

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

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

Date: July 3, 2024
Order Number: 507403382-001
CSLAC File Number: CSLAC-24-007

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Joel McDonald

DECISION

- [1] On June 18, 2024, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on May 13, 2024. The request for review 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 April 25, 2024 and was mailed on April 26, 2024 and required the following action:

Remove all wood, metal, old flower pots, pails, cement mixer, siding, concrete chunks, pipe, tarps, old lawn mower, bicycles, plastic bins, screen doors, metal railings, tires, rims, vehicle parts, cut branches, dry vegetation, dollies/carts, frames from old sheds, 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: May 21, 2024

The subject property is located at 226 Lee Ridge Road NW, Edmonton.

- [2] The hearing on June 18, 2024 was held through a combination of written submissions, video conferencing and in person attendance. 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 Applicant's written request for review and submission; and
 - The Respondent's written submissions and attachments.

Preliminary Matters

- [3] 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.
- [4] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [5] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant,

- [6] Based on a review of the submissions provided by the City, a number of disturbing inconsistencies have been identified.
- [7] It is apparent that some of the photographs have been taken from inside his property and his neighbour's property without permission.
- [8] The inspection was conducted on April 23, 2024 when snow and colder temperatures were still lingering. He had not gone into the rear yard for months and was not aware of the condition of the yard until he received the Order from the City. He was not aware that someone had come into the yard and destroyed the two tarped sheds and scattered the contents of the sheds all over the property.
- [9] He also objects to the extensive history and problematic property designation that has been used by the Municipal Enforcement Officer (MEO) to justify their processes. Each individual complaint needs to be treated individually regardless of the history of the property. He has also been advised by a City of Edmonton Supervisor that no active complaints have been registered against his property since 2021.
- [10] The Officer attempted to access his property five times in 2023 without notice or in response to a complaint. He was advised that the visit was a "viewing of the property to

ensure there will be no issues or violations on your property". The Officer was refused access and was informed that they would be charged with trespassing because the reasoning being used was an absolute abuse of the *Municipal Government Act*, and he not only had the legally protected right against unreasonable search of person and property, but to openly admit, in blunt terms, that the desire was to search for violations when no complaint was issued. This is an outright admission by this MEO that his property was being unjustly singled out without violation.

- [11] Most everything on the property listed by the MEO as a nuisance cannot be seen unless you are within the fenced boundary of the property, and as they are not seen from the road they pose no "unsightly" condition. Most of what was listed has been scattered by whoever tore into our sheds last winter, which we are rectifying by placing cameras at the rear of the property.
- [12] He intends to clean the property, but an Order was issued without any opportunity to begin the spring clean up, and five days after a snowfall, which is not an appropriate time to determine "dry vegetation". He was out of the province for work between April 18 and April 29, 2024 and then dealing with other personal issues on April 30 and May 1, 2024 when there was heavy rain and snow. He left for work again on May 2, 2024. The Order was mailed after he left and was received on May 13, 2024.
- [13] Some clean up work has been started during the times that he is home from work. His stepfather who also resides on the property is disabled and unable to do any work himself. The property will be cleaned up, but it is unreasonable to issue an Order days after a snowfall and without any proper time frame to complete the clean up.
- [14] Therefore, he had no choice but to appeal the Order.
- [15] Many incidents of vandalism in this neighbourhood have been reported to EPS recently. He had no idea that someone had been in his yard, removed and destroyed the tarps covering the storage sheds and rummaged through the items that were stored inside. The wood and siding located behind the garage is out of site and does not pose any safety concern. It can only be seen from inside the yard because of the fence located along the rear property line. The front yard has been cleaned up as illustrated in the photographs that have been submitted.
- [16] His neighbour did not provide permission to enter his property at 222 Lee Ridge Road in order to take one of the submitted photos of his property.
- [17] It is evident from reviewing several of the photographs that they were taken from the back corner of his yard. He was not aware before he left for work in the middle of April that someone had broken into the sheds and scattered material around the yard. He referred to a photo that was taken from inside his property. If it had been taken from the City side of the property you would be able to see the fence line as evidenced in the follow up photos that have been submitted.

