

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), August 29, 2023 ABECSLAC 10013

Date:	August 29, 2023
Order Number:	447791960-001
CSLAC File Number:	CSLAC-23-013

Between:

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Karen Munro

DECISION

- [1] On August 15, 2023 the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on July 7, 2023. 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 June 22, 2023 and mailed on June 23, 2023 and required the following action:

Remove all piles of wood, plastic containers, loose garbage, tires, metal waste, plastic waste, derelict vehicles, 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. ADDITIONALLY, Trim/cut all long grass/vegetation/weeds to under 10CM on the entire property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 16, 2023

- [2] The subject property is located at 3511 - 11 Avenue NW, Edmonton.
- [3] The hearing on August 15, 2023 was held through a combination of in person, video conference and written submissions. 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

a) Position of the Applicant,

- [7] In September 2022, she contacted the Municipal Enforcement Officer ("MEO") that was assigned to her file to discuss the Order issued at that time. She indicated that she disagreed with the wording on that Order and refused to comply with the Order.
- [8] She disagrees with some of the information in the Timeline submitted by the City and noted some points are missing.
- [9] She did not agree to remove the vehicles as stated in the MEO report. The MEO indicated that he would call her back, but she did not receive a call back.
- [10] The Applicant then received a ticket in the mail in the Fall, 2022.
- [11] In the spring of 2023, she received a Notice of Entry and contacted the same MEO. She denied them entry to her property and asked them to issue an Order after the Officer did not call her back.
- [12] The MEO met her at the property to speak to her and she told them not to take photographs of her property because she would comply with the Order. She received a Notice to Comply at that time.
- [13] She agreed to clean up the property and to try to sell the vehicles on the property.

- [14] She was suffering ill effects from the smoke in the air and could not comply with the Order in the required time. She was then out of the country.
- [15] The MEO entered the property on June 21, 2023. She had specifically told the MEO in an email sent in 2009 that City staff could not enter the property without a Court Order. She had also a recording of a more recent conversation with the MEO.
- [16] Based on Section 542 and 543 of the *Municipal Government Act*, if a Court Order is not available from the City to grant them access, then all of the materials submitted by the MEO should not be accepted.
- [17] The Order lists items that do not need to be removed; therefore, she asked the Committee to cancel the Order.
- [18] A brief recess was held to allow the Applicant to locate the 2009 email and the recording she was citing. After the recess, the Applicant indicated that she could not locate the 2009 email she wanted to provide to the Committee. Instead, she relayed the substance of the email regarding access to the property. Further, the Applicant did not wish to provide the recording. However, she reiterated that she told the officials that they were not to enter the property without her presence.
- [19] In the Spring of 2023, she received an email from the MEO with a Notice of Entry issued on April 21, 2023. She had a specific conversation with the MEO about the Notice of Entry.
- [20] After April 21, 2023 she indicated to the MEO that the City could not access her property without an Order from the Court.
- [21] She left a message with the MEO asking for a different date for them to inspect the property. The property was later inspected and they agreed to a plan of action to bring the property to the required standards.
- [22] Complying with the Order is not complete, but some work has been done on the property.
- [23] The Order was issued based on what the MEO saw even though they were not granted permission to enter the property.
- [24] The Applicant provided the following information in response to questions by the Committee:
 - a) She confirmed that she was not providing a recording of any conversation with the MEO.
 - b) She does not disagree with the earlier Notice to Comply issued in September 2022; however, she agrees that the Notice to Comply was issued based on the photographs that were taken at that time.

- c) She does not believe all of the vehicles are derelict. She agrees the grass and weeds were too long.
- d) She agreed with the wording of the entry on the Bylaw Investigation Summary dated May 9, 2023. There has been some progress in the front of the property. The back of the property is still being cleared, but is not complete. The subject vehicles are still on the property.
- e) In her opinion, the photographs are not a proper representation of the property at this time. A tree has been removed and the long grass has been cut.
- f) She reviewed the photographs from June 2023 with the Committee and confirmed where they were taken from. She agrees the photos of the front yard were taken from public property are an accurate depiction of the state of the property on that date and the Committee may consider them. She identified several other photos which she believed should not be considered because they were taken from within the property in her absence without her permission.
- g) She did not bring any photographs of the current state of the property. She expected the City to attend as it has previously.
- h) The Order is not reflective of what the MEO could see on the property from public property.
- i) The owners listed on the Order that was issued on June 22, 2023 are in agreement that the MEO should not enter the property without permission.
- j) She informed the MEO that the vehicles would be put up for sale, but noted that she could not guarantee that any sale would be done by June 2023. She did not agree to remove the vehicles.
- k) The driveway is finished with gravel.
- l) The vehicles are insured and the Applicant agrees that they have been on the property at the shown location for several years and have not been moved during that time.
- m) She would not confirm that the photographs showing the back yard are correct, nor would she say that they are not photographs of the property on the date of the inspection. She objects to the process and the entry on the property in her absence.
- n) The trees and materials that were removed were piled in the front yard and offered to anyone for free. People then came and took them away.
- o) Some of the items that were located in the shed were removed from the property and some items in the yard were moved into the shed and the shed door was replaced.
- p) She confirmed the trucks have not been driven in several years, but said they are still insured.

