

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2024
ABECSLAC 10015

Date: October 30, 2024
Order Number: 526820310-001
CSLAC File Number: CSLAC-24-015

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Joel McDonald
Don Fleming

DECISION

[1] On October 22, 2024, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an Order that was filed on October 8, 2024. 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 September 20, 2024 and was mailed on September 23, 2024 and required the following action:

Cut all long grass and weeds to below 10 centimeters in height.

Remove damaged, dismantled or derelict vehicles, specifically the RV, and other assorted materials from the entire property, and take any actions or remove any other items that are contributing to the unsightly condition of the property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: October 15, 2024.

- [2] The subject property is located at 12127 - 66 Street NW, Edmonton.
- [3] The hearing on October 22, 2024 was held via 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 submissions; and
 - The Respondent's submissions.

Preliminary Matters

- [4] The request for review was filed by _____ with written authority of the recipient (_____) on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

- [5] Neither the Applicant or Respondent attended the hearing. Both asked that the review be determined on the basis of their written submissions. The Committee proceeded based on these submissions.

Decision

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

Cut all long grass and weeds to below 10 centimeters in height.

Remove the RV and trailer from its location on the boulevard outside of the perimeter fence along 66 Street.

YOU MUST COMPLY WITH THIS ORDER BEFORE: October 15, 2024.

Reasons for Decision

- [7] This is a review of an order citing a breach of section 6(1) of the *Community Standards Bylaw 14600* (the "Order") dated September 20, 2024.
- [8] It was issued by the City of Edmonton's Community Standards & Neighbourhoods Branch under authority of section 545 of the *Municipal Government Act*, RSA 2000, c M-26 (the "MGA").
- [9] The Order alleges a nuisance on land condition exists at the subject property based on observations made during an inspection of it on September 19, 2024.

- [10] The recipient landowner, ., is ordered to take two actions by October 15, 2024. First, cut all long grass and weeds to below 10 centimeters in height. Second, remove damaged, dismantled or derelict vehicles, specifically the RV, 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.
- [11] Section 547(1) of the *MGA* provides that any recipient of a section 545 Order has the right to request a review within 14 days. With the approval of the recipient, the current tenant who occupies the subject property, requested this review. He objected to the Order on several grounds asking for both the Order and a ticket issued contemporaneously to be withdrawn or canceled.
- [12] The Committee has no jurisdiction with respect to the ticket. That matter is dealt with in the Courts. The Committee makes no further comment with respect to the ticket.
- [13] Section 547(2) of the *MGA* defines the Committee's authority. It states that after reviewing the Order, council may confirm, vary, substitute or cancel it. Through the *Community Standards and Licence Appeal Committee Bylaw 19003*, the Edmonton City Council delegated this authority to hear reviews of section 545 Orders to this Committee.
- [14] In accordance with section 547 of the *MGA* and the *Community Standards and Licence Appeal Committee Bylaw*, the Committee considered the objections raised by the Applicant in his written submissions in view of all the materials (including notes, photos and maps) submitted to it by both parties.
- [15] In the written submissions, the Applicant argues that the Order should not have been issued and is improper for several reasons, including:
- i) The person whose complaint prompted the inspector's actions must be disclosed and should be a neighbour.
 - ii) The Order was addressed to the owner of the property and not to who occupies the property.
 - iii) The Order should not be issued before the validity of the ticket is finally resolved.
 - iv) The evidence and procedures, including disclosure and rules of procedure, are unfair and biased toward the City.
 - v) The state of the property is consistent with other properties in the area. There are properties in worse condition, including City owned properties shown in submitted photos. The City must disclose evidence of equal enforcement respecting those properties before proceeding.

- vi) The state of the property including the weeds and motor home do not constitute an eyesore in the context of this area, nor do they fit the definition of nuisance.
 - vii) The Order is invalid because it is vague and fails to specify corrective measures. Also it conflicts with the inspectors notes, with an earlier Notice to Comply.
- [16] C. Holstead, Manager, Complaints and Investigations Section, responded on behalf of the City. She argued that the Applicant contravened Section 6(1) of the *Community Standards Bylaw* and requested that the Order be upheld.
- [17] The Respondent provided the Applicant and the Committee with a report of the investigative notes, argument and inspection photos.
- [18] The Respondent declined to provide information about the identity of the complainant, nor about any enforcement steps that may or may not have been taken against other properties.
- [19] The Respondent also submitted a package of documents which included photos, a map and the following background information:
- i) A Bylaw Officer observed a nuisance condition on the property on August 21, 2024, which included long grass and weeds over 30 centimeters in length and a damaged RV. It was missing the entire front end and bumper and appeared inoperable. It was being stored on top of a large flatbed trailer at the front of the property, outside the fenceline.
 - ii) A Notice to Comply was mailed to the property owner on August 22, 2024, with a compliance deadline of September 7, 2024 directing the grass and weeds to be cut and the RV be removed, covered or repaired.
 - iii) The Officer returned to the property on September 19, 2024, and observed that the nuisance condition was still present. A violation ticket was issued to the Property Owner for non-compliance with the *Community Standards Bylaw*. The next day the Order was issued to the owner.
 - iv) Property records show a Development Permit was issued in 1995 to operate an Automotive and Equipment Repair Shop. There is currently no active business license associated with the address that would permit any business activities, including those related to automotive repair storage.