- [18] In response to a question, he gave the opinion that the trees along the rear fence line should have been visible if a photo was taken outside of his property.
- [19] There is no argument that the site has to be cleaned up but he does have a concern regarding how the Order was issued.
- [20] Numerous photos were referenced to illustrate how the tarp sheds were destroyed between October 2023 and when the Order was issued. The sheds were neatly packed with storage items in the Fall and, as illustrated in the photos, the tarps were ripped apart by someone who entered his property. The individual rummaged through the contents of the shed and left it strewn around the rear yard.
- [21] There is a 6-foot high fence along the rear property line. The three cedar trees planted along the fence would be visible in the photo if it was taken outside the fence line. The wood stored there is the old fence that was pushed over by the company that built his neighbour's fence.
- [22] He has every intention of cleaning the site up as evidenced by the photos of the front yard that he submitted. There is still an issue with one shed, siding, wood, and a boat that is still on site. His step father is disabled but has been doing his best to work on the clean up when he is away working.
- [23] A photo taken from the street looking toward his property was referenced. It was noted that the bench and concrete mixer will be removed and re-purposed as part of the landscaping as time allows. The photo of the side of the property illustrates that the clean up has started. The remaining material will be removed at the end of June when he will be back in Edmonton on a more regular basis.
- [24] A photo was referenced to illustrate that the wood stacks identified as a nuisance by the City had been removed from the property before he left the city for work on April 11, 2024. He questioned the evidence of the City that the MEO did not take photos when visiting the site on June 13, 2024 out of respect for the individuals' privacy. However, his step father was not home on June 13, 2024. If photos had been taken it would have confirmed that the clean up had occurred.
- [25] The long grass has been cut and some of the items identified as a nuisance by the City have been removed, the sheds have been repaired and material has been moved inside for storage purposes.
- [26] The Order was issued on the basis that the MEO illegally entered his property. The photos that were taken of the side of his property had to be taken from inside the property although the City will dispute that. One of the photos is not down angled which indicates that it was taken from inside the fence.
- [27] The Order should be removed from his file. He has every intention to clean the site and the process has been started as evidenced in the photos that he has provided.

- [28] It was his opinion that there has to be reasonable grounds. If someone has an automobile at the front of their property that they are working on in the middle of winter, an Order would not be reasonably issued and expected to be followed in minus 40 degree weather. It is not reasonable to expect an Order to be complied with during inclement weather. He had been working out of town and was not aware of the condition of the yard until he received the Order. The Order was issued prematurely and illegally because the MEO entered his property without permission. The same MEO attempted to overstep her powers last year by entering his property without cause to ensure that there was no grounds for future violations. He has been advised by several legal experts that this is an overreach of the powers provided through the *Municipal Government Act*. Many of his neighbours are prepared to support him in future legal challenges against this Officer who illegally trespassed onto his property.
- [29] It is only reasonable for the City to provide the opportunity for property owners to clean up their properties in spring after the snow melts and the weather warms up before issuing a clean up Order.
- [30] Therefore, this Order should be cancelled and removed from his file.
- [31] the following information in response to questions from the Board:
- a) He objects to the issuance date, the entirety of the Order and how it was issued.
 - b) He did not cause and was not aware of the excessive accumulation of material in his yard. He does not dispute the Bylaw or the condition of the yard. However, he is disputing the Order and the circumstances surrounding the issuance of the Order. He acknowledged that the yard was a mess. However, he was not aware of the situation until after he received the Order and went into the rear yard. The items that could not be salvaged were shoveled into garbage bags for disposal. Problems with vandalism in this neighbourhood have increased substantially over the last few years. He has never had issues with the sheds at the rear of his property. He takes responsibility for the mess and has never disputed the fact that it is his responsibility to clean it up. The requirements of the Bylaw are not being disputed. His concern is with the circumstances surrounding the issuance of the Order.
 - c) The situation appeared more excessive than it actually was when the sheds were ripped apart and the contents scattered throughout the rear yard. Progress has been made on the clean up since the Order was issued in April 2024. He has never disputed that the yard was a mess when the Order was issued.
 - d) He has never had an issue with or knowledge of individuals entering his rear yard and had no reason to believe that there was a problem until he received the Order. He does not dispute the condition of the property or the requirements of the Bylaw. His concern is the issuance of the Order. The City has referenced the

Municipal Government Act numerous times in their submission. In his opinion, if you have not done anything wrong it is not necessary to constantly reference back to the power provided to support their decisions and actions. The Officer trespassed onto his property to take photos. He has made some significant progress in the clean up since receiving the Order at the beginning of May 2024.