- q) She is willing to meet the required community standards and dispose of the vehicles by using them or selling them based on her schedule.
- r) She does not object to the Order, except the wording regarding the vehicles located on the property.
- s) Her main concern is how the matter was dealt with by the MEO whose report is incomplete.
- t) She is agreeable to the wording of the Order except for the vehicles and piles of wood that she will use for a fire. Also, the Order states that she must remove any vegetation higher than 10 centimetres. The Applicant wants to remove all vegetation in the rear yard. She also would like to leave the raspberry bushes and fruit trees on her property.
- u) She confirmed that the two trucks are listed for sale.

ii) *Position of the Respondent, C. Perizzolo, Community Standards and Neighbourhoods*

- [25] The Respondent did not attend the hearing but provided written submissions. The submission includes the following timeline of events of the investigation from September 2022 through to June 2023 :

2022SEP17 Citizen complaint received via 311, regarding nuisance on land. Complaint details provided:

“description: There have been 2 trucks in the front yard for 15-20 years. Trees etc are growing up all around and in the trucks. The yard is never dealt with. Neighbors have been unable to sell their houses as property values have decreased.”

2022SEP19 Bylaw Officer inspected 3511- 11 Avenue NW and verified a violation of the bylaw; seven photographs were taken. Officer reported long grass and weeds in excess of 10cm and two derelict vehicles parked on the front driveway. The two derelict vehicles were described as a red Chevrolet truck and a maroon GMC truck. Both vehicles were surrounded by overgrown vegetation indicating that they had not moved in a number of years. Upon further investigation, the Bylaw Officer reported that the vehicles were parked in the same location from 2015 to 2022 according to images found on Pictometry/Slim Map.

2022SEP20 Notice to Comply issued for violation of Section 6(1) of the Community Standards bylaw, nuisance on land.

2022OCT07 Bylaw officer spoke with property owner Ms. Amelia LEUNG. Ms. LEUNG stated she did not agree with the Officer's findings and would not comply with the Notice to Comply.

2022OCT17 Bylaw Officer re-inspected the property and reported that no progress had been made. Officer issued a municipal ticket for the bylaw violation.

2023APR21 Notice of Entry issued for a follow-up inspection on 2023MAY01.

2023MAY04 At the request of the property owner, Ms. LEUNG, Bylaw Officers attended the property for a joint inspection on this date. LEUNG did not attend as scheduled. The Bylaw Officer called Ms. LEUNG, who then requested to reschedule for 2023MAY09.

2023MAY09 Bylaw Officer re-inspected the property with the property owner Ms. LEUNG present. Bylaw Officer discussed what nuisance conditions were present and what needed to be removed. Ms. LEUNG stated that she would remove long grass/weeds, a couch at the front of the house, loose garbage, piles of wood, and piles of tree bushes from the property by the end of May. Ms. LEUNG agreed to remove the derelict vehicles by the end of June.

2023JUN08 Bylaw Officer spoke with Ms. LEUNG who stated the property was partially compliant. Bylaw officer scheduled a follow-up inspection for 23JUN12.

2023JUN12 Bylaw Officer re-inspected property and observed partial compliance. Bylaw Officer called Ms. LEUNG and advised that a final extension would be provided 2023JUN15 and next steps could include the issuance of a Municipal Government Act Order.

2023JUN21 Bylaw Officer re-inspected the property and found it to be in violation of Section 6(1) of the Community Standards bylaw, nuisance on land. The Bylaw Officer observed: long grass and weeds in excess of 10cm, piles of dead vegetation and scrap wood, multiple plastic containers, loose garbage, tires, metal waste, plastic waste, and two derelict vehicles on the property. Thirty-nine photos were taken on this date.

2023JUN22 A 545 Municipal Government Act Order was issued on June 22, 2023, as a result of the nuisance on land violation at 3511-11 Avenue. The MGA Order was mailed via Canada Post to the registered owners on June 23, 2023 at 0815hrs. Copies of the order were sent to each of the four property owners listed on the title.

