

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: Appellants v Community Standards and Neighbourhoods (City of Edmonton), 2024
ABECSLAC 10007

Date:	January 26, 2024
Order Number:	492313046-001
CSLAC File Number:	CSLAC-24-001

Between:

Appellants

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Allan Bolstad
Karen Munro

DECISION

- [1] On January 16, 2024, the Committee heard a request for review of an Order. The request for review was filed on December 27, 2023, and concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated December 18, 2023, was mailed on December 19, 2023 and required the following action:

Remove garbage bags, boot tray, plastic, cardboard, loose litter, 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: January 11, 2024.

- [2] The subject property is located at 9150 - 81 Avenue NW, Edmonton.

[3] The hearing on January 16, 2024, was held through a combination of written submissions, in-person and video conference hearing. 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 submissions; and
- The Respondent's written submissions.

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

a) Position of the Applicants

[7] The property has been in the family since 2001. Ms. E's parents owned it since 2001 and the Applicants purchased it in 2016. The property is currently a rental and the plan is to redevelop the property in the future.

[8] There have been no other complaints or issues with compliance since 2001. What has changed is that transitional housing has been developed right across the street and since then significant illegal dumping has occurred. The property is on a corner so it is an easy spot for people to dump on.

[9] The November 27, 2023, photographs taken by the City show a variety of garbage and debris that are different from the items shown in the December 15, 2023 photographs. The Applicants had cleared all of the garbage identified in the November photographs and then additional items were illegally dumped in December.

[10] Their tenant had been reluctant to bother them with the dumping issues. The tenant was dealing with the sudden loss of her husband so it took her a bit of time to move all of the debris. She had bagged some of it and placed it along the side of the property. The Applicants have spoken with their tenant and advised her to inform them immediately of any future issues so they can be dealt with immediately.

- [11] The Applicants do not feel it is fair that they be penalized or have a record on the property for something that is out of their control. Their track record shows they are decent, reasonable people trying to keep the neighbourhood clean.
- [12] Mr. E. runs a demolition company and his work is located five minutes away from the subject property. He is able to remove a larger volume of debris than what would normally be picked up by the City's regular garbage pick up.
- [13] The Applicants provided the following responses to questions from the Committee:
- a) They confirmed that the debris in the two sets of photographs provided by the City is different. The items in the first set of photographs were removed and subsequently additional dumping occurred. The items in garbage bags along the side of the property in the December 15, 2023 photographs are new debris.
 - b) It is important to the Applicants to have the record of the Order erased from this property. They feel that any kind of record sticks with them. This is their only rental property and they pride themselves in keeping it clean. They are hard working people and just want to make sure their names are clear.
 - c) Ms. E. does not have any issue with the Notice to Comply that was sent out. She agrees that there was dumping on the property and they complied with the notice and cleaned it up. There was new dumping in December and going to the extent of issuing an Order at that point seems too much.
 - d) The Applicants do not agree that the photographs show "serious disregard for general maintenance". The implication that they show disregard for the property is somewhat hurtful.
 - e) While a possible solution may be to put up an eight foot high fence, this seems a waste of resources given their plans to redevelop the property in the near future. They plan to put in motion detector lights to act as a deterrent.
 - f) There is a pattern of dumping on the property. This is an ongoing issue but they are committed to dealing with it.
- [14] *Position of the Respondent, C. Perizzolo (C. Holstead?)*
- [14] The Respondent did not attend the hearing; however, C. Holstead, General Enforcement Operations Manager, Complaints and Investigations Section, provided her written submissions and a series of photos dated November 27 and 28, 2023, December 15, 2023, and January 3, 2024.
- [15] C. Holstead provided the following timeline of events:

2023NOV27 While on proactive patrol, bylaw officers observed garbage

bags and loose litter on the property and found that the conditions of the property were in contravention of Community Standards Bylaw 14600 Section: 6(1) Nuisance on land. Inspection photographs were taken.

2023NOV28 A Notice to Comply (the Notice) was mailed via Canada Post to the property owner and residents providing a deadline of December 14, 2024 to remedy the conditions or face further enforcement action.

2023DEC15 The officers reinspected the condition of the property. They observed the garbage bags, a boot tray, plastic, cardboard, loose litter and debris from the back remained but had been placed on the side of the garage. Municipal Government Act photographs were taken.

2023DEC18 Municipal Government Act 545 Order was issued for failure to comply with the November 28 Notice, which required removal of the garbage from all areas of the property. The Order provided a new deadline of January 11, 2024 to remedy the conditions or face further enforcement action.

2024JAN02 The bylaw officer received a voicemail and email from J. E. indicating the property had been cleaned up.

2024JAN04 The officers returned to 9150 81 Ave NW for reinspection. They observed the conditions had been remedied with all garbage removed. The Bylaw Investigation was closed as compliance with the Order was achieved.

- [16] Based on the evidence provided, Administration submits that the Applicant had contravened Section 6(2)(a.1) of the *Community Standards Bylaw* nuisance on land. The property was brought into compliance with the Order, which is the intent of the Order, and the investigation was closed. Administration is asking that the 545 Order (492313046-001) issued on December 18, 2023 be upheld.

Decision

- [17] The Order is **CANCELLED**.

