

**EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE**

Citation: Sedona Keys Developments Ltds. v Community Standards and Neighbourhoods (City of Edmonton), 2022 ABESLAC 10020

Date: October 6, 2022

Order Number: 434787356-002

CSLAC File Number: CSLAC-22-020

Between:

Sedona Keys Developments Ltd.

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Chris Samuel, Presiding Officer
Karen Munro
Don Fleming

DECISION

[1] On September 20, 2022, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on August 29, 2022. 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 August 22, 2022 and was couriered on August 22, 2022 and required the following action:

Eliminate the danger by securing the property, for as long as structures remain on the property, in the following manner:

- 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; and

- Provide and install security fencing within the property line, providing a barrier around the structure to prevent unauthorized entry to the structure. The fencing shall not encroach on municipal or neighbouring properties; and
- Provide an adequate number of 24-hour onsite security guards to ensure the structure and fence lines are not being breached.

YOU MUST COMPLY WITH THIS ORDER BEFORE: August 29, 2022

[2] The subject property is located at 10209 - 100 Avenue NW, Edmonton.

[3] The hearing on September 20, 2022 was held through a combination of written submissions and video conference. The following documents were received prior to the hearing and form part of the record:

- Copy of the Order issued pursuant to the *Municipal Government Act*;
- The Appellant's written request for review and submission;
- The Respondent's written submission, including a series of photographs; and
- Submission from Legal Counsel for a neighbouring land owner and their property management company.

Preliminary Matters

[4] At the outset of the hearing, the Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.

[5] The Presiding Officer 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 representing ProCura*

[7] The Applicant would like to take a collaborative approach with dealing with issues in the downtown core.

[8] The Applicant is requesting further clarification from the City in terms of what the City will do to help ensure their property is maintained and safe, as well as those on the adjacent properties.

- [9] They would like a review of the Order based on the fact that even when the breaches have been remedied, that does not stop people from coming onto the site and causing similar problems.
- [10] Any Orders issued by the City and the Fire Services have been compiled with. They cannot stop people from coming onto the property.
- [11] In his opinion, fencing and security will not address fires that have been set on the property. In his opinion, the issue is the downtown core itself and not the subject site.
- [12] provided the following information in response to questions by the Committee.
 - a) He confirmed that even if the Order is compiled with, they cannot ensure that the property will be secure from the public.
 - b) He continues to follow the Orders but they are not receiving any help from the City.
 - c) He wants to address the concerns of the subject site.
 - d) He understood that the City had provided two fire watch personnel at the site but that did not stop people from starting fires on the site. In his opinion, security guards will not fix the issue.
 - e) They need the assistance from the Police to keep the property safe from the public.
 - f) They have a demolition permit for the property but the issues will not go away even if the building is demolished.
 - g) The building has been secured and regular visits to the site are taking place.
 - h) They are not able to provide a sufficient level of security to ensure safety on the property on their own. They need assistance.

ii) Position of , City of Edmonton Legal Counsel

- [13] The Order was issued on August 22, 2022.
- [14] There have been three fires on the property since the Order was issued which had an effect on neighbouring properties. Other properties in the area do not have the same issues as the subject site. This is a public safety concern.
- [15] The Applicant indicated that they need help from the City; however, the property owner is not taking responsibility for the subject site.
- [16] Due to the recent fires, the City installed fencing around the property and provided an off-site fire watch for the property.

- [17] There was no security or fencing around the property when the Order was issued. This may have solved the problem with the three recent fires.
- [18] Things have changed since the Order was issued three fires ago. In his original submission, he provided an alternate scenario that the Order should be varied to demolish the subject site. However, this is no longer the City's alternate submission. This is now the City's request. This is the only way public safety will be maintained in the area.

iii) Position of [REDACTED], in response to questions by C. Ashmore, City of Edmonton Legal Counsel

