

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL Committee

Citation: Helm Property Management v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10015

Date: April 28, 2021
Order Number: 364202771-001
CSLAC File Number: CSLAC-21-015

Between:

Helm Property Management

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Ian Wachowicz, Chair
Kathy Cherniawsky
Rohit Handa

DECISION

[1] On April 20, 2021, the Community Standards and Licence Appeal Committee (the “Committee”) heard an appeal that was filed on February 24, 2021. The appeal concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 545(1) of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order is dated July 8, 2020 and was mailed on July 9, 2020, and required the following action:

Remove all graffiti displayed on the rear fence and entire building and/or structure that is visible from any surrounding property.

YOU MUST COMPLY WITH THIS ORDER BEFORE: August 2, 2020

[2] The subject property is located at 9375 - 172 Street NW, Edmonton.

[3] The appeal hearing on April 20, 2021 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*;
- A copy of the Notice of Entry;
- The Appellant's written request for appeal and submission; and
- The Respondent's written submission, including a series of photographs.

Preliminary Matters

[4] At the outset of the appeal 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 Chair raised a preliminary jurisdictional issue regarding when the appeal was filed. The Presiding Officer explained to the Appellant that the Board is constrained by the 14-day limitation period prescribed by section 547(1)(a) of the *Municipal Government Act*, RSA 2000, c M-26 ("*Municipal Government Act*" or "*MGA*"), which states:

Review by council

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, and

(b) 7 days after the date the order is received, in the case of an order under section 546,

or any longer period as specified by bylaw.

[7] The Board must therefore determine whether the Appellant filed the appeal within the 14-day limitation period. If the appeal was filed late, the Board has no authority to hear the matter. The Board invited submissions on this preliminary issue.

Summary of Preliminary Matters

i) *Position of the Appellant, Helm Property Management and Realty Ltd.*

[8] The Appellant was represented by

[17] The *MGA* Order was sent by regular mail on July 9, at 8:30 a.m. Section 547 of the *Municipal Government Act* allows for 14 days to file an appeal; therefore the appeal should have been submitted by July 30, 2020.

iii) Rebuttal of the Appellant

[18] The only letter received from the Board of Directors is dated August 11, 2020 and that is what he responded to.

Decision

[19] The Board does not assume jurisdiction.

Reasons for Decision

[20] This is an application for a review of a written Order issued by the City of Edmonton pursuant to section 545 of the *Municipal Government Act*.

[21] Section 547 of the *Municipal Government Act* allows a person who has received a written Order under section 545 to seek, by written notice, a review of that Order. The bylaws of the City of Edmonton have delegated the function of reviewing section 545 Orders, pursuant to Section 547, to this Committee. Section 547 requires that such written requests be made within 14 days after the date the Order is received.

[22] Ms. Perizzolo of the City of Edmonton provided evidence that the section 545 Order was mailed by ordinary mail on July 9, 2020 and the *Interpretation Act*, RSA 2000, c I-8, deems that the document has been received seven days after mailing. Accordingly the receipt of the section 545 Order is deemed to have occurred in July, 2020 and the written request for a review is made far outside of the 14 day time period.

[23] The Committee also considered the possibility that the Appellant did not receive the section 545 Order; however, the Committee notes that although Mr. Helm indicated he did not have the Order with him; he was not able to distinctly confirm that it was never received by the Condominium Corporation.

[24] Even if the Order was never received, Mr. Helm acknowledges receipt of the follow-up document, the Notice of Entry, which was dated August 11, 2020, and forwarded to him by the Condominium Corporation. At that time, even if the section 545 was not received, the Appellant ought to have known that a section 545 Order had been sent. As a result, even if the time had started to run after receipt of the Notice of Entry, the request for review is still months outside of the 14 day time period.

[25] The 14 day period to seek a written review, pursuant to section 547, cannot be extended by this Committee. This section explicitly gives power to the municipality to extend that

period but only by way of bylaw. This implies that the appeal timeline cannot be simply extended by this Committee or even by any other method other than bylaw.

- [26] As neither Mr. Helm nor Ms. Perizzolo were aware of such a bylaw, the time cannot be extended by this Committee and the 14 day time period is binding upon this Committee.
- [27] The time period set out in section 547 is essential to be followed because the structure of section 545 is such that it allows a municipality to issue an Order that directs a person to clean up property if they are violating the *Community Standards Bylaw*. It states that if it does not happen within a certain specified time, then the municipality has the right to take action at the expense of the person receiving the Order.
- [28] As a result, section 545 requires that these reviews of Orders must be done in a timely fashion. The review should be conducted prior to the municipality engaging in the remedial work.
- [29] For the above reasons, this Committee does not have jurisdiction to review the Order.

A handwritten signature in blue ink, appearing to read "I. Wachowicz".

Mr. I. Wachowicz, Chair
Community Standards and Licence Appeal Committee

cc: Helm Property Management
Community Standards and Neighbourhoods – J. Lallemand, C. Perizzolo

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.