

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2023
ABECSLAC 10010 and 2023 ABECSLAC 10011

Date: July 31, 2023
Order Number: 471042463-001 and 471042463-002
CSLAC File Number: CSLAC-23-010 and CSLAC-23-011

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Joel McDonald
Allan Bolstad

DECISION

[1] On July 18, 2023 the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of two Orders that were filed on June 19, 2023. The requests for review concerned the decision of Community Standards and Neighbourhoods to issue Orders pursuant to Section 545(1) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Orders were dated June 9, 2023. The Orders required the following action:

Order No. 471042463-001

Repair/Replace or Board any open or broken windows or doors and cover any holes or openings on the buildings or structures.

Repair/Replace or Board all broken or missing soffit pieces, including capping open ends of soffits at the end of the eaves.

Take any actions or remove any other items that are contributing to the unsightly condition of the buildings or structures.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 4, 2023

Order No. 471042463-002

Remove all televisions, electronics, shopping carts, trailers, cardboard boxes, old siding, old awnings, wood, broken fence sections, tree branches, old windows, broken off eavestroughs, plastic buckets, 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.

Cut all grass and weeds throughout the entire property, including any boulevard and alley flankage areas, to a measurement of under 10cm.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 4, 2023

- [2] The subject property is located at 11311 - 104 Street NW, Edmonton.
- [3] The hearing on July 18, 2023 was held through a combination of written submissions and in-person hearing. The following documents were received prior to the hearing and form part of the record:
- Copy of the Orders issued pursuant to the *Municipal Government Act*;
 - The Applicant's written request for review; and
 - The Respondent's written submission, including a series of photographs.
- [4] The following exhibits were presented during the hearing and form part of the record:
- Exhibit A – series of photographs submitted by the Applicant

Preliminary Matters

- [5] At the outset of the hearing, the Chair indicated that CSLAC-23-010 and CSLAC-23-011 would be heard simultaneously.
- [6] The Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [7] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [8] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Submissions with respect to Order No. 471042463-001*i) Position of the Applicant,*

- [9] The Applicant referred to Section 9(1) of the *Community Standards Bylaw 14600*. He is not in violation of Section 9(1) that states: A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy. The word nuisance in Section 9(1) does not apply. Section 9(2)(c) governs openings in the buildings. In his opinion, the Order is not correct.
- [10] The Development Compliance Officer took photographs of his property from his neighbour's property. The house photographs were shown to the Applicant and emailed to the Applicant prior to the hearing.
- [11] The Bylaw investigation summary was shown to the Applicant and emailed to the Applicant prior to the hearing.
- [12] The soffit is not a nuisance. The house was built in 1947 and if he causes it to revert back to that state the soffit would comply with the Order.
- [13] The Order should be canceled since part of the Order does not create a nuisance.
- [14] He lives at the property and has had several break-ins and has had a hard time repairing the windows regularly.
- [15] The Applicant provided the following information in response to questions by the Committee:
 - a) He has lived at the subject property since 2005.
 - b) He has not received any complaints from his neighbours regarding the state of the property.
 - c) He intends to repair areas of the property that he believes are a nuisance.
 - d) With several break-ins on the property his tools were stolen and he has not been able to do repairs on the property.
 - e) The exterior of the house was finished several years ago.
 - f) He had a break-in to the garage and then a break-in to the house and solar panels were stolen that he intended to install.
 - g) There are no other broken windows other than the one window on the storm door.
 - h) It has always been his intention to repair the soffit on the house.

- i) The last sentence on the Order should be removed. The sentence states: "Take any actions or remove any other items that are contributing to the unsightly condition of the buildings or structures." It is too broad.
- j) Birds are living in the soffit of the building and he is willing to repair the soffit.
- k) He is requesting additional time to comply with the Order.
- l) He is willing to repair the siding before the winter or within a year.