- [19] [REDACTED] is a Fire Prevention Officer with the City of Edmonton, Fire Rescue Services.
- [20] He is the issuing Officer of the current Order. He is part of the Community Property Safety Team (CPST) within the Edmonton Fire Rescue Services. The property was referred to CPST.
- [21] The property has had numerous fires, incidents, and inspections that showed that the building was not secure and required attention.
- [22] The first Order he issued was on May 27, 2022 with instructions to secure the building to CPST standards which were board up standards.
- [23] Since the initial CPST Order, they have responded to fires and the inspections showed that the building continued to remain unsecure.
- [24] It was clear to their team that boarding alone was not stopping any future breaches. A new Order was issued on August 22, 2022 with additional public safety controls listed to board up and secure, install fencing, and provide 24 hour fire watch or security coverage.
- [25] He referred to the submission titled Summary of Fires, Attachment 3. Prior to the Order, there were 5 fires from 2020 to 2021 and 19 in 2002. This is a public safety concern and the issues keep on escalating with 9 fires in August.
- [26] From January 2022 to today's date, there were 19 interior and exterior fire events.
- [27] He referred to the inspection photos taken on August 11, 2022, Attachment 5. During that inspection, he took photographs and observed three breaches on the property which was why the Order was issued.
- [28] He referred to Attachment 4. This was a copy of an email dated Friday August 26, 2022 (as a follow-up from a telephone call) from L. Diggins, Operations Supervisor from ProCura, who provided an update on what would be completed by August 29, 2022, the compliance date in the Order.

- [29] On August 29, 2022, CPST was informed by the Community Standards and Licence Appeal Committee that the Applicant requested a review of the Order.
- [30] After the compliance date, the site was assessed and determined that the Order was not complied with. The property did not have a fence installed around it or was boarded up but there were two fire watch personnel onsite.
- [31] The CPST has a progressive security model for unsecured vacant properties. When CPST finds unsecure vacant buildings, they establish contact with the property owner and attempt to achieve compliance before enforcement by educating property owners about their board and securement standards. If the property owner is working to comply with the Order, CPST will extend the compliance date if necessary.
- [32] With each additional breach, CPST will assess the situation and determine what security measures are required to mitigate the public safety concerns or risks. CPST will remain in contact with property owners and provide them with the knowledge necessary to comply with the progression. If they choose not to comply, CPST will issue an Order under the *Municipal Government Act* with direction.
- [33] He referred to Attachment 9, which included a copy of a study, titled Distressed Properties: Pathways of Decline and the Emergence of Public Safety Risk. This study was conducted in 2016 and showed how real estate speculation by owners of older homes resulted in reduced investment in the maintenance of their properties. The study revealed a number of safety risks at and or around distressed properties or unsecure vacant properties which resulted in a large number of Police or Fire Bylaw responses.
- [34] He referred to Attachment 10, which included a copy of a study, titled Distressed Properties: Community Risk Reduction in the City of Surrey. This documentation is built upon the recommendations from the previous study. The program model in this documentation focuses on assessing and evaluating the effectiveness of fire prevention strategies for properties that are in the final stages of decline.
- [35] Once properties are identified and an assessment is conducted to confirm the properties in distress and determine the stage of decline, the next steps are to inspect the properties and ensure properties at risk are secured to prevent fires.
- [36] He referred to Attachment 16, photographs taken after the fire of September 8, 2022, showing that structure fires at unsecure vacant properties are dangerous and often go unreported due to the lack of properly working smoke or fire alarms. Most, if not all buildings, have the electricity turned off.
- [37] Each time there is fire at this property, it increases the risk to firefighters and emergency personnel and the public in the area.
- [38] After the most recent fire, the City installed a fence around the property which complies with the Order issued. The City continues to maintain a fire watch of the property.

[39] He could not confirm if the property owner is conducting security of any kind to address the items listed in the Order that was issued.

[40] provided the following information in response to questions by the Board.