- e) In 2021, an MEO was questioned about how it was determined that a property was problematic. He was advised that a property that received three or more complaints over a four year period of time was deemed to be problematic. A Supervisor advised him earlier this year that there had not been any active complaints against his property since 2021. He has refused an MEO access to his property in the past because there was no justification to issue five notices of entry without complaint. The conditions and circumstances surrounding the issuance of this Order are suspect and photos were taken from his property illegally.
- f) He and his step father reside at the property. He was working out of town from April 18, 2024 to approximately May 6, 2024.
- g) He is in the rear yard once every two weeks during the summer months to mow and weed the lawn and to ensure that it is maintained.
- h) A photo of one side of the front yard has been submitted but he experienced some difficulty uploading a number of other photos. There is currently one vehicle and an ATV parked on the front driveway. A snowmobile has been pulled out of the rear yard and is sitting on the driveway but it will be removed and taken to the dump. The rest of the driveway is clear.
- i) A photo of the front yard taken during the initial inspection was referenced. The wood has been removed and was reused to side the shed.
- j) It was his opinion that the resubmitted photos marked 4 and 5 were taken from inside his property line because the fence is not visible and they do not appear to be down angled photographs.

ii) *Position of the Respondent:*

- [32] C. Holstead, Acting Manager, Complaints and Investigations Section, did not attend the hearing but provided written submissions and attachments that were considered by the Committee.

Decision

- [33] The Order is **CONFIRMED**.

Reasons for Decision

[34] This is an application for a review of a written order (the “Order”) issued by the City of Edmonton pursuant to section 545 of the *Municipal Government Act* the “MGA”).

[35] The City’s authority to issue the Order is found in section 545(1) of the MGA:

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.

[36] The Order under review is addressed to the Applicant and dated April 25, 2023. It identifies the subject property and states:

As a result of an inspection of the property on April 23, 2024.

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's Community Standards Bylaw 14600 Section 6(1), Nuisance on Land.

YOU ARE THEREFORE ORDERED TO:

Remove all wood, metal, old flower pots, pails, cement mixer, siding, concrete chunks, pipe, tarps, old lawn mower, bicycles, plastic bins, screen doors, metal railings, tires, rims, vehicle parts, cut branches, dry vegetation, dollies/carts, frames from old sheds, 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: May 21, 2024

[37] Section 6 of the *Community Standards Bylaw 14600* 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;

...

- [38] Per section 547(1)(a) of the *MGA*, the recipient of any order issued under the authority of section 545 has the right to seek a review by Council within 14 days of receipt of that order.
- [39] Per section 547(2) of the *MGA*, after reviewing an order, the Council may confirm, vary, substitute or cancel it.
- [40] In the *Community Standards and Licence Appeal Committee Bylaw* ("*Bylaw 19003*"), Edmonton City Council delegated this Committee the authority to review section 545 orders and the authority to then confirm, vary, substitute or cancel them.
- [41] To make its decision, the Committee considered all of the oral and written submissions, including photos provided by both parties. The Applicant asked the Committee to vacate the Order entirely and remove it from the subject property record. The City asked the Committee to uphold the Order as issued.
- [42] The Applicant provided written and oral submissions as well as photos of portions of the subject property after the site had been reinspected by the Bylaw Officer in June 2024.
- [43] The Applicant raised several concerns about the Order. In his view:
- i) Some of the cited objects should not have been included. For example, the time of year meant that the dry vegetation could not be assessed; the shed frames were vandalized by unknown trespassers and were to be rebuilt, the wood and metal was to be stripped down and repurposed for siding and shed upgrades, the concrete cores were present when he bought the property and form part of its landscaping, the sidewalk slabs were to be used for a new walkway; the tires were being stored for two vehicles, the cement mixer was to be repurposed.
 - ii) Most everything listed as a nuisance on the property by the Bylaw Officer cannot be seen unless you are within the fenced boundary of the property. As the things are not seen from the road they do not pose an "unsightly" condition.
 - iii) Orders account for the time of year; the amount of time an item is on the property; and, the amount of time needed to remedy the situation. Here, the Order was unreasonable given the April weather and short timeline. Nonetheless, and despite working out of town, the Applicant has made significant progress in the clean up

since he received the Order at the beginning of May 2024. Some items have been repurposed. Some items that could not be salvaged were shoveled into garbage bags for disposal. The clean up is ongoing.