Summary of submissions with respect to Order No. 471042463-002

- [16] The Applicant was shown the Order and the materials and photographs submitted by the Development Compliance Officer. The documents were emailed to the Applicant prior to the hearing.
- [17] Picture No. 12 shows the eavestrough leaning against the house.
- [18] The window on the ground is not broken, but was removed during the break-in and it just needs to be fixed.
- [19] He provided the Committee with photographs of other properties in the City, marked Exhibit A.
- [20] Picture No. 1 shows a property across the alley from his house. That property has a five foot high fence that is covered with six foot high weeds.
- [21] Picture No. 3 shows decorative crab grass next to the LRT station by the Royal Alexandra Hospital. His bike in the picture shows that the grass is excessively high.
- [22] Picture No. 2 shows a City property that has acres of weeds.
- [23] The City can have an excess of grass and weeds and developers in the summer have long grass and piles of snow and Bylaw Enforcement does not issue them an Order.
- [24] Picture No. 3 shows decorative crabgrass that is permitted over 10 centimetres and he should be allowed to have an excess of 10 centimetres as well.
- [25] If the grass is longer it chokes out the weeds. He mows the grass at the end of the summer before the snow falls.
- [26] He referred to Section 15 of the Charter of Rights and Freedoms. The Chair indicated that the Committee does not have the authority to consider arguments founded on the Charter of Rights.
- [27] The City has property that looks the same as his.

- [28] Picture No. 5 shows a property that has a car located on the property over a decade and pointed out that property to the Bylaw Enforcement Officer.
- [29] Other property owners can enjoy their property the way it is and he should be able to do the same thing. His property is in keeping with the standard of the community.
- [30] The Applicant provided the following information in response to questions by the Committee:
- a) He confirmed that the items around his house in the yard will be removed within a month.
 - b) He would like a year to remove the branches so he can burn them in the winter.
 - c) He has new siding that will be put on the house and had intended to complete the siding project prior to the issuance of the Order, but needs time.
 - d) He is willing to remove the awnings that were removed from the house and remain in the yard.

ii) Position of the Respondent, J. Lallemand

- [31] J. Lallemand, Operations Manager, Complaints and Investigations, City of Edmonton, did not attend the hearing but provided a written submission that was considered by the Committee and reviewed with the Applicant at the hearing.

Decision on Order No. 471042463-001

- [32] The request for review is **ALLOWED IN PART**. The Order is **AMENDED** as follows:

Repair/Replace/Remove or Board any broken windows or doors and cover any holes or openings on the buildings or structures.

Repair/Replace or Board all broken or missing soffit pieces, including capping open ends of soffits at the end of the eaves.

Repair/Replace to complete unfinished portions of the exterior house (including portions of the exterior with exposed strapping or Tyvek type wrap) with siding or similar exterior finishing materials.

YOU MUST COMPLY WITH THIS ORDER BEFORE: October 31, 2023

Decision on Order No. 471042463-002

- [33] The request for review is **ALLOWED IN PART**. The Order is Confirmed as issued on June 9, 2023. The compliance date of the Order is varied to September 1, 2023.

Reasons for Decision

- [34] This hearing involves applications to review two written Orders pertaining to the same property, both issued on June 9, 2023 by the City of Edmonton pursuant to section 545 of the *Municipal Government Act*. The first Order deals with structures and buildings. It states the Applicant is in contravention of section 9(1) of the City of Edmonton *Community Standards Bylaw 14600*. The second Order deals with items located outside the buildings and structures within the yards of the property. It states the Applicant is in contravention of section 6(1) of the same *Bylaw*.
- [35] The Applicant appeared in person. He made oral submissions and provided a series of pictures of other properties.
- [36] No one appeared to represent the City and the Committee proceeded based on two sets of pictures of the property dated June 7, 2023 and two Bylaw Investigation Summaries.
- [37] Each summary provided:
- a chronology of events,
 - a quotation of the section of the *Bylaw* alleged to be contravened;
 - a quotation from the enabling section of the *Municipal Government Act*;
 - the submission that based on the provided evidence (pictures) that the Applicant had contravened the prohibition of nuisance in the *Bylaw*; and
 - a request that each order be upheld.