- a) He confirmed that even if the Order is compiled with, the property owner cannot ensure that the property will be secure from the public.
- b) He clarified that there were fires at the subject site on September 14, 15, and 16, 2022, which brings the total number of fires on the property up to 20 in 2022.
- c) After receiving an email from CSLAC about the review of the Order, he drove past the property and could not see that anything had been done on the property. He did not go onto the property.
- d) He confirmed that compliance was to be done on August 29, 2022 and he drove by on August 30 or 31, 2022.
- e) He confirmed that he did see onsite security at the property.
- f) He confirmed that someone had removed some of the plywood boarding that had been used to restrict access to the property.
- g) On the first Order issued to the property owners, they were asked through the progressive model of phase 1 to board up all entry points of the structure.
- h) The first Order issued was compiled with. Since that time, there were multiple fires and they assessed the property and noticed 3 breaches on the property. From there they took photographs and because it is a unique situation, they skipped phases within their security model and did not ask for a 3 hour security patrol as they knew it was ineffective due to the 9 previous fires that occurred in August.
- i) Before he issued the Order, he reached out to L. Diggins to inform him an additional Order would be issued.
- j) He had a telephone conversation with ProCura who indicated they would provide security on August 30 or 31, 2022. He requested that an email be sent to him with that information.

iv) *Position of [redacted], in response to questions by C. Ashmore, City of Edmonton Legal Counsel*

[41] He is the Specialized Program Coordinator with the Complaints and Investigations Section which is in the Community Standards and Neighbourhoods Branch.

[42] He oversees the Municipal Enforcement Officers that are mainly responsible for Bylaw Enforcement matters that deal with nuisance conditions or problem properties.

- [43] He was not directly involved with issuing the Order that is being appealed, but prior to the creation of CPST, his area has issued Orders on this property, pursuant to Sections 545 and 546 of the *Municipal Government Act*.
- [44] He referred to the Summary of Events at 10209 - 100 Avenue, Attachment 1. He conducted a review in the case file management system for the subject site and found 27 reported complaints or incidents over the last two years. The complaints can be summarized as a general lack of maintenance and general upkeep that range from noxious weeds, snow and ice on the sidewalk, graffiti on the building, materials on the property, broken glass or other dangerous items on site after fires have been put out, and complaints that the occupants have breached the boarded up building unlawfully.
- [45] He referred to Attachment 8. Orders were issued to the property owner dated June 26, 2020, March 31, 2021, and December 3, 2021. The CPST issued an Order on May 27, 2022 and August 22, 2022.
- [46] The Orders could not be complied with sufficiently enough to keep the public from entering the building and starting fires so CPST issued an Order on August 22, 2022, the subject of today's appeal.
- [47] The majority of the previous Orders were compiled with, except for the one being appealed today. However, that is after a great deal of effort on the City's behalf when it comes to communicating these issues with the property owner. The property owner would secure the building and comply with the Order and it would be breached days later.
- [48] The breaches would be discovered by the Officers in the area and not the property managers. Representatives for the property owners claimed in March, 2022 to have twice nightly security, K-9 inspections, and daily daytime inspections scheduled where they would report any breaches of concerns and deal with the issues themselves.
- [49] The summary of Edmonton Police calls for services, Attachment 7, shows the results of a query that was conducted at the subject site from the time the building was no longer operational and became unoccupied which was approximately October 31, 2020 to September 6, 2022. There were 79 police calls for service which ranged from assisting in other agencies due to safety concerns, break and enters, arson, fire events, suspicious people on the site, assaults, disturbances, warrant arrest and a death.
- [50] The calls for service were directly linked to the subject site and do not account for any disorderly conduct occurring in the area as they began on the site and were later documented as a call for service from an adjacent property.
- [51] When they are considering issuing an Order under Section 546 of the *Municipal Government Act*, to remedy dangerous and unsightly property, they look at the condition of the property and assess if it is detrimental to the surrounding area. They talk to those living and working in the surrounding area. Municipal Enforcement Officers approached neighbouring buildings adjacent to the subject site and handed out a community impact

statement, as sampled on Attachment 13. The statement is a series of questions related to their experiences in the area and how the property may affect their day to day lives.

