

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: R. C v Community Standards and Neighbourhoods (City of Edmonton), 2021
ABECSLAC 10026

Date: July 7, 2021
Order Number: 390611807-001
CSLAC File Number: CSLAC-21-026

Between:

R. C

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Joel McDonald

DECISION

[1] On June 15, 2021, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an order that was filed on May 10, 2021. The request for review 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*” or “*Act*”). The Order was dated April 27, 2021 and was mailed on April 29, 2021 and required the following action:

Remove all metal, plastic, carts, shopping carts, wood, tables, 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.

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 24, 2021

[2] The subject property is located at 10946 - 154 Street NW, Edmonton.

[3] The hearing on June 15, 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:

- A copy of the Order issued pursuant to the *Municipal Government Act*;
- The Applicant's written request for review and submission; and
- The Respondent's written submission, including a series of photographs.

Preliminary Matters

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

[5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.

[6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant, R. C

[7] The Applicant was not in attendance at the hearing and staff made an attempt to contact him but could not reach him.

ii) Position of the Respondent, C. Perizzolo

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

[9] C. Perizzolo summarized the investigation that had taken place on the property.

[10] A Municipal Enforcement Officer attended the property on March 29, 2021 due to a citizen complaint. The Municipal Enforcement Officer observed a nuisance condition, which included shopping carts, a large area with garbage bags, electronics, plywood, tires, cardboard and other loose litter and debris.

[11] Six photographs were taken on that date and a Notice to Comply was issued on March 30, 2021.

[12] On April 26, 2021, a follow-up inspection was conducted and the Municipal Enforcement Officer noted that voluntary compliance was not obtained.

[13] The majority of the previously noted material remained on site. Six photographs were taken on this date depicting the nuisance condition.

- [14] Section 6 of the *Community Standards Bylaw* (the “*Bylaw*”) identifies nuisance on land as land or any portion thereof that shows signs of serious disregard for general maintenance and upkeep whether or not, it's detrimental to the surrounding area.
- [15] The *Bylaw* lists examples of nuisance conditions, which include excessive accumulation of material, including building materials, appliances, household goods, boxes, garbage, or refuse whether of any apparent value or not.
- [16] As a result of this inspection, the Municipal Enforcement Officer issued a 545 *Municipal Government Act* Order on April 27, 2021 ordering the landowner to remove all material listed that was contributing to the nuisance on land condition.
- [17] On May 17, 2021, the Municipal Enforcement Officer reinspected the property and found it to be in compliance at that time and the investigation was concluded.
- [18] Section 545(1) of the *Municipal Government Act* states that:
- 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.
- [19] The Applicant had indicated to the Municipal Enforcement Officer that he was seeking to withdraw his appeal, and the Municipal Enforcement Officer had advised that it would need to be done in writing to the Committee.
- [20] A Municipal Enforcement Officer hand delivered a letter to his property advising that the file itself had been concluded and he indicated he would have a letter waiting for them notifying the Committee of his intention to withdraw the appeal. However, upon arriving at the Applicant’s property, no letter was available.
- [21] A Municipal Enforcement Officer reached out to the Applicant a few times and he indicated he would fax the withdrawal letter, but they have not heard anything further from the Applicant.
- [22] Ms. Perizzolo provided the following responses to questions from the Committee:
- a) They have been in communication with him since May 17, 2021. The Applicant indicated to the Municipal Enforcement Officer that he was going to withdraw the appeal and he was advised that it needed to be done in writing.
 - b) A letter was delivered for him to sign and fax the letter to the Committee withdrawing the appeal but no letter was received.

- c) If the Order is abandoned, it would be deemed to be not served or not in place. The City prefers that a decision is made on the Order so should there be future occurrences at the property that would provide them with history, which includes warnings and issuances, as to how to proceed with any additional complaints.
 - d) There have been thirty complaints regarding this property. There was a hearing in July 2019 and the Order under review at that time was upheld.
 - e) Since the conclusion of the investigation with respect to this Order, there has since been an additional complaint about the nuisance of the property.
 - f) A new Order would need to be issued for the new complaint.
- [23] The Committee Officer confirmed that hearing notices were mailed to the home address and post office box provided by the Applicant and calls were made to contact the Applicant on the day of the hearing but he was unable to be reached.

Decision

- [24] The Order is Upheld.

