscaping.

[42] In their submissions, the parties both referred to Bylaw violations tickets and to section 545 of the *Act* which authorizes Orders in the event of a Bylaw infraction. However, the only matter under review in this hearing is the section 546 Order cited above concerning an unsightly property. The Committee makes no findings whatsoever with respect to any

other order which may or may not exist. Further, this Committee has no authority with respect to tickets or associated fines issued for alleged Bylaw infractions with respect to the subject property. Those matters are subject to scrutiny in other legal forums.

[43] Based on the four submitted photographs taken during the May 28, 2021 inspection, the Committee finds that the subject property was in an unsightly condition and detrimental to surrounding properties as defined in section 546 of the *Act* and that on the face of it, the Order should be confirmed.

[44] The Committee then considered the following factors in determining whether the Order should nonetheless be varied, substituted or canceled:

i) The Order refers to "wood pieces, metal pieces, wooden pallettes, concrete chunks, plastic pieces, tarps, wood shavings, plastic fencing, plastic bins, and all other loose litter, debris, and assorted nuisance materials"

ii) The Applicant indicated that the mulch, wood and old window well had been delivered on May 26 and 27, 2021 and were only on the property for a couple days. However, he also agreed that some of the other listed items had been in place on his front yard for a longer time.

iii) A complaint from a Neighbour about the state of the property was received by the City concerning the property May 20, 2021.

iv) Both parties agreed that this was not the first incident involving the condition of the subject property since the Applicant purchased it.

v) The City has discretion with regard to issuing orders and there is no Bylaw which requires the City to issue a warning or notice to comply prior to the issuance of an order under Section 546 of the *Act*.

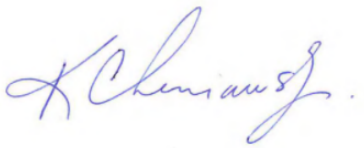
vi) Orders issued per section 546 of the *Act* are not based on Bylaw violations, they are intended to address properties which are determined to be either dangerous to public safety or, as in this case, unsightly and detrimental to surrounding properties.

[45] Given these factors, the Committee was not persuaded that the Order should be substituted or cancelled because the City failed to issue a notice to comply or discuss the matter with the Applicant prior to the issuance of the section 546 Order.

[46] The Committee took note that some of the listed items remain on the front yard of the property while other items no longer appear on the 8 photos dated June 18, 2021. The photos show that many items appear in a tidier pile or have been moved and repurposed by incorporation into the Applicant's landscaping. In addition, the grass has been cut to a length less than 10 centimeters. The Applicant has indicated that given his work commitments, he will be able to fully complete his landscaping and remove or repurpose any remaining items by July 31, 2021.

[47] Given the documented progress described by the Applicant and the City's extraordinary authority to step in and bring the property into compliance with the Act and to charge the Applicant for the associated costs, the Board finds this revised timeline reasonable to allow the Applicant full opportunity to fully address the state of the property through his own efforts.

[48] For these reasons, the Board confirms the section 546 Order dated May 28, 2021 and substitutes July 31, 2021 in place of June 17, 2021 as the date of compliance.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

Community Standards and Neighbourhoods – J. Lallemand, C. Perizzolo

Important Information for the Appellant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10032.

Date:	August 6, 2021
Order Number:	391436346-001
CSLAC File Number:	CSLAC-21-032

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Rohit Handa
Allan Bolstad

DECISION

[1] On July 20, 2021 the Community Standards and Licence Appeal Committee (the "Committee") heard a request for review of an order that was filed on June 15, 2021. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 546(1)(c) of the *Municipal Government Act*, RSA 2000, c M-26 (the "*Municipal Government Act*"). The Order was dated April 27, 2021 and was mailed on April 29, 2021 and required the following action:

> **Remove all damaged, dismantled, and derelict vehicles. Additionally, remove all wood, metal, plastic, tree trimmings, branches, plywood, lumber, pallets, constructions materials, renovation materials, window casings, railings, clothing, fabrics, tools, ladders, heaters, generators, light towers, pressure washers, auto parts, tires, wheels, transmissions, bumpers, tailgates, truck canopies, tarps, containers, pails, oil containers, fuel containers, barrels, furniture, benches, stools, tables, chairs, garbage, garbage bags, loose litter and debris and other assorted materials from the entire property and take any actions or**

> **remove any other items that are contributing to the unsightly condition of the property**
>
> **YOU MUST COMPLY WITH THIS ORDER BEFORE: May 18, 2021**

[2] The subject property is located at 10173 - 144 Street NW, Edmonton.

[3] The hearing on July 20, 2021 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:

- Copy of the Order issued pursuant to the *Municipal Government Act*;
- The Appellant's written request for review; and
- The Respondent's written submission, including a series of photographs.

Preliminary Matters

[4] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The Chair raised a preliminary issue about whether to proceed in the absence of the Applicant and a jurisdictional issue regarding when the request for review was filed. The Committee is constrained by the 7-day limitation period prescribed by section 547(1)(b) of the *Municipal Government Act*, RSA 2000, c M-26 ("*Municipal Government Act*" or "*Act*"), which states:

> **Review by council**
> **547(1)** A person who receives a written order under section 545 or 546 may by written notice request council to review the order within
>
> (a) 14 days after the date the order is received, in the case of an order under section 545, and
>
> (b) 7 days after the date the order is received, in the case of an order under section 546,
>
> or any longer period as specified by bylaw.

[7] The Committee must therefore determine whether the Applicant filed the written request within the 7-day limitation period. If the request was filed late, the Committee has no authority to hear the matter. The Committee invited submissions on this preliminary matter.