- [52] They received 35 statements from the surrounding community and the general consensus from the statements was there were negative experiences identified in the area that could be contributed to the subject site. Experiences ranged from witnessing drug use, uncontrolled fires, being harassed while walking by the site, fighting and disturbances, erratic behavior of those occupying the site illegally, and gunshots in the area.
- [53] Community members indicated that it was difficult to enjoy their property because there are no signs of property maintenance which attracts criminal behaviour and the constant issues over the last few years makes them feel unsafe.
- [54] When asked on a course of action that could be taken, the opinion was to demolish the site or turn it into something that will help the surrounding area. If these actions were not taken, the property owners could visit the property more often, ensure that it is maintained, install a fence around it, and have proper security in place.
- [55] They contacted neighbouring buildings adjacent to the property that would be most affected by the subject site. They talked to staff and property managers and provided them with the statement.
- [56] Representatives of the property informed Officers throughout 2022 that they would be pursuing a demolition of the building.
- [57] He reached out to the City Permit and Inspection area to see if any demolition applications were made and the status of them.
- [58] A demolition permit application was received by the City of Edmonton on August 26, 2022 to demolish a Hotel Building. A building permit application was received on August 26, 2022 for demolition. He confirmed the building permit was not issued yet. After the City's review, the Applicant was required to provide additional information because of the unusual nature of the site stability.
- [59] After the most recent Order was issued by the CPST on August 22, 2022, the owners submitted a demolition application four days later, which signals the intention of those in control of the property is to demolish the building.
- [60] He referred to a photograph in Attachment 6. A Municipal Enforcement Officer attended the property on September 6, 2022 and took several photographs of the subject site from public property.
- [61] Photographs 16 to 22 and 25 to 29 show the north side of the building is not secure and is accessible to the public. Photographs 61 and 62 show a basement access point into the building from the east side that had been previously secured. Photographs 63 to 66 show

the components used to board and secure that access point on the east side of the property and are now removed from the building.

- [62] If the exterior of the property was like this during a site check of the property, he would assume one of the access points was not secure and he would conduct an assessment of the building.
- [63] The photographs were taken after numerous Orders were issued to secure the building.
- [64] This is an example of demand on resources and the community is concerned.
- [65] provided the following information in response to questions by the Committee.
 - a) An Order is issued with a set compliance date and if the Order is not complied with by that date the City can do the remedial work themselves. The City has had to board up a property when there is a lack of compliance, but he clarified that the City did not have to take that action in this instance. Every time there is a breach with an Order, they meet with property management who indicates they will secure the property and then it is not done. They still work with the property management but the city is finding the breaches, not the management company.
 - b) He could not confirm the average number of service calls for a specific property.
 - c) He could not confirm what information is needed to apply for a demolition permit. After the application is made, an assessment is done and it is more about the unusual nature of the site stability. The City would have more questions about how the work is going to take place. That is between the Applicant and the City of Edmonton.
 - d) They can use Section 546 of the *Municipal Government Act* to issue an Order for a demolition of the building. The building code permit inspection area referenced in his submission is the permit to do that work not the actual Enforcement Officers that issue an Order to do that work.
 - e) C. Ashmore clarified that they can deal with the property under the *Safety Codes Act* if there is a fire on the property. There is another section that can be used when there is an emergency situation on the property and the City can take actions they feel are necessary to deal with that emergency. The action the City took in this case because of the number of fires was to fence the property and that was done under the *Safety Codes Act* and not through a separate Order.

v) *Position of [REDACTED], City of Edmonton Legal Counsel*

- [66] As set out in his written submission, Section 546 of the *Municipal Government Act* is broken into 2 parts. An Order can be issued if a property is dangerous to public safety or if the property, because of its unsightly condition, is detrimental to the surrounding area.

- [67] Further, in subsection (1), there are options the City can take when issuing these Orders. Pursuant to Section 546(1)(a), the Order can require the owner to eliminate the danger to public safety in the manner specified, which is what this Order does right now, or demolish the structure, which is what the City is asking the Committee to add to this Order. The remainder of Section 546 is not relevant to what is before the Board. Section 546(2) are the additional requirements of the Order, such as stating timeliness and if the Order is not complied with.
- [68] Section 547(2), is the Committee's power to vary, substitute or cancel the Order. There is not a request to cancel the Order. The only request about variation of the Order, other than the demolition, is to clarify what is meant by adequate security. If the Committee clarifies what is meant by public security, the best way to do that is to set a number of security officers on the site. Two onsite security officers would be best.
- [69] There needs to be 24/7 onsite security. The Order is clear what needs to be done at the subject site. The Order complies with the legislation and is warranted with the concerns of several fires and the condition of the property. There is evidence of an issue with public safety.
- [70] The property owner has indicated they do not believe the security will work, so now the issues need to move to the next level and the building needs to be demolished.
- [71] With the evidence presented, the correct response to the overwhelming public safety concerns for the property, is to demolish the building.
- [72] If the Order is varied to demolish the building, a timeline needs to be added. He suggested that a three month timeline would be sufficient because the property owner has already applied for a demolition permit so the process has started.
- [73] There is a City fire watch on the property and the City has fenced the surrounding of the property, which should have been done by the property owners.
- [74] The next step, which is necessary to keep the area safe, is to demolish the property
 - [75] provided the following information in response to questions by the Board.
 - a) If the property owner did not give any indication that they might demolish the building, there might be a procedural fairness issue, but their demolition permit application indicates that they intend to demolish the building.
 - b) The Committee can then make the decision to Order the demolition of the building and can determine how fast that can be done.
 - c) He could not confirm if the building could be demolished in the winter.

