

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2024 ABECSLAC 10008

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| Date: | July 24, 2024 |
| Order Number: | 500857433-002 |
| CSLAC File Number: | CSLAC-24-008 |

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Karen Munro
Skye Van Dyk

DECISION

- [1] On July 16, 2024, the Committee heard a request for review of an Order. The request for review was filed on June 17, 2024, and concerned the decision of Community Standards and Neighbourhoods to issue an Order (“*the Order*”) pursuant to Section 545(1) of *Municipal Government Act*, RSA 2000, c M-26 (*the “Municipal Government Act”* or “*MGA*”). The Order was dated June 4, 2024, was mailed on June 5, 2024 and required the following action:

Remove all cut branches, tarps, cardboard boxes, wood, fence sections, plastic containers, metal, pipe, hot tub cover, plastics, propane tanks, bricks, hose, broken lawn furniture, plastic bins, broken flower pots, furniture, siding, chain link fencing, broken bicycles, styrofoam, all materials from under the gazebo/tarps, 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: July 1, 2024

- [2] The subject property is located at 1525 - Jarvis Crescent NW, Edmonton.
- [3] The hearing on July 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 Applicant's written request for review and submissions; and
 - The Respondent's written submissions including a series of photographs, development permits for the garage and sunroom, inspection report and sign-off for the garage and an overhead view of the subject property.

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 Applicant, M.*

- [7] The Applicant acknowledges there have been bylaw breaches and he intends to comply with the Order. However, the details of the Order need clarification.
- [8] This is a rental property and there was a garage fire in 2020. The garage was entirely destroyed and the contents of the garage were inventoried by the insurance adjuster at a much later date.
- [9] It was difficult to get contractors during COVID which caused delays in getting the garage re-built. Drywall work to the garage was still being done last year and the main house was re-roofed last year.
- [10] There are currently still numerous construction projects underway including fencing, siding the main home, a second storey addition and the construction of a deck.
- [11] Some of the items listed on the Order include construction materials which need to remain for an extended period of time as work will be ongoing until at least the end of October. These materials include neatly stacked fencing and siding.

- [12] Nine pick-up truck loads including the old fence and numerous totes, tarps and boxes have been removed. A new hot tub is now located in the area where the old fencing material was located but it has not yet been hooked up. While the yard is still untidy, a significant amount of material has been removed.
- [13] In discussions with the Municipal Enforcement Officer, the Applicant indicated that it was not possible to have all materials removed from the yard by May 30, 2024; however, an Order was issued anyway.
- [14] The Applicant would like a reinspection to be done at a later date - the end of July or end of August to assess the site for compliance. The Chair clarified that this Committee does not have the jurisdiction to schedule inspections.
- [15] The list of items to be removed is unclear and requires clarification as to what can remain on site. For example:
- a) The Order states that cut branches are to be removed. Much woody debris has been removed but some cut branches have been stacked to be used as firewood.
 - b) The nuisance tarps have been removed; however, some tarps remain to protect construction material on site.
 - c) The majority of cardboard boxes have been removed but four cardboard boxes remain on site. They contain a \$4,000 brand new pergola which will be installed later in the summer.
- [16] As per these examples, the list of items on the Order is open to interpretation and subjectivity.
- [17] Work at the property is ongoing. The Applicant has hired a one-person contractor to assist with the projects. He expects that the majority of the work will be done by the end of July but requests that the compliance date of the Order be revised to August 31, 2024 to ensure substantial compliance can be achieved. He will call Community Standards for a reinspection at that time.
- [18] The Applicant provided the following responses to questions from the Committee:
- a) Some materials have already been moved into the garage. He would like to be able to store some of the larger renovation materials and the materials that are being actively used in the yard. The reason materials were not moved into the garage earlier was because the garage was drywalled last year but has not yet been mudded or painted.
 - b) Because the insurance adjuster did not come out in a timely fashion things were not disposed of immediately. Fire damaged articles and burned rubbish have now been removed.

- c) The Applicant anticipates he will be in substantial compliance of the Order by August 31, 2024 and all construction projects should be done by October 31, 2024.
- d) There is no furniture in the yard that is not lawn furniture. All fire damaged furniture has been disposed of.

ii) Position of the Respondent, C. Holstead

[19] The Respondent did not attend the hearing; however, C. Holstead, General Enforcement Operations Manager, Complaints and Investigations Section, provided her written submission, a series of photos dated April 10, 2024, June 3, 2024 and July 10, 2024 and supporting documents.