Reasons for Decision

- [25] This is a review of an Order issued to the Applicant pursuant to section 545 of the *Municipal Government Act*. The Committee has the authority under section 547(2) of the *Act* and the *Community Standards Licence Appeal Committee Bylaw 19003* to conduct a review of the Order and to then confirm, vary, substitute or cancel it.
- [26] The Committee received a written request signed by Ronald C (the Applicant) for review of the Order by fax on May 10, 2021 which reads:
- “Order Date: April 27,2021. Receive (*sic*) by myself: May 6, 2021. This is my request for a review of the said Order”.
- [27] The Committee received no additional submissions from the Applicant.
- [28] The Applicant did not attend the scheduled oral hearing. No information or communication was received from the Applicant indicating an intention to either abandon the review or request an adjournment.
- [29] The Committee Officer confirmed that the Applicant was given notification of the review hearing at the address provided and unsuccessful attempts were made to contact him by phone immediately prior to the hearing.

[30] C. Perizzolo, speaking for the City, provided information confirming that the Applicant had recently been in communication with City officials and had discussed withdrawing this request for review once his property was found to be in compliance with the *Bylaw*. She believed he was aware of this review hearing, but he had not provided confirmation of withdrawing his request for review of the Order. She also indicated that the property had been the subject of 30 prior investigations and that the Committee had upheld a prior section 545 Order in 2019.

[31] Given these circumstances, the Committee decided to proceed with the review on the merits in the absence of the Applicant based on his prior written submission and the submissions and materials provided by the City.

[32] As a result of an inspection conducted March 29, 2021 a Notice to Comply was issued the Applicant on March 30, 2021 which stated in part:

It is against the City of Edmonton's bylaw* to have an untidy property. We need your help!

To fix the problem, remove the following items that were found on your property:

Shopping carts
Large pile of garbage bags
Electronics
Pails
Plywood
Tires
Cardboard
Loose Garbage
Loose Litter
Debris

Please remove these items by taking them to the landfill, the nearest Eco or Recycle Station, or putting them in your home or garage.

Your property includes the garbage storage area, the sidewalks and the areas around, and in front of your house and garage.

If your property is still untidy after the date listed below, you may have to pay a fine of \$250 or more, and the City will remove the items and send you the bill.

...

[33] Photos were provided to the Committee showing the state of the property and the identified items on the date of inspection.

- [34] A re-inspection conducted by the Municipal Enforcement Officer on April 26, 2021 revealed that the items had remained at the property. Photos were submitted to the Committee by the City to show that a nuisance as defined in section 6(1) of the *Bylaw* was continuing on the property on April 26, 2021.
- [35] As a result of the reinspection, an Order dated April 27, 2021 was issued pursuant to Section 545(1) of *Act* by a Municipal Enforcement Officer having the delegated power, duties, and functions of a designated officer for the purposes of section 545.
- [36] The Order indicates that the Applicant has been found in contravention of the City of Edmonton's *Community Standards Bylaw 14600* Section 6(1) and states:

YOU ARE THEREFORE ORDERED TO:

Remove all metal, plastic, carts, shopping carts, wood, tables, 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.

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 24, 2021

- [37] Section 545(1) of the *Act* states:
- (1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.
 - (2) The order may
 - (a) direct a person to stop doing something, or to change the way in which the person is doing it;
 - (b) direct a person to take any action or measures necessary to remedy the contravention of the enactment or bylaw, including the removal or demolition of a structure that has been erected or placed in contravention of a bylaw, and, if necessary, to prevent a re-occurrence of the contravention;
 - (c) state a time within which the person must comply with the directions;
 - (d) state that if the person does not comply with the directions within a specified time, the municipality will take the action or measure at the expense of the person.

- [38] Sections 6(1) and (2) of the *Community Standards Bylaw* 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;

(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;

(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;

(e) production of excessive dust, dirt or smoke;

(f) production of any generally offensive odours;

(g) any tree, shrub, other type of vegetation or any structure:

(i) that interferes or could interfere with any public work or utility;

(ii) that obstructs any sidewalk adjacent to the land; or

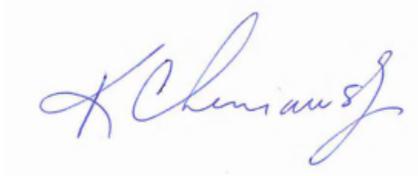
(iii) that impairs the visibility required for safe traffic flow at any intersection adjacent to the land; and

(g.1) any accessible excavation, ditch, drain or standing water that could pose a danger to the public; and

(h) any construction project or activity not completed within five years of the date the building permit for the project or activity was issued by the City or, within five years of starting construction.