The First Order: Order No. 471042463-001 - Nuisance in Respect of Building or Structure

- [38] The First Order alleges a contravention of section 9(1) of the *Bylaw* and orders the Applicant to take three steps:

Repair/Replace or Board any open or broken windows or doors and cover any holes or openings on the buildings or structures.

Repair/Replace or Board all broken or missing soffit pieces, including capping open ends of soffits at the end of the eaves.

Take any actions or remove any other items that are contributing to the unsightly condition of the buildings or structures.

- [39] Section 9 of the *Bylaw* states:

9 (1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing 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) any damage to the building or structure;

(a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;

(b) any rot or other deterioration within the building; and

(c) any inappropriate infiltration of air, moisture or water into the building due to peeling, unpainted or untreated surfaces, missing shingles or other roofing materials, broken or missing windows or doors, or any other hole or opening in the building.

[40] The Applicant argued that this Order was invalid as it cited section 9(1) whereas the allegations relate to Section 9(2).

[41] The Committee disagrees. In the Committee's view, section 9(1) prohibits any person from causing or permitting a nuisance to exist in respect of any building or structure. Section 9(2) explicitly provides greater certainty to the phrase nuisance in respect of a building or structure in the context of the *Community Standards Bylaw*. The Committee therefore finds the Order correctly cited section 9(1) of the *Bylaw*.

[42] The Committee considered the pictures of two buildings structures (the Dwelling and Garage) submitted by the City as well as the oral submissions of the Applicant concerning them.

[43] The Applicant indicated he intends to keep his property in good repair, but has been challenged and set back recently, particularly due to regular thefts and break-ins in more recent years. He argued that there is only one broken window on the house and that it belongs to a storm door which he can remove from the exterior of the property. He acknowledged the state of the house, but indicated that he is in the midst of a "siding project". He added the soffit himself years ago and acknowledges it now has holes, particularly at the end-caps, and, as a result, his home is being inhabited by pigeons that he also finds a nuisance which he would like to remedy. Finally, he argued that there is nothing in the Order or pictures that shows the garage to be in a state of nuisance. He would like a year to complete this exterior project, but also stated he could accomplish it prior to winter or by October 31, 2023.

[44] Based on these submissions from both parties, the Committee finds that the house falls within the definition of nuisance in respect of a building or structure in section 9 of the *Bylaw* and confirms the first and second requirement of the First Order.

- [45] However, the Committee also agrees with the Applicant that there was only evidence of one broken window attached to the house - the window located on the storm door. The Committee agrees that one way to fix this issue would be by removing the storm door from the house and the exterior of the property. Therefore the Committee adds the option to “Remove” any broken windows or doors to reflect the Applicant’s point.
- [46] The Committee finds the third requirement: “Take any actions or remove any other items that are contributing to the unsightly condition of the buildings or structures” is vague and overly broad, but finds that the unfinished and exposed exterior walls do constitute a nuisance in respect of the building or structure.
- [47] In the Committee’s view, the Applicant’s proposed timeline of one year is excessive and the Applicant himself indicated the “siding project” could be completed by October 31, 2023; therefore the Committee varies the deadline for compliance to October 31, 2023.
- [48] Therefore the Committee varies the issued order as follows:

Repair/Replace/Remove or Board any broken windows or doors and cover any holes or openings on the buildings or structures.

Repair/Replace or Board all broken or missing soffit pieces, including capping open ends of soffits at the end of the eaves.

Repair/Replace to complete unfinished portions of the exterior house (including portions of the exterior with exposed strapping or Tyvek type wrap) with siding or similar exterior finishing materials.

