

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton),
2022ABECSLAC 10017

Date: October 20, 2022
Order Number: 435925322-001
CSLAC File Number: CSLAC-22-017

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawky, Chair
Chris Samuel
Joel McDonald

DECISION

[1] On October 11, 2022, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on July 18, 2022. 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 July 4, 2022 and was mailed on July 6, 2022 and required the following action:

Remove or cut any tree, shrub, or other type of vegetation that obstructs any sidewalk or alleyway that is adjacent to the land.

Remove damaged, dismantled or derelict vehicles. Add air to vehicles that have flat tires.

Remove all furniture, chairs, tree branches, shelves, cardboard, plastic, bins, carpet, sink, wood, shopping cart, metal, broken flower pots, broken patio furniture, non approved waste containers, cookware, pots, auto parts, hub caps, tarps, metal cage, plastic file cabinets, pop containers, broken lawn mowers, laundry baskets, garbage bags, recycle bags, 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.

All yard tools that are not broken please organize and store in garage or house.

YOU MUST COMPLY WITH THIS ORDER BEFORE: July 28, 2022

- [2] The subject property is located at 13603 - 136 Avenue NW, Edmonton.
- [3] The hearing on October 11, 2022 was held through a combination of written submissions and video and telephone 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 Applicant's written request for review, subsequent email correspondence and photo submissions; and,
 - The Respondent's written submission, including a series of photographs.
- [4] The following exhibit was presented during the hearing and forms part of the record:
- Exhibit A – 15 photographs taken on October 11, 2022 from the Applicant.

Preliminary Matters

- [5] Prior to the start of the hearing, the Chair explained the reason for recording the audio portion of the hearing. The Applicant confirmed she had no objection to the hearing being recorded.
- [6] 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.
- [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*.
- [9] The Applicant confirmed that she was no longer seeking a Postponement.

Summary of Hearing

i) Position of the Applicant,

- [10] The Applicant's neighbour entered her yard on several occasions and illegally cut and burned her hedge and left the debris as well as tools on the front lawn. The Applicant cleaned up the majority of the debris but left the abandoned tools.
- [11] The Applicant has someone coming this week to deal with the tree that is hanging over her fence line into the alley. She cannot do anything about the other trees because the neighbour's wires are hanging over her garage. She has asked both the property owner and the neighbour to move the wires but they have not done so.
- [12] The red car referred to in the Order is in working condition. She had someone inflate the tire and turn the car around so that the damaged portion was not visible from the alley. She does not know why the tire is again deflated and intends to have it repaired by the end of the month so it will stay inflated. The other two vehicles are also operable and she does not understand why she has to move them.
- [13] The Order states that all furniture must be removed including a chair on the porch and a shelf which is at the back door. These items are required by the Applicant due to her disabilities.
- [14] The Applicant agrees that the June 30, 2022 photographs accurately show the state of her yard on that day. Medical issues and difficulties getting help during COVID-19 were contributing factors. A lot has been cleaned up since the Order was issued and believes what remains should be allowed to stay in the yard.

A short adjournment was called to give the Applicant the opportunity to email some photographs that were taken this morning showing the current condition of the yard. Fifteen photographs were provided and shared with the Committee and the Respondent.

- [15] The Applicant would like the Order to be amended to allow the items that are still in the yard to remain. She has disabilities and requires certain things to put groceries and other items on when she walks from the front to the back.
- [16] One of the photographs she submitted (Image 3003) shows a piece of furniture that she requires to put her dehydrator on. It is on wheels and easy to move.
- [17] She would like the cars to remain where they are. The red car has been turned around so the dent cannot be seen. A lot of other people also have cars in their driveways.
- [18] The Applicant provided the following responses to questions from the Committee:
- a) The debris from the tree overhanging the alley will be gone when the fall garbage pick-up occurs (by the end of the month).

- b) The green SUV is not damaged and is operable but she is not sure if it is currently insured. She does not know if any of the vehicles are currently registered but she does not think vehicles have to be registered in order to be on the property.

ii) *Position of the Respondent, C. Perizzolo*

[19] C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.