[39] Based on the submitted photos, the Committee is satisfied that a nuisance as defined in section 6(1) of the *Community Standards Bylaw* was occurring on the property at the time of the initial inspection and on the date that the order was issued. The Committee finds that the property owner was contravening the *Bylaw* on April 27, 2021.

[40] The Committee confirms the Order.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky". The signature is fluid and cursive, written on a light-colored background.

Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc: R. C
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 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.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: K. G v Community Standards and Neighbourhoods (City of Edmonton), 2021
ABECSLAC 10027

Date: June 29, 2021
Order Number: 389283731-001
CSLAC File Number: CSLAC-21-027

Between:

K. G

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Don Fleming
Joel McDonald

DECISION

[1] On June 15, 2021, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an order that was filed on May 13, 2021. The request for review 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 was dated April 16, 2021 and was mailed on April 19, 2021 and required the following action:

Remove all furniture, wood, garbage bins, household refuse, plastic, metal, tarps, cardboard, damaged, dismantled or derelict vehicles or motor vehicles, whether insured or registered or not, 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.

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 12, 2021

[2] The subject property is located at 16206 - 100 Avenue NW, Edmonton.

- [3] The hearing on June 15, 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*;
 - The Appellant's written request for review 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 issue about whether to proceed in the absence of the Applicant and a jurisdictional issue regarding when the request for review was filed. The Committee 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 "*Act*"), 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 Committee must therefore determine whether the Applicant filed the written request within the 14-day limitation period. If the request was filed late, the Committee has no authority to hear the matter. The Committee invited submissions on this preliminary matter.

Summary of Preliminary Matters

i) Position of the Applicant, K. G

- [8] The Applicant was not in attendance at the hearing and Committee Administration made an attempt by email to contact him.

ii) Position of the Respondent, C. Perizzolo

- [9] C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.
- [10] C. Perizzolo indicated that she is ready to proceed in the absence of the Applicant.
- [11] Their investigation is concluded and they spoke to Mr. _____ and the point of issue is the *Bylaw* ticket. The Applicant was given direction about the process for appealing the ticket to the Court of Appeal.
- [12] There has been no communication with the Applicant since that time.
- [13] The Chair indicated that the Committee would proceed with the issue about whether the Order was filed on time.
- [14] C. Perizzolo stated that the Order was mailed April 19, 2021 at 8:30 a.m. and the Applicant had until May 12, 2021 to comply with the Order, giving three weeks for the Order to be served.
- [15] Community Standards received the notification to appeal on May 13, 2021 which would mean the appeal was filed late.

Decision

- [16] The Committee has no jurisdiction to consider the request for review.

Reasons for Decision

- [17] 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*.
- [18] Section 547(1) of the *Municipal Government Act* provides that a person who receives a written order under section 545 may, by written notice, request council review the order within 14 days after the order is received or any longer period as specified by bylaw.
- [19] In section 8(1)(b) of the *Community Standards and Licence Appeal Committee Bylaw*, 19003 Council has delegated the authority to conduct reviews under section 547(1) to this Committee. Council has passed no bylaw extending the 14 day appeal period set in section 547(1) of the *Municipal Government Act*.
- [20] Based on the evidence before the Committee, the written order issued under section 545 is dated April 16, 2021 and was mailed by regular mail to the Applicant on April 19, 2021.
- [21] Section 23 of the *Interpretation Act*, RSA 2000 I-8 (the "*Interpretation Act*") states:

Presumption of service

23(1) If an enactment authorizes or requires a document to be sent, given or served by mail and the document is properly addressed and sent by prepaid mail other than double registered or certified mail, unless the contrary is proved the service shall be presumed to be effected

(a) 7 days from the date of mailing if the document is mailed in Alberta to an address in Alberta, or

(b) subject to clause (a), 14 days from the date of mailing if the document is mailed in Canada to an address in Canada.

(2) Subsection (1) does not apply if (a) the document is returned to the sender other than by the addressee, or

(b) the document was not received by the addressee, the proof of which lies on the addressee.

[22] The Applicant provided no information concerning the date of receipt to rebut the presumption in the *Interpretation Act*.

[23] Therefore, the Committee finds that the Order was deemed received by the Applicant on April 26, 2021.

[24] Fourteen days after April 26, 2021 (the date of receipt) is May 10, 2021 which was a regular business day.

[25] The written request for review was received by Committee Administration on May 13, 2021, which is more than 14 days after the order was received by the Applicant. The written request for review was not received in time.

[26] The Committee has no authority to extend the time period in section 547(2) and therefore has no jurisdiction to review the Order.