- [20] The Committee makes the following findings and conclusions.

Complainant

- [21] The Committee is not persuaded that the identity of a complainant must be disclosed and should be a neighbour or the Order is invalid. The Bylaw does not require a complaint to

trigger an investigation in any event. The main question for the Committee to determine based on the submitted evidence is: on the day the Order was issued, did a nuisance on land condition exist at the subject property?

Recipient

- [22] Section 5 of the *Community Standards Bylaw* states: “For the purposes of this Part, a person who owns or occupies land shall be considered to occupy that portion of any highway between the property line and the centre line of the highway.”
- [23] Section 6(1) of the *Community Standards Bylaw* states “A person shall not cause or permit a nuisance to exist on land they own or occupy”.
- [24] Based on the plain wording of these provisions, the Committee finds that issuing the Order to the property owner of the subject property was in accordance with the *Bylaw*.

Contemporaneous municipal ticket and order of proceedings

- [25] As indicated above, this Committee has no jurisdiction with respect to the ticket issued contemporaneously with the Order. There is no provision in the Bylaws that dictate an order of proceeding as between an Order and a ticket, nor any provision that one consequence for a breach of the *Community Standards Bylaw* must be resolved finally in law before another consequence may be imposed. Fines and tickets have different consequences.
- [26] Further, Sections 542 through 547 of the *MGA* contemplate a speedy resolution of these types of Orders and the delay created by postponing the issuance of an Order until the judicial resolution of the validity of an associated ticket runs contrary to this statutory intention.

Disclosure, submitted evidence and Committee Procedure

- [27] The Committee is not persuaded that there has been an unfairness or prejudice to the Applicant by the disclosure of the City’s evidence or the hearing procedure in this case. The question at issue is whether or not the evidence submitted shows that there was a nuisance on land occurring on the property he occupied on the date of the Order.
- [28] Disclosure respecting this issue was made by the Respondent in accordance with the timelines set out in the Manual for the Committee. In response to the request for a review, the Applicant acknowledged that he received significant additional early disclosure well in advance of the hearing, although he deemed it insufficient.
- [29] The Committee notes that gathering of evidence concerning the state of the subject property, is entirely within the Applicant’s control. In fact, he did provide some photos of the property he occupies. Both parties were able to provide evidence about the state of the

property and they both did. The Applicant provided several written submissions including submissions delivered moments before the hearing was to begin.

- [30] The Committee does not agree that its general practice concerning the order of appearance in its proceeding is unreasonable or unfair. The Applicant is seeking the review and as in any appeal the appellant generally presents their case first. The Committee always allows the Applicant the final right of reply and also will consider any requests for an adjournment raised in the hearing.
- [31] If a particular concern arises, the Committee has allowed the order of appearance to change. In any event, there were no oral representations as both parties chose to proceed by written submission. The Committee accepted additional written submissions from the Applicant just moments before the hearing was to begin.

Appearance of neighbouring properties, including City owned properties

- [32] As noted above, the issue before the Committee concerns the validity of the Order and more specifically an examination of whether or not the conditions on the subject property constituted a nuisance on land as defined in the *Community Standards Bylaw*. In the Committee's view the state of neighbouring properties is not germane to this issue.

Content of the Order

- [33] The Order alleges a nuisance on land condition and requires the recipient to do two things. First, cut all long grass and weeds to below 10 centimeters in height. Second, remove damaged, dismantled or derelict vehicles, specifically the RV, 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.
- [34] The Applicant argued that the property did not constitute a nuisance. In support, he provided several legal and common definitions of the word nuisance.
- [35] However, in the context of this hearing nuisance has a unique meaning. Nuisance is a defined term. Section 6 of the *Bylaw* states in part:
- 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;...

[36] The Committee evaluated the case based on this meaning of nuisance.

[37] With respect to the first requirement in the Order, the Committee finds that the photographs taken by the inspector on September 19, 2024 show unkempt grass or weeds higher than 10 centimeters. The photos depict a situation which fits squarely within the *Bylaw* definition of nuisance on land in section 6(2)(d). The Committee therefore confirms the first requirement of the Order.

[38] After a review of the inspector's notes, the submissions and all of the inspection photos taken September 19, 2024, the Committee decided to vary the second requirement.

[39] The Committee agrees with the Applicant that this requirement is overly broad and insufficiently clear about the precise actions required for compliance. Therefore, the Committee finds this clause vague and overly inclusive. The Committee strikes the phrase "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" from the Order.

[40] However, the Committee agrees with the Respondent that the damaged RV being stored on a trailer outside the perimeter fence on the boulevard immediately next to the public sidewalk and roadway is a nuisance on land as defined in the preamble in section 6(2) and the specified example in subsection 6(2)(b). Reinspection photos dated September 19, 2024 numbered 4, 5, 6 and 7 clearly establish the nuisance condition is present and has existed for some time given the weed growth around the trailer. The Committee notes that per section 5 of the *Community Standards Bylaw*, the recipient is responsible to maintain this boulevard area location in accordance with the *Bylaw*. The Committee confirms this aspect of the Order.

[41] For all of these reasons, the Order is varied as described above.

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

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.