YOU MUST COMPLY WITH THIS ORDER BEFORE: October 31, 2023

The Second Order: Order No. 471042463-002 - Nuisance on Land

- [49] The Second Order alleges a contravention of section 6(1) of the *Bylaw* orders the Applicant to do two things:

Remove all televisions, electronics, shopping carts, trailers, cardboard boxes, old siding, old awnings, wood, broken fence sections, tree branches, old windows, broken off eavestroughs, plastic buckets, 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.

Cut all grass and weeds throughout the entire property, including any boulevard and alley flankage areas, to a measurement of under 10cm.

- [50] Section 6(1) of the *Bylaw* states:

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;

(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; (S.2, Bylaw 17678, June 28, 2016)

(b) damaged, dismantled or derelict vehicles or motor vehicles, whether insured or registered or not;

(b.1) any vehicle displaying graffiti that is visible from any surrounding property;

(c) smelly or messy compost heaps;

(d) unkempt grass or weeds higher than 10 centimetres;

(e) production of excessive dust, dirt or smoke;

(f) production of any generally offensive odours;

(g) any tree, shrub, other type of vegetation or any structure:

(i) that interferes or could interfere with any public work or utility;

(ii) that obstructs any sidewalk adjacent to the land; or

(iii) that impairs the visibility required for safe traffic flow at any intersection adjacent to the land; and

(g.1) any accessible excavation, ditch, drain or standing water that could pose a danger to the public; and

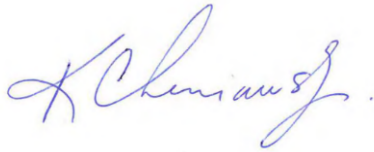
(h) any construction project or activity not completed within five years of the date the building permit for the project or activity was issued by the City or, within five years of starting construction.

(3) Repealed

- [51] Section 6(2) states that 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 and then lists some examples in the fifteen following subsections.
- [52] Based on the photographs, the Committee agrees with the City that the subject property is in a condition that meets the definition of nuisance on land and is therefore in contravention of the *Bylaw*.
- [53] The Applicant provided photos of other properties of comparable or worse conditions and argued from his standpoint he should not be required to take action on his property given the state of these properties owned by the City, developers and other owners. Further he argued grass and decorative wheat or grass are the same thing.
- [54] The Committee is not persuaded by these arguments. The state of those properties are not in issue in this review and the Committee has no authority to issue orders of its own volition. The Committee has the authority granted by section 547 of the *Municipal Government Act* only to determine the validity of the specific order under review which alleges a contravention of the City Bylaw and to confirm, vary, substitute or cancel that order.
- [55] The Committee finds the second requirement to be valid based on the photographic evidence and submissions. The grass and weeds in the specified areas shown in the pictures are clearly unkempt and higher than 10 centimetres. The Committee finds that the grass and weeds fall within the definition of nuisance on land in section 6(2)(d) which is prohibited by section 6(1) of the *Bylaw*.
- [56] The Committee took note that the first requirement in the Order contains a somewhat generic, catchall final phrase, but finds in the circumstances it is sufficiently clear, particularly as the branches and other debris obscure the view of items on the property.
- [57] The Committee considered that despite his serious frustration with the situation and with City enforcement, the Applicant was willing to clean the area up including many of the listed items if given enough time (which ideally would be one month) and to clear the branches and wood within one year so it could be burned in the winter months.
- [58] After hearing from the Applicant and on receiving no information or objection on the possibility of an extension for compliance from the City, the Committee has determined that a compliance date of September 1, 2023 will provide the Applicant with sufficient time to complete the required actions to bring the property into compliance with the Bylaw.
- [59] The Order is varied to order compliance by September 1, 2023. It shall read:

YOU MUST COMPLY WITH THIS ORDER BEFORE: September 1, 2023.

[60] For all of these reasons, both reviews are allowed in part and the Orders are varied as specified above.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky".