Reasons for Decision

- [18] This is an application for a review of a written Order issued by the City of Edmonton pursuant to Section 545(1) of the *Municipal Government Act* which states:

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a

bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[19] The relevant portion of the Order under review states:

As a result of an inspection of the property on December 15, 2023:

Being an employee of the City of Edmonton having the delegated power, duties, and functions of a designated officer for the purposes of section 545, **I find that you are in contravention of The City of Edmonton #14600, Section 6(1) Nuisance on Land.**

YOU ARE THEREFORE ORDERED TO:

Remove garbage bags, boot tray, plastic, cardboard, loose litter, 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: January 11, 2024

[Emphasis Added]

[20] Section 6 of the *Community Standards Bylaw 14600* (the “Bylaw”) deals with nuisance on land. The relevant portions of section 6 state:

6(1) A person shall not cause or permit a nuisance to exist on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of land, means 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, some examples of which include:

(a) excessive accumulation of material including but not limited to building materials, appliances, household goods, boxes, tires, vehicle parts, garbage or refuse, whether of any apparent value or not;

(a.1) any loose litter, garbage or refuse whether located in a storage area, collection area or elsewhere on the land;

...

[21] The Committee's authority is set out in section 547(2) which states:

(2) After reviewing the order, the council may confirm, vary, substitute or cancel the order.

[22] In making this decision, the Committee considered the parties' submission and noted the following points.

[23] The submitted Bylaw Investigation Summary indicates:

- a) On November 27, 2023 a Bylaw Officer on active patrol observed the state of the subject property and found it to be in violation of section 6 of the Community Standards Bylaw. Three photos taken that day and submitted show black garbage bags and loose garbage at the rear of the property behind the rear detached garage near the alley.
- b) The Bylaw Officer issued a Notice to Comply indicating it is against the Bylaw to have an untidy property. The Notice to Comply asked the recipients to fix the problem by removing garbage bags, loose household refuse, loose litter and debris by taking them to the landfill the nearest ECO or Recycle Station or putting them in the home or garage. The Notice to Comply advises that the subject property includes the garbage storage area, the sidewalks and the areas around, and in front of the house and garage.
- c) The Notice to Comply was mailed to both the residents at the subject property and the property owners by regular mail on November 28, 2023. It required compliance by December 14, 2023 (sixteen days after mailing) and warned that if the property was still untidy the recipients may have to pay a fine and that the City would remove the items and send them the bill.
- d) The Bylaw Officers reinspected the condition of the property on December 15, 2023 (seventeen days after the Notices to Comply had been mailed). The Bylaw Officers observed the garbage bags, a boot tray, plastic, cardboard, loose litter and debris from the back remained but had been placed on the side of the garage.
- e) Based on this reinspection, they formed the opinion the conditions on the property were in violation of the *Community Standards Bylaw* and issued the Order under review. The City submitted three photos dated December 15, 2023 as evidence supporting their conclusion and consequential issuance of the Order.

[24] The Applicants provided written submissions including photos and oral submissions. The Applicants indicated:

- a) Upon receipt of the Notice to Comply the tenant dealt in part with the situation placing some bags to the side of the garage, but she was overwhelmed by other circumstances during November so the Applicants stepped in to assist as well.

- b) After they received the Notice to Comply and prior to December 14, 2023, the Applicants personally removed the garbage bags shown in the November 27, 2023 photos. The loose garbage and the garbage bags shown in the two sets of photos are not the same bags.
- c) Illegal dumping by third parties has become an ongoing issue. They subsequently returned to the property to find new items of garbage have appeared since the items shown in the December 15, 2023 photos were removed. They removed these new items as well as demonstrated in the photos they submitted dated December 27, 2023.
- d) They have owned the property for several years with no issues regarding its condition whatsoever. Recently, they have been dealing with ongoing third party dumping of garbage on the property.
- e) Together with the tenant, they intend to continue to monitor the situation and to maintain the property by removing the illegally dumped items which exceed the amount which can be removed through the regular city black bin removal procedure.

[25] The parties agree the conditions have been remedied with all garbage removed as of January 4, 2024.

[26] After considering the submissions and reviewing the photos provided, the Committed finds:

- a) The Committee does not agree with the Bylaw Officers that the three photos from December 15, 2023 show that the state of the property meets the definition of Nuisance on property in section 6(2)(a) or (a.1) in contravention of the *Community Standards Bylaw*. The photos show that the front yard of the property is in excellent condition and very tidy and that there are an unknown number of garbage bags, one recycle bag and a few loose items resting along the side of the rear detached garage.
- b) The photos taken in November and December 2023 by the City support the Applicant's assertions that steps were in fact taken to "fix the problem" and address the issues identified in the Notice to Comply prior to the compliance date.
- c) In particular, the three photos taken in December 2023 include one shot of a very tidy front yard and two shots of the rear yard which show one blue recycle bag, a boot mat, an indeterminate number of black garbage bags and two items lined up along the side of the rear garage, and no loose garbage whatsoever. The garbage bags located along the side of the garage in the rear yard are somewhat obscured, but the photos appear to show different bags and items than the bags and items

strewn behind the garage along the alley in the photos taken in November 2023.

- d) Faced with ongoing dumping by third parties, the Applicants have shown serious regard for the condition of the property. They made ongoing efforts to remove illegally dumped garbage, this shows an ongoing commitment to maintain the property and a serious regard for general maintenance and upkeep of the property. The Committee finds that the evidence does not support a finding of a serious disregard for general maintenance and upkeep of the subject property.
- [27] For these reasons, the Committee finds that there has been no contravention of the *Community Standards Bylaw* and cancels the Order.

Kathy Cherniawksy, Chair
Community Standards and Licence Appeal Committee

cc: Community Standards and Neighbourhoods – C. Perizzolo / C. Holstead

Important Information for the Appellant

1. A person affected by this decision may appeal to the Alberta Court of King'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.