Kathy Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc: K. G
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 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.

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: B. E v Community Standards and Neighbourhoods (City of Edmonton), 2021
ABECSLAC 10023

Date: June 30, 2021
Order Number: 389873149-001
CSLAC File Number: CSLAC-21-023

Between:

B. E

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair
Donald Fleming
Joel McDonald

DECISION

[1] On May 18, 2021, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for a review of an order that was filed on April 20, 2021. The request for review 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*” or “*Act*”). The Order was dated April 15, 2021 and was mailed on April 19, 2021 and required the following action:

Remove all garbage, garbage bags, recyclables, wood, metal, plastic, cardboard, fabrics, construction materials, renovation materials, automobile parts, tires, wheels, spools, rugs, carpets, pallets, pails, containers, coolers, household items, furniture, furniture parts, tables, chairs, planters, pots, yard equipment, hoses, drainage hoses, cables,

barrels, ladders, tools, appliances, electronics, fans, vacuums, barbeques, barbeque parts, holiday decorations, 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.

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 13, 2021

- [2] The subject property is located at 10367 - 146 Street NW, Edmonton.
- [3] The hearing on May 18, 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*;
 - The Applicant's written request for review and submission; and
 - The Respondent's written submission, including a series of photographs.

Preliminary Matters

- [4] At the outset of the hearing, the Chair confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Chair outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] The appeal was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

i) Position of the Applicant, B. E

- [7] The Committee confirmed it had received the six disclosure emails that had been submitted by the Applicant.
- [8] It is the Applicant's understanding that this Committee does not require a re-inspection of his property prior to the hearing. The Applicant believes that such a request was made solely at the request of the Municipal Enforcement Officer's supervisor and is an invasion of privacy and a violation of his rights.
- [9] There is nothing in writing that states what is and what is not allowed on a property. The whole process is complaint driven and B. E has no way of knowing if an actual complaint was ever made. He wants to be provided with the complainant's name, address, telephone number and substance of the complaint. If this cannot be provided, the Order should be dismissed.

- [10] The Notice of Entry the Applicant received dated March 21, 2021, is not valid as it refers to *Community Standards Bylaw 1400* which does not exist. Since this Notice of Entry is not valid, anything derived from this Notice of Entry should be thrown out.
- [11] According to the complaint process outlined on the City website, a person should discuss a concern with their neighbour as a first step. The Applicant has owned the property since 1988 and no neighbour has ever approached him with any concerns.
- [12] The Applicant received a Notice of Entry in March, 2019, and, at that time, an Officer and a second person attended his property and inspected the yard. The only request made was that he remove some bags of leaves from his front yard. He had wanted to compost the leaves but put them in the garbage as requested. No Order was issued and no nuisance on land was observed.
- [13] Nothing has substantially changed on his property. He does not understand why during the 2019 inspection, the Officer did not find any problems other than the leaves, yet during the most recent inspection, a different Officer issued an Order saying that everything is a problem. At the time of the most recent inspection, the only request made by the Officer was to find a place to store the barbeques which were sitting on the driveway.
- [14] There is not an excessive amount of anything on his property. He finds the Order ridiculous in that it asks him to remove everything from his property, including items that every homeowner has such as barbeques, flower pots, planters, ladders, etc. The list is totally subjective. There is nothing spilling over his fence onto the surrounding area.
- [15] The Applicant provided the following responses to questions from the Committee:
- a) He has collected the barbeques as a COVID19 project. He intends to repair them and then donate them to non-profit groups for functions and church camps. He confirmed that they have been removed from the driveway. He currently has a total of six barbeques in his yard - three are for his personal use and three are ready for donation.
 - b) The Applicant has some musician friends and during normal times he organizes house concerts. That is the reason for the large amount of lawn chairs. He has never had any complaints from neighbours about these concerts.
 - c) There is no garbage visible in any of the recent photographs which he took and submitted to the Committee. All garbage has been removed.
 - d) Regarding the second notice of entry dated April 27, 2021, he waited around all day yesterday and no one showed up to inspect his property.
 - e) The Order is nonsensical and if he removes everything there would just be a vacant lot. He is unsure if wood includes trees, the fence, the house and the siding.