- iv) The Bylaw Officer who issued the Order acted improperly and abused her authority because there was no triggering complaint prompting the inspection. Further, the Bylaw Officer previously improperly tried to access the subject property on 5 occasions in 2023 without justification to view it and ensure there would be no issues or violations. The Bylaw Officer also trespassed as she took some of the submitted photos from within the subject property without his permission and from the neighbour's private property without their permission.
- v) The Applicant did not cause the excessive accumulation of material in his yard. He was not aware of the condition of his property until after he received the Order and went into his rear yard. While the situation was contrary to the Bylaw, the Committee should vacate the entire Order as the circumstances surrounding it are suspicions and he believes the Order is based on illegal access to the property which is an overreach and abuse of authority under the *MGA*.

[44] At the end of the hearing, the Applicant clarified that he does not dispute the terms of the Bylaw, nor the condition of the property. He asked the Committee to cancel the entire Order and remove it from the property file because of the improper procedures followed by the City officials, including trespass, and also because the timeline for compliance was unreasonable given his work schedule and the weather.

[45] The City provided a written submission with a Bylaw Investigation Summary in lieu of attending the hearing. The submission contained several background documents including: a slim map image of the property; weather reports for spring 2024; 9 photos taken during the original inspection on April 23, 2024; reinspection photos of the rear yard taken June 13, 2024 and a summary of applicable legal provisions from the *MGA* and the *Community Standards Bylaw*.

[46] According to the written submission, the Applicant contravened section 6(1) of the *Community Standards Bylaw* and the Order was valid. The City explained:

- i) In response to a citizen complaint of an untidy and unsightly condition, on April 23, 2024 the Bylaw Officer attended the subject property and observed a nuisance condition at the front and back of the property;
- ii) On April 25, 2024 the Bylaw Officer issued a bylaw violation ticket and a section 545 Order (with a compliance date of May 21, 2024) due to an extensive history with the subject property.
- iii) On April 26, 2024 the Order was mailed.

- iv) Between May 13 and May 17, 2024, City administration was informed of the Applicant's request for review. A discussion occurred between the investigating Bylaw Officer's supervisor and the Applicant. The supervisor clarified that all investigative photos were taken from City property.
- v) On June 13, 2024 the Bylaw Officer returned to take the additional photos of the subject property which were provided to the Committee. At that time only the rear of the subject property was photographed to protect privacy of individuals present in the front yard. The Bylaw Officer observed that there did not appear to have been any attempts to remedy the nuisance conditions in rear or front and most, if not all, items on the property from the original photos appeared undisturbed.
- vi) Section 545 orders may be issued at any time of year. In April, the daily maximum average temperature was 11.7 degrees and in 2024 no precipitation had been recorded prior to the issuance of the Order since April 17, 2024 according to Government of Canada records.
- vii) The Order allowed for a compliance period 5 days longer than the appeal period set by the applicable provisions of the *MGA* and the *Interpretation Act*:

MGA:

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, [...]

Interpretation Act:

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, [...]

- viii) Further, the lack of changes to the nuisance condition suggest that additional time would not result in compliance with the *Community Standards Bylaw*.

[47] The Committee confirmed the Order for the following reasons.

Citizen Complaint

- [48] The Committee took note that the parties gave conflicting submissions about whether a citizen complaint had triggered the investigation. The City submission was prepared by the Manager in Complaints and Investigations. It states that there was a complaint which prompted the investigation. The Applicant stated that a City official told him there were no active complaints concerning the subject property since 2021.
- [49] The Committee was not persuaded that the Order should be varied or cancelled due to conflicting submissions about the existence of a citizen complaint.
- [50] The specific circumstances that may ultimately lead to the issuance of section 545 orders come about in many ways. The existence of a citizen complaint is not a prerequisite for the issuance of a section 545 order, nor is there any specified process for consultation that must be followed prior to the issuance of a section 545 order. In the Committee's view, it is unnecessary in this review to make a specific ruling with respect to the existence of a complaint as that issue is not determinative.