- d) The Order does not supersede the demolition permit application. A demolition of a building needs to be done safely; however, if the Order cannot be complied with the City needs to step in.
- e) The property owner had sufficient time to install a fence around the property but it was not done so the City needed to step in.
- f) It is cheaper to demolish a building and rebuild rather than leave it for a long period of time.
- g) They would like the property dealt with in a timely manner so they do not want to see the timing of the demolition in the property owner's control.
- h) By adding the demolition portion and timeline to the Order, that would remove the immediate danger to public safety.
- i) It is outlined in the Order that if the property owner does not comply with the Order, the City will take over and put the cost on the property owners taxes.
- j) If the property owners cannot demolish the building safely, the City will step in and ensure it is done safely.

vi) *Position of [REDACTED], representing McLab Properties*

- [76] The residents at Edmonton House have concerns with health and safety due to the current state and lack of care and maintenance to the building.
- [77] There is security at Edmonton House from 7:00 p.m. to 7:00 a.m. The security at Edmonton House has provided some security for the subject site with calling about fires and issues at the subject site.
- [78] It is an unsafe and unhealthy environment and the residents have concern for themselves and those gaining access to the subject site and first responders.
- [79] Until the recent fencing was put up by the fire department, that is the first time they have seen adequate fencing and security at the site.
- [80] Edmonton House is hoping for action to be done quickly.

[81] [REDACTED] provided the following information in response to questions by the Board.

- a) She confirmed that there is security at Edmonton House from 7:00 p.m. to 7:00 a.m.
- b) In her opinion, two security guards should be able to keep the property secure and safe.
- c) In her opinion, ongoing monitoring needs to be done for the subject site.

vii) Rebuttal of the Applicant,

- [82] The Applicant indicated that the Committee needs to review and clarify that and said they did not comply but they have complied.
- [83] They put in a submission to review the Order and appeal it so they did not comply with this Order in the last 2 weeks, but they have complied with previous issued Orders.
- [84] Putting a timeline on the demolition of the building without having further discussions is premature.
- [85] They would like clarity on the request for security onsite so they can comply with the Order.
- [86] There is fencing onsite from the Fire Department and if it needs to be replaced and installed by the property owner they will comply with that.
- [87] There is continual trespassing and they need help from the City.
- [88] provided the following information in response to questions by the Committee.
 - a) He does not feel a timeline for a demolition should be put in place.
 - b) The safety of the area has nothing to do with the building.
 - c) They need to work together for safety and security from an outside investment.

viii) Rebuttal of , City of Edmonton Legal Counsel

- [89] He referred to the August 26, 2022 email from about the demolition. The email outlined that they applied for a demolition permit to demolish the building and once it is approved they will proceed with scheduling and keep all parties involved.
- [90] He does not believe the building will be dealt with in a timely manner and feels the Committee should put a timeline on their decision.
- [91] provided the following information in response to questions by the Board.
 - a) In his opinion, two security guards during the evening and one during the day would be sufficient for the nature of the property.
 - b) There is no lighting at the subject site since all utilities have been cut off. More onsite security is essential with the lack of lighting.
 - c) He agrees that previous Orders have been complied with; however, the problems continue at the subject Site and another Order needs to be issued. There is a concern with the ongoing compliance before the City has to deal with the property again.

d) He is not concerned with any *Res Judicata* or Issue Estoppel issues, depending on how the Committee words the decision. For example, if the Committee determined there was a procedural fairness issue with including a demolition portion in this decision, they are not necessarily making a finding on the validity of the demolition Order itself. Also, there might be additional fires on the property, so circumstances would then have changed, warranting a demolition Order under the new Order.

ix) Final Rebuttal of the Applicant,

[92] The reference to communication is indicative of their approach. He is suggesting that they would continue to communicate as things move forward and collaborate their approach.