[20] She provided the following summary of the bylaw investigation:

- a) June 16, 2022: A Bylaw Officer attended the property in response to a citizen's complaint regarding the untidy and unsightly condition. He found the property to be in a nuisance condition with an excessive accumulation of items as well as damaged and / or derelict vehicles.
- b) June 20, 2002: A Notice of Entry was mailed to the property owner to allow for a full inspection on June 30, 2022.
- c) June 30, 2002: The Bylaw Officer attended the site and found several items contributing to the nuisance condition throughout the entire yard. Eighteen photographs were taken on this date depicting broken and damaged furniture, carpet, scrap metal, scrap wood, vehicle parts, tree branches, garbage bags, and other debris.
- d) The Bylaw Officer also reported an overhanging tree obstructing the rear alley.
- e) At the rear of the property, the Bylaw Officer noted two damaged and / or derelict vehicles. The evidence confirming the vehicles' conditions are as follows:
- Red Car - a flat tire on the driver's side at the front, a broken headlight and damage at the front end of the vehicle.
 - Green SUV - the vehicle was surrounded in debris indicating the vehicle had not recently moved and was not currently being used for transport. A tree was growing in towards the passenger side of the vehicle and the tires were sunk into the ground adjacent to the driveway.

[21] Section 6 of the *Community Standards Bylaw 14600* states:

- (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;

.....

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

.....

- (g) any tree, shrub, other type of vegetation or any structure:
 - (i) that interferes with or could interfere with any public work or utility.

[22] As a result of the June 20, 2022 inspection, a section 545 *Municipal Government Act* Order was issued on July 4, 2022.

[23] Section 545(1) of the *Municipal Government Act* states:

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.

[24] Based on the above information and the photographs provided, the City is satisfied that the Applicant has contravened section 6.1 of the *Community Standards Bylaw*.

[25] The Bylaw Officer spoke with _____ on July 31, 2022 and August 15, 2022 in order to provide support and resources. _____ said her health was poor and it was difficult to comply with the Order. The Bylaw Officer provided a number of options including contacting Sage Seniors Association and provided information on three upcoming big bin events where the Applicant could dispose of items for free.

[26] Three Notice of Entries were issued for a follow-up inspection; however, at request, the Bylaw Officer did not attend or re-inspect her property.

[27] C. Perizzolo provided the following responses to questions from the Committee:

- a) A bylaw investigation can result from a citizen’s complaint as well as from proactive patrols. A single complaint will prompt an investigation. Their role is to verify if a bylaw violation is present.
- b) When a Bylaw Officer attends a site they are looking to determine if there has been a violation of section 6 of the *Community Standards Bylaw* and they focus on whether there is a serious disregard for general maintenance and upkeep as that is

the definition of a nuisance within the bylaw. Further to that, they look at the definitions provided in section 6 that help create that definition.

- c) The Respondent referred to section 1 of the *Community Standards Bylaw* which states:

The purpose of this bylaw is to regulate the conduct and activities of people on privately owned property and immediately adjacent areas in order to promote the safe, enjoyable and reasonable use of such property for the benefit of all citizens of the City.

- d) As per section 1, the Bylaw Officer looks to see if the property is safe and if it is contributing to a livable, vibrant city and if any items are present that would contribute to the serious disregard for general maintenance and or upkeep.
- e) Basically, the Bylaw Officer determines if the yard is a mess and if it is they initiate warnings. They take an education over enforcement approach and try to work with the property owner as much as possible to achieve compliance.
- f) The Respondent confirmed that she has reviewed the photographs that the Applicant submitted this morning and it appears work has been done to improve the yard and some areas appear to be cleaner. However, without an inspection, she cannot say definitively that compliance has been achieved.
- g) Photographs No. 13 and 14, taken on June 30, 2022, support the requirement in the Order that states "Remove or cut any tree, shrub, or other type of vegetation that obstructs any sidewalk or alleyway that is adjacent to the land." If a utility vehicle such as Waste Services were to drive down the alley there would be an obstruction.
- h) The Respondent would not object if the Committee were to extend the timeline for complying with the removal of trees and vegetation to November 1, 2022.
- i) The biggest concern with regard to vehicles is that they can be safely started and moved for emergency access. The red vehicle is currently not operable as one of the tires is deflated. The green vehicle is derelict as it has been there for a number of years and the tires have sunk into the ground. That vehicle is not fully parked on the driveway and there is a tree that is now bending to the shape of the vehicle. It is not clear if it is operable.
- j) After reviewing the current photographs provided by the Applicant, the Respondent does not believe that all of the requirements of the Order have been fully complied with.
- k) Because this is a section 545 Order, the Bylaw Officer is looking to see if there has been a violation of section 6 of the *Community Standards Bylaw*. In addition to the

examples listed in the bylaw, they also look at the impact to the community as well as safety.