[20] C. Holstead provided the following timeline of events:

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| April 10, 2024 | An inspection was conducted in response to a citizen's complaint and photographs were taken from a neighbouring property. |
| April 12, 2024 | <p>The Officer conducted a review of the file and noted there had been a fire in the garage in June 2020, which also damaged the house. Since the fire four other nuisance complaints were received in addition to the most recent one.</p> <p>The property owner was contacted and he advised the Officer that the debris in the backyard would be moved into the garage once work on the garage had been completed.</p> <p>City records confirm that the garage on the property had been rebuilt and cleared final City inspection in March 2022.</p> <p>An additional Development Permit was issued on March 18, 2024 for a second story sunroom to be added to the House.</p> |
| May 7, 2024 | A reinspection of the property was conducted and it was noted that minimal progress had been made regarding cleaning of the yard. |
| June 3, 2024 | <p>The property owner indicated to the lead Officer (via phone) that drywalling of the garage was underway and the property would be cleaned in two weeks.</p> <p>Officers conducted an inspection and noted that nuisance conditions appeared to have deteriorated since the initial inspection on April 10, 2024. Photographs were taken from a neighbouring property</p> |

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| June 4, 2024 | A Section 545 <i>Municipal Government Act</i> Order was issued with a compliance date of July 1, 2024. |
| June 17, 2024 | Enforcement action was suspended because the Order was appealed. |
| July 10, 2024 | Additional photos of the property were taken from a neighbouring property for the July 16, 2024 hearing. |

Summary of the Respondent's Request

[21] Section 6 of the *Community Standards Bylaw* states that:

(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;

(a.2) any loose building or construction materials, any accumulation of construction-related garbage or refuse, or any untidy work or storage areas on the land;

.....

[22] Section 545(1) of the *Municipal Government Act*, states that 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 (and for this hearing, Community Standards Bylaw 14600), the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

[23] The applicant appears to appeal the Order on the basis of his intention to complete projects on the site by September 30, 2024. Administration is not seeking to enforce completion of renovation projects or construction on site by a specific timeline - that is

not within the jurisdiction of the Community Standards Bylaw nor enforceable through the *MGA* Order that was issued. However, the Development Permits issued to Mr. for the garage and sunroom addition do not exempt a property owner from complying with City Bylaws or the *Municipal Government Act*.

- [24] A property owner's intentions to comply with an Order do not invalidate the lawfulness of its issuance. Additionally, Officers made efforts to work with the Applicant on timelines and progress for clean up prior to issuance of the Order with minimal results. The Applicant and the City had been engaged in four previous nuisance related complaints on the property since the 2020 fire. The property has been cleaned since the fire and during garage development as a result of enforcement action on those complaints; however, the property has not been consistently maintained in compliance with the *Community Standards Bylaw*.
- [25] At the time the Order was issued (and as of the July 10, 2024 inspection), a significant volume of materials was present on the property and enumeration of every single item on the Order would not be reasonably practicable. A property owner has the option of removing and storing items that they do not wish to risk removal of by the City. Property owners are given time, through the enforcement process and throughout the Order period, to address the conditions of the property on their own. If the City undertakes the remediation of a property following the expiry of an *MGA* Order, the City is bound to remove only those items that contribute to the nuisance conditions.
- [26] Based on the evidence provided, it is Administration's submission that the Applicant has contravened Section 6(1) of the *Community Standards Bylaw* and that the *MGA* Order issued on June 4, 2024 was valid. Administration is requesting that the Order be upheld.

Decision

- [27] The request for review is ALLOWED IN PART. The Order is AMENDED as follows (changes underlined):

YOU ARE THEREFORE ORDERED TO:

Remove all cut branches, tarps, cardboard boxes, wood, fence sections, plastic containers, metal, pipe, hot tub cover, plastics, propane tanks, bricks, hose, broken lawn furniture, plastic bins, broken flower pots, furniture, siding, chain link fencing, broken bicycles, styrofoam, all materials from under the gazebo/tarps, 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 or store within the rear detached garage.

YOU MUST COMPLY WITH THIS ORDER BEFORE: August 16, 2024.

Reasons for Decision

[28] Section 545(1) of the *Municipal Government Act*, “the MGA” 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.

[29] An Order dated June 4, 2024 was issued to the Applicant under this section of MGA. It states:

As a result of an inspection of the property on June 3, 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 #14600, Section 6(1) Nuisance on Land.

YOU ARE THEREFORE ORDERED TO:

Remove all cut branches, tarps, cardboard boxes, wood, fence sections, plastic containers, metal, pipe, hot tub cover, plastics, propane tanks, bricks, hose, broken lawn furniture, plastic bins, broken flower pots, furniture, siding, chain link fencing, broken bicycles, styrofoam, all materials from under the gazebo/tarps, 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: July 1, 2024.

[30] The Applicant has requested the Committee to review the Order as he is entitled to do per section 547(1) of the MGA.

[31] The Committee's authority in this hearing is set out in section 547(2) of the MGA which provides that after reviewing the order, it may confirm, vary, substitute or cancel the order.