[93] He confirmed that they have complied with Orders in the past.

[94] They have had security and fencing installed but they have no control of the public entering the site.

Decision

[95] The appeal is allowed in part and the Order is varied as follows (**additions underlined and deletions noted in strikeout**):

YOU ARE THEREFORE ORDERED TO:

Eliminate the danger by securing the property, for as long as structures remain on the property, in the following manner:

- Re-secure **and maintain** 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;** and
- Provide, install, **and maintain** security fencing within the property line, providing a barrier around the structure to prevent unauthorized entry to the structure. The fencing shall not encroach on municipal or neighbouring properties; and
- Provide ~~an adequate number of 24-hour~~ onsite security guards to ensure the structure and fence lines are not being breached. **Specifically, you are required to provide:**

One security guard from 7:00 A.M to 7:00 P.M. daily

Two security guards from 7:00 P.M. to 7:00 A.M. daily

YOU MUST COMPLY WITH THIS ORDER BEFORE: October 14, 2022

YOU ARE THEREFORE ALSO ORDERED TO:

- **Remove or demolish the structures and level the site**

YOU MUST COMPLY WITH THIS PORTION OF THE ORDER BEFORE: October 6, 2023

Reasons for Decision

[96] On August 22, 2022, the City of Edmonton issued an Order requiring the property owner to take certain steps to improve public safety at their property. This Order was made pursuant to Section 546 of the *Municipal Government Act* (“the *MGA*”). This is an application for a review of that Order.

[97] The full text of the original Order issued on August 22, 2022 was:

YOU ARE THEREFORE ORDERED TO:

Eliminate the danger by securing the property, for as long as structures remain on the property, in the following manner:

- 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;** and [Condition #1]
- Provide and install security fencing within the property line, providing a barrier around the structure to prevent unauthorized entry to the structure. The fencing shall not encroach on municipal or neighbouring properties; and [Condition #2]
- Provide an adequate number of 24-hour onsite security guards to ensure the structure and fence lines are not being breached. [Condition #3]

YOU MUST COMPLY WITH THIS ORDER BEFORE: August 29, 2022

[98] The Appellant, Sedona Keys Developments Ltd, is the owner of the subject property, which is located at 10209 - 100 Avenue NW, Edmonton. The Appellant appealed the decision in order to ask this Committee to clarify the Order, and specifically what was meant by “adequate security.” In response, the City asked this Committee to exercise the

variance authority granted by Section 547(2) of the *MGA* to impose a more severe condition: that the Committee order the outright demolition of the subject property.

[99] For the reasons that follow, the Committee grants both requests. The Committee exercises its powers under Section 547(2) of the *MGA* to vary the Order in three ways: 1.) to provide greater clarity regarding the term adequate security; 2.) to create an ongoing obligation to maintain fencing and secured points of entry; and 3.) to grant the requested demolition Order.

Factual Findings of the Committee: There Is an Ongoing Risk to Public Safety

[100] The subject property previously operated as a Lodging House, but ceased operations some time in 2020. Since then, the building has been vacant.