Trespass

- [51] The parties disagreed about whether or not the Bylaw Officer trespassed on the subject property or on a neighbouring property to obtain some of the submitted inspection and reinspection photos.
- [52] The City indicated the photos were all taken from public property and that it had informed the Applicant of this fact.
- [53] The Applicant argued that the photos could only be taken if the Bylaw Officer trespassed. The Committee notes this is a serious allegation.
- [54] During his oral submissions, the Applicant clarified his opinion. He agreed that the photos of the front yard were taken from a public roadway and that some of the photos of the rear yard had also been taken from public property as they show the perimeter fence.
- [55] He argued that other photos were ambiguous and some photos of them had to have been taken from private property. In his view, these photos could not be taken from the same spot at higher magnification due to the angle and the absence of screening tree branches or perimeter fencing in those shots.
- [56] There was no direct evidence from the neighbour before the Committee about whether or not the Bylaw Officer entered the neighbouring property with or without permission.
- [57] The Committee noted that the submitted Slim Map aerial view confirms that there are public roadways facing the front of the property and the rear of the subject property. The inspection photos show that the trees, including those along the back of the property had

not fully leafed out and therefore the trees would have been less likely to have screened the view of the subject property in a close up photo.

[58] The Committee concluded that the evidence submitted by the Applicant for this review hearing did not, on balance, convince the Committee that a trespass occurred.

[59] Even if the Committee is wrong, the Committee also found that the photos which the Applicant agreed were (or may have been) taken either from public property along the front roadway and from public property to the rear and show the Applicant's fence are sufficient to show signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area existing at the subject property on April 23, 2024.

[60] Furthermore, both parties agreed that the subject property was in a state that contravened the *Community Standards Bylaw* at the time the Order was issued.

i) The Applicant explained in detail that he did not cause the excessive accumulation of material in his yard and was not aware of it until after he received the Order and went into the rear yard. The Applicant stated repeatedly that he was not challenging either the provisions of the Bylaw, or the condition of the yard.

ii) The Applicant candidly conceded several times during the hearing that he agreed the subject property was in a "mess" that had to be cleaned up and it was non compliant with the Bylaw in April when the Order was issued.

[61] The Committee agrees with the Applicant that section 545 orders must be based on reasonable grounds. The Committee finds there are reasonable grounds to support the Order in this case. Based on the photos that were not challenged by the Applicant, the Slim map showing an aerial view of the property and the submissions of both parties, the Committee concluded that a Nuisance on Land condition existed on the subject property as described in the Order when it was issued April 25, 2024.

Listed Items

[62] The Applicant questioned the inclusion of some of the listed items given his intention to repurpose them, to repair them, or to store them within rebuilt sheds.

[63] In the Committee's view, the listed items as they appear in photos taken from public land on April 23, 2024 constitute a Nuisance on Land as defined in section 6 of the *Community Standards Bylaw*. Accordingly, the Committee declines to vary the content of the Order.

[64] The Committee considered that the Applicant made noticeable progress cleaning up the property in the days before the hearing as shown in his photos. Moving forward, it will be

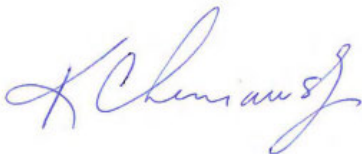
a matter for the City and the Applicant to resolve whether or not the subject property, or any portion of it fits within the definition of Nuisance on Land and continues to show signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area. However, compliance with the Order through removal, repurposing, rebuilding, or storage within accessory structures is a matter beyond the scope of this Committee's authority in this request for review of the Order as issued.

Compliance Date

[65] The Committee considered whether the compliance date was reasonable and found that it was for the following reasons:

- i) The Committee found that the City submission that the compliance date was proper because it was 5 days longer than the appeal period is irrelevant and gave that argument no weight.
- ii) In the Committee's view, the question to be asked is whether the stated compliance date creates a reasonable opportunity for the Applicant to take the steps required in the Order to bring the property into compliance with the *Community Standards Bylaw*.
- iii) No snow or extreme environmental factors appear in any of the inspection photos. There is no evidence that weather or any other circumstance out of the Applicant's control prevented or delayed remedial action.
- iv) All property owners have a legal obligation to comply with the Community Standards Bylaw, whether they live on the property or not, whether they are in the City or not. The fact that the Applicant was away does negate his obligation.
- v) The Applicant himself indicated that he was able to make significant progress in the very few days he was present and working to clean up the subject property.

[66] In summary, after considering all submissions, the Committee was not convinced that either the content or compliance date in the Order ought to be vacated, varied or substituted. For all of the above reasons, the Order is confirmed.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

CSLAC-24-007

July 3, 2024

cc: Community Standards and Neighbourhoods - C. Perizzolo / C. Holstead / J. Lazaruk / D.
Kutnikoff

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.