Contravention of Community Standards Bylaw - Nuisance on Land

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

(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;

(a.2) any loose building or construction materials, any accumulation of construction-related garbage or refuse, or any untidy work or storage areas on the land;

[33] The Applicant repeatedly acknowledged that the property has been in a state of unacceptable disrepair since the detached rear garage was rebuilt during 2022 after a fire which occurred in 2020. He also agreed that the rear yard requires maintenance and that it was in violation of the *Bylaw* when the Order was issued.

[34] Based on the Applicant's comments, the summary of the Inspector's notes from inspections in April and June, and the submitted photos taken on June 3, 2024, the Committee finds a nuisance on land contrary to section 6(1) of the *Bylaw* was occurring at the property on June 4, 2024 when the Order was issued. Therefore, the Order which alleges a contravention of the *Community Standards Bylaw* on its face is valid.

Substantive Content of Order

[35] The Applicant expressed concerns with the subjective wording of the Order, in particular with some of the items he was required to remove from the property.

[36] In his written submission, he identified and commented upon 18 of the listed items of the Order.

[37] The City objected to any request to vary the items on the list, arguing that the Order should stand as issued. According to the City:

a) At the time of issuance (and later during reinspection), a significant volume of materials was present on the property, many items were buried underneath other items. Therefore the enumeration of every single item on the Order would not be reasonably practicable.

- b) The City is bound to remove only those items that contribute to the nuisance conditions should it undertake remediation following the expiration of the MGA Order.
- c) Property owners may remove or store any items that they do not wish to risk removal of by the City.

- [38] During the oral hearing, the Committee inquired about the Applicant's concerns regarding the subjective potentially over-inclusive content of the Order. The Committee reviewed some of the items with the Applicant and asked for his input regarding how he would like to see the Order revised given he agreed that the yard was in violation of the *Bylaw*.
- [39] After a short recess, the Applicant indicated that he appreciated that the items were hard to list in this situation and that his primary concern was with the timing. His main concern was to get more time to comply with the intent of the Order and to complete his renovation of the house that was also damaged in the fire.
- [40] While the Committee acknowledges some of the listed items may be interpreted very broadly, they nonetheless are all limited by the definition of nuisance on land in section 6(2) of the *Bylaw*. Further all parties agree in this case the state of the yard makes a comprehensive detailed list impractical.
- [41] Therefore, the Committee declines to alter the list of items.
- [42] However, in view of the Applicant's comments and his submissions about the current state of the rebuilt garage, the Committee varies the Order to recognize that some of the listed items may be stored in the detached garage in order to bring the property into compliance with the *Bylaw*.
- [43] The Committee has altered the Order as noted above to recognize this option.

Time to Comply

- [44] The Applicant indicated he has made significant progress which shows an intent to comply and that all projects could be done by October 31, 2024. The City has indicated insufficient progress has been made and that prior promises regarding compliance have not been met. The City notes that even as renovations continue, the Applicant has an obligation to comply with the *Community Standards Bylaw* which prohibits nuisance on land. This obligation is made clear in all development permits, including development permits issued to the Applicant.
- [45] The Committee considered the Applicant's actions to date and his previously stated intentions.

- a) The Applicant repeatedly stated he agrees action must be taken, that he intends to fully comply with the intent of the Order; however, he needs more time.
- b) A review of the written submissions, shows that the Applicant promised: an intent to substantially clean up the site by June 30, 2024; an intent to comply with the intent of the Order to remove most of the rubbish on or before July 1, 2024; and an intention that any outstanding items be discussed with the enforcement officer and removed on or before July 31, 2024.
- c) In his written submission the Applicant identified 7 projects that he intends to complete by September 30, 2024 or earlier.
- d) At the hearing, the Applicant suggested ongoing work would be done by July 31, 2024 or August 31, 2024 and that also all construction would be concluded by October 31, 2024.
- e) At the end of the hearing he asked the Committee to change the compliance date to October 31, 2024.

[46] The Committee also considered:

- a) The neighbours have been subject to this nuisance on land and potential hazards for more than two years.
- b) There have been several complaints since the 2020 fire.
- c) The images submitted by the City show an extreme situation with materials of all sorts, including some garbage, piled up to and in some cases over the fence level filling the rear of the Applicant's property.
- d) All parties agree the property has been maintained in a state which violates the *Community Standards Bylaw* since at least 2022.
- e) Several dates for completion or substantial completion have come and gone since the discussions in April following the most recent complaint.

[47] Therefore, the Committee concludes that an extension to October 31, 2024 is unreasonable, but also acknowledges the reality that some time is needed to address the state of the yard.

[48] Given the availability of storage space in the garage, the Committee finds it reasonable for the Applicant to bring the property into compliance by August 16, 2024. The Committee deletes the prior date for compliance of July 1, 2024 and substitutes August 16, 2024 as indicated above in this decision.

[49] For all of the above reasons the review is allowed in part and the Order is varied as noted above.

Kathy Cherniawksy, Chair
Community Standards and Licence Appeal Committee

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

Important Information for the Applicant

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.