[101] On the basis of the evidence provided to the Committee, the City clearly demonstrated that the subject property poses an ongoing risk to public safety. In particular, the following undisputed evidence was supportive of this conclusion:

- i)* There was ample evidence that showed that the property was repeatedly being breached by unauthorized persons who were using the vacant building for shelter. The evidence from the City was that it is unsafe to use the building in this way.
- ii)* According to the City of Edmonton's Fire Rescue Services, there have been 20 fire events in 2022 at the subject property as of the Hearing date, with the most recent string of fire events occurring on September 14, 15, and 16.
- iii)* The summary of the Edmonton Police Service's calls for services, between the dates of October 31, 2020 and September 6, 2022, show that there were 79 calls for service at the subject property. Those calls covered a wide range of reported conduct, including the investigation of breaks and enters, arson, assaults, and a death.
- iv)* In preparation for this hearing, the City's Community Standards and Neighbourhoods Branch gathered 35 statements from surrounding community members. These statements catalogued negative experiences attributable to the subject property, including uncontrolled fires, harassment, disturbances, and drug use.

[102] As stated above, the Appellant did not contradict the evidence of the City or argue that the property was safe. Instead, the Appellant argued that the issues plaguing the property were attributable to the neighbourhood in which the property is located, rather than being caused by the property itself.

[103] On this point, the Committee disagrees with the Appellant. Although it may be true that the characteristics of the surrounding neighbourhood exacerbates any existing public safety risks, the property itself remains the source of those risks.

[104] Since June 6, 2020, there have been five Orders made to the Property Owner pursuant to Section 546 of the *Municipal Government Act*. To the Appellant's credit, the Committee found that in all prior instances where an Order was issued, the City determined that the Appellant achieved at least short-term compliance with the terms of the Order.

The Purpose of Section 546 of the *Municipal Government Act*

[105] The relevant portions of section 546 of the *Municipal Government Act* read as follows:

546(1) If, in the opinion of a designated officer, a structure, excavation or hole is dangerous to public safety or property, because of its unsightly condition, is detrimental to the surrounding area, the designated officer may by written order

- (a) require the owner of the structure to
 - (i) eliminate the danger to public safety in the manner specified, or
 - (ii) remove or demolish the structure and level the site;

546(2) The order may

- (a) state a time within which the person must comply with the order;
- (b) state that if the person does not comply with the order within a specified time, the municipality will take the action or measure at the expense of the person.

[106] In other words, Section 546 contemplates two distinct scenarios that may require remediation by a property owner: first, an “unsightly condition” that is “detrimental to the surrounding area;” second, a property that is “dangerous to public safety.”

[107] The terms “unsightly condition” and “detrimental to the surrounding area” are defined in Section 546(0.1) of the *MGA*. However, the terms “dangerous to public safety” and “public safety” are undefined terms in the *Act*.

[108] Section 547(1) provides that persons who receive a Section 546 *MGA* Order can submit a written request to have that Order reviewed by the municipality’s council. Edmonton’s City Council has delegated this review function to this Committee, pursuant to Bylaw 19003, the *Community Standards and Licence Appeal Committee Bylaw*. Section 547(2) allows this Committee to “confirm, vary, substitute, or cancel” the Order in question.

[109] Taken as a whole, the legislation creates a set of obligations for a property owner. The owner has the dual responsibilities of keeping their property both maintained and safe. Where a property owner fails to meet one of these obligations, the legislation authorizes a municipality to take corrective action against the property owner.

The Term “adequate security” in the August 22 Order was Unclear

- [110] The Appellant appealed this Order on the basis that the requirement to provide “adequate security” in the original Order was not clearly defined. The Appellant argued that nothing would be “adequate” and that placing a ring of security guards around the property, six feet apart from each other, would not solve the problems that plagued the property.
- [111] On the point regarding clarity, the Committee agreed with the Appellant. The undefined term “adequate security” does not provide sufficient guidance for the Appellant. Would the provision of a single security guard be sufficient to meet the terms of this Order? Does two?
- [112] Notably, the evidence from the City of Edmonton’s Fire Prevention department was that the Appellant did have onsite security on or about August 30th, 2022. Despite that, there was evidence that fire events continued to occur into September.
- [113] When asked how the Committee could provide greater specificity to the term “adequate,” the City responded that two security guards at night and one in the day would be reasonable. The Appellant did not contest that submission.
- [114] Therefore, the Committee exercises its authority under Section 547(2) to vary the Order and alter Condition #3 to provide greater specificity to the property owner. The obligation will now be to provide two security guards during the hours of 7pm to 7am and one security guard during the hours of 7am to 7pm.