2023JUL17 City Administration received notification of the request to appeal the issuance of the MGA Order. All enforcement suspended pending the outcome of the CSLAC hearing.

Decision

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

Remove all piles of wood, plastic containers, loose garbage, tires, metal waste, plastic waste, derelict vehicles, 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. ADDITIONALLY, Trim/cut all long grass/vegetation/weeds, excepting for fruit trees and raspberry bushes, to under 10CM on the entire property. YOU MUST COMPLY WITH THIS PORTION OF THE ORDER BEFORE: September 5, 2023.

Remove all derelict vehicles from the property. YOU MUST COMPLY WITH THIS PORTION OF THE ORDER BEFORE: September 29, 2023.

Reasons for Decision

[27] This is a review of an Order issued to four individuals and dated June 22, 2023. The Order states it was issued on authority of section 545 of the *Municipal Government Act* (“MGA”) for a contravention of section 6(1) of The City of Edmonton *Community Standards Bylaw 14600* (the “Bylaw”).

[28] Section 545 of 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.

(2) The order may

(a) direct a person to stop doing something, or to change the way in which the person is doing it;

(b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;

(c) state a time within which the person must comply with the directions;

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

[29] Section 6 of the *Bylaw* deals with nuisance on land. It 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;

...

[30] The Applicant is one of the four individuals listed on the Order. She requested the review per section 547(1) of the *MGA* which states:

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 [...]

[31] The Committee's authority comes from the Community Standards and Licence Appeal Committee Bylaw 19003 and section 547(2) of the *MGA* which states:

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

[32] The Applicant agreed with some of the Respondent's submissions. She candidly stated that the property did need some remedial clean up and indicated that she had already made inroads on that front. Through the course of the hearing she ultimately indicated that she did not object to the content of the Order except regarding a couple of specific items, rather her major concerns were centered on the actions of the Inspectors throughout the investigation process which commenced in September 2022 and culminated with the issuance of the Order under review. She asked the Committee for four types of relief:

- a) Cancel the Order as there was no Court Order from the Court of King's Bench authorizing access onto the property for inspection cited in the Order under review contrary to section 542 of the *MGA*.
- b) Cancel the Order as far as it was based on evidence obtained in violation of section 542 of the *MGA* - specifically all photos taken on June 21, 2021 from within the property.
- c) Delete the phrase derelict vehicles from the Order.
- d) Amend the Order by narrowing the requirement to trim all vegetation and remove all wood.

Court Order from the Court of King's Bench

[33] The Committee considered the Applicant's request to cancel the Order because the City had not produced a Court Order issued by the Court of King's Bench authorizing entry onto her property for inspection purposes.

[34] The Applicant argued that she sent an email in 2009 to the effect that she would never agree to allow any inspections of the property and that in any event no inspections could proceed without her presence. In her view, the email meant that by operation of section 542 of the *MGA*, no subsequent inspections of the property whatsoever could occur without a Court Order. Accordingly, the June 21, 2023 inspection was illegal and the submitted photos were illegal and contrary to the *MGA* because there was no Court Order authorizing entry onto the property on that date.

[35] The Committee disagrees.

[36] In the Committee's view, an individual cannot by one time email preemptively, and permanently refuse all future requests for entry to inspect that might possibly be initiated

by the City under the authority of section 542 of the *MGA* and section 7 of the Community Standards *Bylaw*.

- [37] Taking a purposive approach to the *MGA* and the considering the wording of section 542, the Committee concludes that it is not intended that a single email sent in the context of one investigation can generically trigger a blanket requirement essentially forcing municipal authorities to obtain Court Orders authorizing access for inspection or entry for all purposes and into perpetuity,
- [38] The Committee finds that the proper interpretation of section 542, read in context, is that each request for entry initiated by a municipality must be based on reasonable notice in accordance with the requirements of fairness and the applicable bylaws and is a stand alone event. If, upon receiving a notification, the recipient then refuses to allow, or interferes with the request for the specified entry inspection, enforcement or action, then the Court may issue an Order restraining the person objecting from preventing or interfering with that entry, inspection, enforcement or action.
- [39] In any event, more than ten years have passed since the email referred to by the Applicant was sent to a City official. In the interim, the Applicant indicated that she has cooperated with other investigations and requests for access to inspect the property. In September 2022, the Applicant received a Notice to Comply issued for violation of section 6(1) of the Community Standards *Bylaw*. Through September and October she participated in and cooperated to a certain degree with the investigation and inspection.
- [40] When she received the most recent notification, a Notice of Entry dated April 21, 2023 to follow up on the September 2022 investigation, the Applicant did not respond by refusing to allow or interfering with entry or inspections. She insisted on being present during any entry on the property, provided potential dates for inspection, cooperated on more than one occasion with the Inspectors, agreed with some (although not all) of the remedial actions requested by the Inspector and took steps to partially comply with the Inspector's requests.
- [41] Therefore, the Committee declines to cancel the Order on the basis that a Court Order authorizing entry was not obtained in conjunction with the April 21, 2023 Notice of Entry.