- l) It does not matter if the nuisance is in the front yard, backyard or in the lane. A yard full of items contributes to a safety risk and there is an impact to the community. If someone were to enter the yard a lot of items piled up could be a hazard.
- m) An accumulation of material could be a fire hazard. Vehicles must be able to be moved quickly in order to save a structure in the event of fire. The excessive accumulation of material could also make it difficult for access to the property for emergency services with a stretcher or a wheelchair or other equipment.
- n) If the accumulation of materials or inoperable vehicles are removed, the risk is removed. That is how the point of safety is arrived at.
- o) Bylaw Officers do their best to connect with the property owners to have conversations on how best to comply with the Order and discuss exactly what items can remain and which ones need to be removed. In this case, the Bylaw Officer issued three additional Notice of Entries but the property owner refused them entry to the property.

iii) Rebuttal of the Applicant

- [28] The Applicant believes the next door neighbour filed a complaint against her because she did not allow this neighbour to sell her the subject cars and did not give this neighbour money to buy cigarettes.
- [29] She does not dispute her yard was a mess. Personal circumstances during the last two years have made it impossible for her to keep it clean.
- [30] The west yard was done two weeks ago but is full of debris again as the leaves keep dropping.
- [31] She does not believe there was a fire risk as the spring and summer were very wet.
- [32] The Appellant needs the barrels at the west fence to dampen the noise from the neighbour's yard and to help keep out the smoke from the neighbour's fire pit.
- [33] She does not see anything wrong with having a hanging chair on the tree and she requires some of the furniture that she is being asked to remove.
- [34] The plant pots are for use in the spring. They are for her garden although she was not able to use them this past summer because of her health issues. There are more garden items along the garage. She was not able to find any broken pots or broken tools in her yard other than the tools left in her front yard by the neighbour.

- [35] The Applicant disputes that there were tires in her yard.
- [36] There are two barrels full of pop bottles which she has to count and send in.
- [37] Some of the supplies in her yard will be used to build a raised garden bed when someone has time to help. The dirt in the bags is required for this garden bed.
- [38] The Order incorrectly states there were car parts in the yard. She had two hubcaps which were used to feed the birds.
- [39] The metal cage referred to in the Order is being used as a table.
- [40] The Applicant provided the following responses to questions from the Committee:
- a) She was never informed that her property presented a public safety risk.
 - b) She was upset that the Bylaw Officer told her that since she had health problems she should not be living at this property. She was never advised of any help that was available and thought the whole idea was to keep seniors in their homes as long as possible.
 - c) She could not have foreseen that she would require emergency surgery during COVID-19 and she did not realize how often she would be back and forth to the hospital and how difficult it would be to get help during COVID-19.
 - d) She does not understand why the June 30, 2022 photographs were not provided to her right away. She did not want to allow the Bylaw Officer to do any follow up inspections as she was worried it would cost her more money every time the Bylaw Officer attended her property. She was also provided with very little notice by the Bylaw Officer to allow entry - less than a day's notice.
 - e) The Bylaw Officer wanted to come out earlier than what the rules stated because she was going on vacation. The Applicant did not feel it was fair that she had to comply with the Bylaw Officer's wishes all of the time.
 - f) The orange lawnmower in the yard works. The other mowers have been removed.

iii) Rebuttal of the Respondent

- [41] The Respondent declined the opportunity for any further comments.

Decision

- [42] 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:

~~Remove or cut any tree, shrub, or other type of vegetation that obstructs any sidewalk or alleyway that is adjacent to the land.~~

Remove the two damaged, dismantled or derelict vehicles stored on the property. ~~Add air to vehicles that have flat tires.~~

~~Remove all furniture, chairs, tree branches, shelves, cardboard, plastic, bins, carpet, sink, wood, shopping cart, metal, broken flower pots, broken patio furniture, non-approved waste containers, cookware, pots, auto parts, hub caps, tarps, metal cage, plastic file cabinets, pop containers, broken lawn mowers, laundry baskets, garbage bags, recycle bags, 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.~~

~~All yard tools that are not broken please organize and store in garage or house.~~

YOU MUST COMPLY WITH THIS ORDER BEFORE: **November 20, 2022.**

Reasons for Decision

[43] This review involves an Order issued to the Applicant by the City pursuant to section 545(1) of the *Municipal Government Act* (“MGA”) which states:

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.