Creating an Ongoing Obligation to Maintain Adequate Fencing and Prevent Unauthorized Entry

- [115] As stated earlier, the Appellant has complied with all previous Orders from the City. These previous Orders, which include the original wording of the Order under review, have created a series of one-time obligations. In other words, when compliance with the Order has been achieved, regardless of the duration of that compliance, the Order was spent and the City would be unable to take any further enforcement action without first issuing a new Order.
- [116] This approach to crafting Orders has not worked. Despite the evidence of compliance, the subject property has remained a public safety risk. The City argued that the Appellant would do the minimum required to achieve a state of compliance, yet immediately after the Order was spent, the subject property would still require attention from the City’s Fire Department or Police Service.
- [117] In the Committee’s view, the *MGA* can be interpreted in a way that allows this Committee to issue a more robust Order. Section 546(1)(a) states that an Order can require the owner to “eliminate the danger to public safety in the manner specified.” This broad wording could allow the City to issue an Order that creates an ongoing obligation, provided that the Order has a specific end date.

- [118] For these reasons, the Committee exercises its authority under Section 547 of the *MGA* to vary the Order and alter Conditions #1 and #2 to create ongoing obligations for the property owner to prevent unauthorized entry and to maintain adequate fencing.
- [119] The Appellant's broader argument was that, as the property owner, it should not have to bear the sole responsibility for keeping the property safe. The social conditions found in the surrounding neighbourhood are complex and require cooperation from all affected parties.
- [120] To some extent, the Committee is sympathetic to the Appellant's position. The social issues prevalent in downtown Edmonton will persist, regardless of the decision reached in this matter.
- [121] However, the narrow issue before the Committee is whether the subject property presents a risk to public safety as understood in Section 546 of the *MGA*. As explained above, in addition to the benefits enjoyed by being a property owner, there are also certain obligations that must be met. On the evidence, the subject property is a risk to public safety. As the property owner, the Appellant has a responsibility to remediate that risk.

The Subject Property Should be Demolished

- [122] The legislation allows the municipality to make an Order for demolition. As a matter of common sense, this approach should be used sparingly and only as a last resort when Section 546 Orders have not worked to eliminate the risk to public safety. The City argues that we have reached the point where demolition is the only way to permanently remove the threat to public safety. The City urged a timeline of approximately three to six months between the date of the Order and the deadline for the demolition to be completed.
- [123] The Appellant did not contest that demolition was desirable. In fact, the Appellant has already submitted a demolition permit that is under consideration by the City. However, the Appellant argued that this Committee should not impose a specific timeline for the demolition. When questioned by the Committee, the Appellant stated that they would like to have the demolition completed within the year.
- [124] From the evidence, it is clear that the ultimate end for this property will be demolition. Given the ongoing and troubled history of the subject property, the Committee agrees with the City that this is a rare instance where a demolition Order is appropriate. However, the Committee also agrees with the Appellant that a three to six month demolition window is too short. For those reasons, the Committee would impose a compliance date of one year from the current Order. Of course, if the Appellant chooses to complete the demolition on an expedited timeline, they would stand to benefit by being released from their obligations to provide fencing and security.

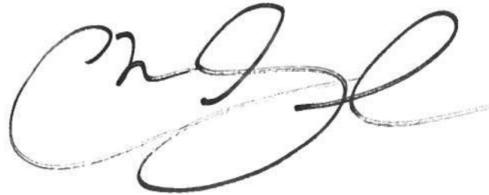
Conclusion

[125] In the result, the Committee would exercise its authority granted to it under Section 547(2) of the *MGA* to make the following changes:

- i)* Vary Condition #3 to provide greater clarity regarding what is required of the property owner.
- ii)* Vary Conditions #1 and #2 to create an ongoing obligation on the part of the property owner for the duration of this Order.
- iii)* Impose an additional condition that requires the demolition of this property, within one year of the date of this Order.

The full and exact wording of the amended Order can be found above at paragraph 95 of this decision.

[126] The Committee would like to thank all parties who attended the hearing for their hard work on this matter.

A handwritten signature in black ink, appearing to read "Chris Samuel".

Chris Samuel, Presiding Officer
Community Standards and Licence Appeal Committee

Important Information for the Appellant

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