Photos taken June 21, 2023 from inside the property and Content of the Order

- [42] The Applicant stated that the submitted aerial photos taken in the years from 2015 through 2022, the submitted photos taken September 2022 and the submitted photos taken of the property on June 21, 2023 from the front street are accurate, legally obtained and show the property needs some remediation to become compliant with the Community Standards *Bylaw*.
- [43] However, the Applicant argued that portions of the Order applicable to any areas of the property that are not visible from public property should be canceled because several

photographs from the June 21, 2023 inspection were taken from within the property illegally without her consent or presence while she was away.

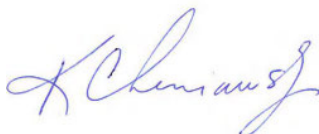
- [44] While the Applicant did not argue that the impugned photos were not an accurate reflection of the state of her property and acknowledged they are likely accurate representations of the state of the property on the indicated date, she argues they were illegally obtained and therefore that the Order should be canceled.
- [45] The Committee considered information provided by the Applicant and Respondent concerning the investigative steps and noted they agreed on certain points but were not totally consistent. In particular, the Respondent submissions state that they attended the property on other occasions and noted the presence of the Applicant on those dates. However, there is no indication about the attendance of the Applicant, nor any of the three other named individuals during the June 21, 2023 inspection. The Applicant says she was not in attendance and that she had been clear that the city employees were not to enter the property without her and were not to take pictures at all.
- [46] In this case, the Committee finds it unnecessary to make a specific ruling with respect to the impugned photos as it finds that there is sufficient information apart from them to show that the property, more likely than not, constituted a nuisance on land as defined in section 6(2)(a.1),(b) and (d) in contravention of Section 6(1). This conclusion supports the issuance of a varied section 545 Order applicable to the entire property. The information in support before the Committee includes:
- a) The Aerial photos which were taken over several years, the photos taken in September 2022 and the photos taken from public property on June 21, 2023;
 - b) The opinion of the Inspector formed based upon an inspection on May 9, 2023 with Applicant in attendance and with which the Applicant agreed. The Applicant acknowledged property was not in compliance at that time and that she completed some, but not all, required actions to bring about compliance, including with respect to the state of the rear and side yards of the property and the need for further work in those parts of the property.
 - c) The reinspection of the property on June 12, 2023 when the Inspector found partial compliance with requests and advised of next steps which would include an Order.
 - d) The Applicant's acknowledgement before the Committee that she does not object to the content of the Order apart from the demand to remove the vehicles and some of the wood located beside the house.
 - e) The Applicant's acknowledgement before the Committee that the grass and weeds must be trimmed in the rear yard and her intention to clear some of the wood and to exterminate all vegetation in the rear and side yards. On this point, the

Committee took account of the Applicant's view that the wording of the Order on this point is overly broad and that she would also like to maintain fruit trees and raspberry bushes at a height in excess of 10 centimetres. The Committee agrees and has exempted the plants she identified from the Order.

- [47] Based on her submissions, the Committee determined that September 5, 2023 is an appropriate date for compliance with the Order for all items other than the vehicles.

The Vehicles

- [48] The Committee considered the Applicant's request to remove the reference to derelict vehicles from the Order.
- [49] The aerial photos from 2015 through to 2022, the photos taken September 2022, the photos taken June 21, 2023 from public property as well as the Applicant's own statements are clear. The two trucks have been stored on the front driveway and not driven for several years. They have remained stationary long enough for significant vegetation to grow up through and around them, some of this vegetation is clearly observable in the photos taken from public land facing the property.
- [50] Given this situation, the Committee finds that the two trucks currently stored on the front driveway fit within the meaning of derelict vehicle in section 6(2)(b) of the *Bylaw* and therefore constitute a nuisance on land.
- [51] The Committee notes that the *Bylaw* states whether the vehicles are insured and registered is not relevant.
- [52] The Committee also notes that the Order does not address or concern ownership per se and does not order the Applicant to sell the vehicles. It addresses nuisance on land, specifically the long term storage of derelict vehicles on the front driveway.
- [53] The Committee has extended the compliance date for removing all derelict vehicles to September 29, 2023.
- [54] For all of the above reasons the Order has been varied as set out in paragraph 26 above.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc: Community Standards and Neighbourhoods - 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.