Summary of Preliminary Matters

[8] Committee Administration attempted by email to contact the Applicant.

[9] Administration confirmed that the Applicant was properly notified of the hearing and no communication was received.

i) Position of the Applicant,

[10] The Applicant was not in attendance at the hearing.

ii) Position of the Respondent, C. Perizzolo

[11] Ms. C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.

[12] C. Perizzolo indicated that she was ready to proceed in the absence of the Applicant.

[13] The Committee made and passed the following motion:

> "The Committee will proceed to determine whether the Appeal was filed on time".

[14] C. Perizzolo confirmed that the Order was issued on April 27, 2021 and mailed on April 28, 2021. Community Standards was notified of the Appeal on June 15, 2021. Pursuant to Section 547 of the *MGA* it is the City's submission that the Appellant has exceeded the 7 day time frame for filing the appeal and the appeal should not be heard today.

[15] According to the *Interpretation Act* the Order was deemed to have been served seven days after the mailing date of April 29, 2021. While submitted he did not pick up his mail until June 10, that is not an acceptable argument.

[16] Ms. Perizzolo confirmed that the Order was mailed to the correct address.

Decision

[17] The Committee has no jurisdiction to consider the request for review.

Reasons for Decision

[18] This hearing is to review an Order dated April 27, 2021 and issued to the Applicant pursuant to section 546(1)(c) of the *Municipal Government Act* (the Act).

[19] The Committee is authorized under section 547(2) of the *Act* and section 8(1)(b) of the *Community Standards and Licence Appeal Committee Bylaw*, 19003 to conduct reviews of Orders issued per section 546 of the *Act* and to then confirm, vary, substitute or cancel them.

[20] As the Applicant did not attend the scheduled oral hearing, the Committee considered as a first preliminary issue whether or not the review should proceed in his absence.

[21] The City requested that the hearing proceed, particularly as the review involved a section 546 Order against an unsightly property with detrimental impacts on surrounding properties.

[22] The request for review was brought to the attention of CSLAC via an email sent by the Applicant addressed to sdab.edmonton.ca dated June 15, 2021 in which he indicated a desire to file a "2x appeal".

[23] On June 17, 2021 CSLAC staff sent a written notice of the time, date and place of this section 546 Order review hearing.

[24] In the interim, no information or communication was received from the Applicant indicating an intention to either abandon this review or request an adjournment.

[25] The Committee Officer confirmed that unsuccessful attempts were made to contact the Applicant by email immediately prior to the start of the oral review hearing.

[26] After due consideration of these circumstances, the Committee decided to proceed with the review hearing on the merits in the absence of the Applicant based on his prior written submission and on the submissions and materials provided by the City.

[27] The Committed then considered as a second preliminary matter whether or not the written request for review had been filed in time and determined that it had not for the following reasons.

[28] Section 547(1)(b) of the *Act* provides that a person who receives a written order under section 546 may, by written notice, request council to review the order within 7 days after the order is received or any longer period as specified by bylaw.

[29] Council has passed no Bylaw extending the 7 day appeal period set in section 547(1)(b) of the *Act*.

[30] According to the evidence before the Board, the Order dated April 27, 2021 was mailed to the correct address from the City offices on April 29, 2021.

[31] Section 23 of the *Interpretation Act*, RSA 2000 I-8 (the "*Interpretation Act*") states:

Presumption of service

23(1) If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta, or

(b) subject to clause (a), 14 days from the date of mailing if the document is mailed in Canada to an address in Canada.

(2) Subsection (1) does not apply if

(a) the document is returned to the sender other than by the addressee, or

(b) the document was not received by the addressee, the proof of which lies on the addressee.

[32] The Applicant provided no information concerning the date of receipt to rebut the presumption in the *Interpretation Act*. The written request from the Applicant dated June 15, 2021 states in part, "All documents were received Thursday June 10, 2021 as that was when the mail was collected from the box and looked at. An appeal was made via phone 04/12/21.

[33] In the Committee's opinion:

a) Any phone call on 04/12/21 is not relevant as it predates the issuance of the Order and was not in writing.

b) Section 546 contemplates reviews of Orders concerning properties remediation of properties that are dangerous, or unsightly and detrimental to neighbouring properties must be done in a timely fashion as confirmed by the brief 7 day appeal period set out in the *Act* and by the fact that if remedial action does not happen then the municipality has the right to take action at the expense of the person who receives the order.

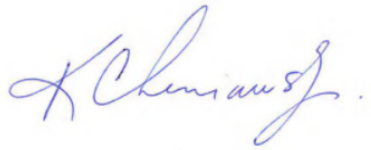
c) Property owners have a responsibility to collect and open mail that has been received at the proper address in a timely manner.

[34] The Committee finds that the Order was received on May 6, 2021, 7 days from April 29, 2021

[35] Therefore, the 7 day appeal period in section 547(1)(b) expired 7 days later on May 13, 2021 which was a regular business day for the Committee.

[36] The written request for appeal to the SDAB which cites the Order is dated June 15, 2021 and was not made within the time period specified in section 547(1)(1)(b) of the *MGA*.

[37] The Committee has no authority to extend the time period and therefore has no jurisdiction to review the Order.



K. Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc:

Community Standards and Neighbourhoods – J. Lallemand, C. Perizzolo

Important Information for the Appellant

1. A person affected by this decision may appeal to the Alberta Court of Queen's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this *Act* is not followed, or the decision is patently unreasonable.