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc: Community Standards and Neighbourhoods, Attn: C. Perizzolo / J. Lallemant

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.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2023
ABECSLAC 10009

Date: July 31, 2023
Order Number: 474851151-001
CSLAC File Number: CSLAC-23-009

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Joel McDonald
Allan Bolstad

DECISION

[1] On July 18, 2023 the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on June 13, 2023. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 546(1) of *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated and mailed on June 9, 2023 and required the following action:

Secure/board/Re-secure all points of entry on all structures on both the basement and main or first floor levels, including doors, windows and any holes or openings, as well as any point of entry on any upper levels that may be accessible from any potential climbing point in a manner sufficient to prevent unauthorized entry.

Please refer to the attached “Board Up Procedure Bulletin” for the detailed requirements that must be met for compliance.

YOU MUST COMPLY WITH THIS ORDER BEFORE: June 30, 2023

- [2] The subject property is located at 16413 - 105A Avenue NW, Edmonton.
- [3] The hearing on July 18, 2023 was held through a combination of written submissions 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
 - 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 appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing*i) Position of the Applicant,*

- [7] The Applicant was not in attendance at the hearing.
- [8] Administration made attempts to contact the Applicant with no response submitted prior to the conclusion of the hearing.

ii) Position of the Respondent, R. Rybak, Fire Prevention Officer, Fire Rescue Services and M. Grocock, Fire Prevention Officer, Fire Rescue Services, appeared on behalf of the City of Edmonton.

- [9] R. Rybal and M. Grocock provided the following information in response to questions by the Committee:
- a) The property is currently vacant.
 - b) They spoke to neighbours who indicated that the property has been vacant for some time but could not confirm an exact date.
 - c) Prior to receiving information about this hearing, they spoke to the Applicant regarding the property.

- d) The Applicant confirmed to them that the property has been vacant since June 1, 2022.
- e) The Order was issued June 9, 2023 and they spoke to the Applicant on June 13, 2023. No further contact was made with the Applicant.
- f) They believe the entry points are secure on the subject site but not to their required standard.
- g) They indicated to the Applicant that he is allowed to have a vacant property. However, action must take place to secure the property.
- h) A Notice of Entry will be issued in the fall.
- i) There is no time limit on how long a property can be boarded up. They must document five breaches prior to the issuance of any Order to demolish a structure such as the subject house.

Decision

[10] The Order is confirmed as issued on June 9, 2023.

Reasons for Decision

[11] This is an application for a review of a written Order issued by the City of Edmonton pursuant to section 546 of the *Municipal Government Act* dated June 9, 2023.

[12] Section 547 of the *Municipal Government Act* states:

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

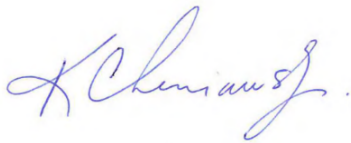
[13] The Applicant sent an email to the Committee on June 13, 2023 stating in its entirety:

“Good afternoon,

I received the above mentioned order for my property 16413-105a ave on June 8, 2023. After looking into the order details and municipal government act, I do not agree with the order decision and would request a review. Reasons are as follows:

1. The property IS NOTtenanted from June 1, 2022 to”

- [14] In response, the Committee Administration asked the Applicant for clarification or confirmation of his intention to request a review.
- [15] The Committee received ambiguous and ambivalent replies. None of the communications from the Applicant provided any further substantive arguments or reasons for the request for a review of the Order.
- [16] The Applicant was sent notice of the hearing before the Committee in accordance with its bylaw provisions and standard practice. The Applicant did not reply further and did not attend the hearing.
- [17] The Committee therefore proceeded on the basis of the Respondent’s submissions and the Applicant’s emails, particularly the initial email quoted above and dated June 13, 2023.
- [18] After considering the submissions before it, the Committee was not persuaded of any reason to substitute, vary or revoke the Order.
- [19] The Committee therefore confirms the Order as issued.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky".

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc: Fire Rescue Services, City of Edmonton, Attn: R. Rybak / A. Girven / M. Grocock

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.