[44] The Committee first considered the background information.

[45] After receiving a complaint concerning the subject property through its 311 system, the City initiated an investigation in the normal course. As part of the investigation, a City representative formally inspected the subject property on June 30, 2022. He determined that it was in a nuisance condition with an excessive accumulation of items as well as damaged and / or derelict vehicles in contravention of section 6(1) of the *Community Standards Bylaw* (“Bylaw”) which prohibits nuisance on land.

[46] The City representative issued an Order per section 545 of the MGA. The Order was dated July 4, 2022. It identifies the *Bylaw* contravention and orders the Applicant to take three actions before July 28, 2022:

1. Remove or cut any tree, shrub, or other type of vegetation that obstructs any sidewalk or alleyway that is adjacent to the land.
2. Remove damaged, dismantled or derelict vehicles. Add air to vehicles that have flat tires.
3. Remove all furniture, chairs, tree branches, shelves, cardboard, plastic, bins, carpet, sink, wood, shopping cart, metal, broken flower pots, broken patio furniture, non approved waste containers, cookware, pots, auto parts, hub caps, tarps, metal cage, plastic file cabinets, pop containers, broken lawn mowers, laundry baskets, garbage bags, recycle bags, 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.

[47] At the hearing, the City representative contended that the Order as written was valid and properly issued. They submitted a report with 18 photographs of the subject property taken during the inspection to support the Order. They argued that the photographs clearly show a nuisance condition in contravention of the *Bylaw* existed at the date of inspection.

[48] The City representative indicated that subsequent to the issuance of the Order, the inspector spoke with the Applicant twice to try to bring the situation to a resolution and provide support. However, the City representative could not speak to the current condition of the property as the Applicant has declined their last three attempts to enter and reinspect for compliance.

[49] The Applicant candidly acknowledged that for various reasons, at the time of the inspection, the property was “a mess” and she agreed that something had to be done including the removal of some items shown in the inspection photographs. However, she took issue with: comments made during her subsequent interactions with the inspectors; the totality of the Order, including the number of items required to be removed; and, the deadline for compliance.

[50] The Applicant provided a series of recent photographs to prove substantive compliance and argued that the remaining items (including the red and green vehicles) shown in her photographs should not have been included in the Order and should be allowed to remain. She also indicated that clean up was ongoing and would include additional yard work and the removal of some tree branches and other vegetation. In her view, the matter was prompted by an unfair complaint and the City had gone too far in the Order. The Applicant asked the Committee to amend the Order to allow the items that are still in the yard to remain and to allow the cars to remain where they are in the rear of the property.

[51] The Committee is mindful that it is a serious matter when a municipality finds a specific bylaw violation and takes steps to issue a section 545 Order directing the responsible person to clean up a property. There can be significant legal and financial consequences to

the recipient for failure to comply. A noncompliant recipient may be fined up to \$10,000 or be ordered to an imprisonment for not more than one year, or both (*MGA* section 566). In addition, if the clean up does not happen within the specified time, then the *MGA* authorizes the municipality to take remedial action to achieve compliance with the Order at the expense of the recipient and to add those costs to the tax roll for the property (*MGA* section 553).

[52] In the Committee's view, a section 545 Order may go no further than to order the recipient to take the steps that are necessary to remedy the identified contravention of a specified bylaw. The interests of fairness also demand that the Order be clearly worded so that a recipient may understand the extent of the alleged contravention and the specific actions required to achieve compliance within the imposed timeframe.

[53] With these principles in mind, the Committee considered the specific wording of the Order, the inspection photographs and the relevant sections of the *Bylaw*, including section 6 which the Order alleges has been contravened and section 1 which sets out the purpose of the *Bylaw*:

The purpose of this bylaw is to regulate the conduct and activities of people on privately owned property and immediately adjacent areas in order to promote the safe, enjoyable and reasonable use of such property for the benefit of all citizens of the City.

[54] The Committee agrees with the City representatives that the inspection on June 30, 2022 revealed a nuisance condition contrary to section 6 of the *Bylaw*. The Committee also finds that the requirements in the Order as written are unreasonable and beyond the purpose of the *Bylaw*. Consequently, the Committee varies the Order as noted in paragraph 42 above for the following reasons.

[55] The Committee removes the first requirement based on a review of the inspection photographs provided by the City. In particular, the Committee is not satisfied that the tree shown in photographs 13 and 14 is obstructing any sidewalk, or alleyway adjacent to the subject property and therefore does not fit within the example of nuisance specified in section 6(2)(g) of the *Bylaw*.

[56] The Committee heard that the second requirement for clean up pertaining to vehicles refers to a green SUV and a red car shown in both the inspection photographs taken on June 30, 2022 and the more recent photographs taken by the Applicant just a few days prior to the hearing.

[57] The Committee finds based on the photographs and the Applicant's submissions that both vehicles fit within the scope of nuisance in respect of land prohibited in section 6(1) of the *Bylaw*. The front end of the red car is clearly significantly damaged. This damage goes well beyond the tire and may well affect the driveability of the vehicle. Turning this vehicle around does not make it any less damaged. Further, the damage remains a visible eyesore

even though the vehicle has been turned. The photographs of the green SUV vehicle confirm the Applicant's own submissions and show that it has been left in place partially on the rear driveway for a very long time, indeed long enough for mud to accumulate around and partially bury some of its tires and for vegetation to grow in a manner which accommodates its shape. The Committee finds that the green SUV is a derelict vehicle.

[58] Section 6(2)(b) of the *Bylaw* provides that damaged, dismantled or derelict vehicles or motor vehicles (insured or registered or not) are an example of a prohibited nuisance. The Committee finds that these two vehicles fit within that definition and consequently storing these two vehicles on and beside the rear driveway is a contravention of the *Bylaw* and is contrary to its purpose. Therefore, the Committee affirms this requirement with clarification. The Committee alters the Order to require that these two vehicles in their current condition must be removed from their location on the property.

[59] The Committee deletes the third requirement entirely. The Order as written requires the removal of all items from all portions of the property. In the Committee's view, this requirement is not reasonable because it is vague and overly broad in several respects:

- a. This requirement includes a long list of items and begins with the modifier "**all**" even though from the evidence it is clear that some of the items could not be considered part of a nuisance or items which show a serious disregard for general maintenance and upkeep, or an excessive accumulation of items as otherwise described in section 6 of the *Bylaw*;
- b. The list of items that the Applicant ordered to remove also includes "**other assorted materials from the entire property**";
- c. Above and beyond these two requirements, the Applicant is ordered to take "any actions or remove any other items that are contributing to the unsightly condition of the property";
- d. An apparent request is added that "all yard tools that are not broken please organize and store in garage or house." There is no such requirement in the *Bylaw*.

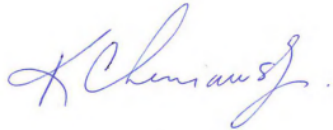
[60] The Applicant asked that the Order be altered to state that all items in the photographs she provided be authorized to remain in her yard. The Committee declines the request for the following reasons:

- a. The Committee notes that the City provided no updated photographs as the last three attempts for entry were refused by the Applicant and after reviewing the current photographs provided by the Applicant, they do not believe that all of the requirements of the Order have been fully complied with.

- b. Section 545 authorizes a designated City representative to issue an Order to remedy a bylaw contravention that the City is authorized to enforce if the circumstances require it.
- c. Section 547(2) of the *MGA* authorizes this Committee to review an issued Order under section 545, and then to confirm, vary, substitute or cancel it.
- d. The Committee finds that there is insufficient evidence before it to make a finding (beyond the two vehicles discussed above) about whether or not a nuisance is continuing to exist on the subject site or to form the basis for substituting the section 545 Order per section 547 of the *MGA*.

[61] The Committee makes no findings or comments regarding the current status of the property or the possible validity of a more specific and limited section 545 Order that may or may not be issued by a designated representative.

[62] For these reasons, the Order is varied as specified in paragraph 42.

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 – J. Lallemand, C. Perizzolo

Important Information for the Applicant

1. A person affected by this decision may appeal to the Alberta Court of King's Bench under Section 548 of the *Municipal Government Act*, RSA 2000, c M-26 if the procedure required to be followed by this Act is not followed, or the decision is patently unreasonable.