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

- [16] C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.
- [17] She provided a summary of the bylaw investigation.
- [18] On March 22, 2021 a Municipal Enforcement Officer attended the property in response to a citizen's complaint regarding the untidy and unsightly condition. The Officer observed a nuisance condition on the driveway and in the rear yard which included furniture, several barbeques, several vehicles and tarped material. Additional material was noted to be inside the fenced portion of the yard; however, it could not be seen from public land.
- [19] As a result of this visit, the Municipal Enforcement Officer issued a Notice of Entry on March 24, 2021 under section 542 of *The Municipal Government Act* in order to conduct a full inspection of the property. The Municipal Enforcement Officer inspected the property on April 14, 2021; a date agreed upon by both parties.
- [20] The Municipal Enforcement Officer, a Development Compliance Officer and the Applicant were all present at the April 14, 2021 inspection. The Municipal Enforcement Officer took 26 photographs of the nuisance condition and verbally advised B. E what items were contributing to the nuisance condition.
- [21] As a result of the April 14, 2021 inspection, a 545 *Municipal Government Act* Order was issued on April 15, 2021 ordering all material contributing to the nuisance on land to be removed.
- [22] Section 6(2) of the *Community Standards Bylaw* defines nuisance on land as
- 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,
- For further clarification, the *Bylaw* lists examples of nuisance conditions which include excessive accumulation of material including building materials, appliances, household goods, boxes, garbage or refuse, whether of any apparent value or not.
- [23] Section 545(1) of the *Municipal Government Act* states that:
- 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 to the Committee, Administration is satisfied that the Applicant has contravened Section 6(1) of the *Community Standards Bylaw* and is asking that the Order be upheld.

- [25] On May 10, 2021, the Area Supervisor spoke to B. E. [REDACTED] who stated he had concerns with the latest Notice of Entry and requested that they do not attend his property on May 17, 2021. The Notice of Entry was therefore rescinded and there are no accurate photographs of the current condition of the property. It is not clear if compliance has been achieved.
- [26] C. Perizzolo provided the following responses to questions from the Committee:
- a) C. Perizzolo confirmed that no complaint is required for an investigation to occur. While the first priority of Officers is to respond to complaints, there is also an expectation for them to conduct proactive patrols. A complainant's information is not released because it is the Officer's job to determine if a violation of the *Bylaw* has occurred.
 - b) During an inspection, the Officer is looking to see if the property is being used more for storage than for the enjoyment of a yard.
 - c) It is difficult to determine what materials have to be removed when a yard is as full as this one. The Officer tries to be as inclusive as possible when issuing the original Order as this opens a discussion with the property owner. The Officer would then work with the Property Owner to achieve compliance and they would come to an agreement regarding what can stay and what has to be removed.
 - d) C. Perizzolo is unable to determine from the recent photographs taken by the Applicant if compliance has been achieved as only part of the yard is shown.
 - e) When the original complaint came in, the 311 agent would have sent the file to the Complaints and Investigations office for investigation.
 - f) The Order does not include the items inside of the shed which is the subject of a separate investigation by Development Compliance.
 - g) Even though materials are contained within the fence and are not visible from the outside, they would still be included in the Order.
 - h) C. Perizzolo would say that six barbeques on the property are excessive.

iii) Rebuttal of the Applicant

- [27] The Applicant disputes that he advised the area supervisor not to attend his property on May 17, 2021. He just asked her if she was aware that the Committee did not request these photographs.
- [28] He already went to court over the temporary shed and it was determined to be legal. The Development Compliance Officer did not enter the yard. Only the Municipal Enforcement Officer conducted the investigation.

- [29] The holiday decorations mentioned in the Order are hung for two months of the year and then are stored on the deck.
- [30] There was never any conversation as to what has to be removed. The only items discussed were the barbeques. It is beyond belief that items such as garden boxes, shovels and rakes need to be removed.
- [31] He objects that his photographs have been shared with the City, but he has not seen the 26 photos taken by the City. He has also never received a response to his FOIP request.
- [32] At this point in the hearing, it became apparent that the Appellant had not received all of the evidence provided to the Committee by the Respondent.
- [33] The Chair called for a short recess and returned to notify the parties that the hearing would reconvene on June 15, 2021 to ensure that there is proper disclosure and that the Appellant and the Respondent have received and been afforded the opportunity to review all submissions and evidence submitted to the Committee by one another.
- [34] Neither party objected to the adjournment.

Decision

- [35] The Community Standards and Licence Appeal Committee made and passed the following motion on May 18, 2021:

“That the appeal hearing be re-convened on Tuesday, June 15, 2021 to ensure that all parties have proper disclosure of evidence”.

The disclosure dates are as follows, although any previously submitted evidence is not required to be re-disclosed:

Disclosure Submission Dates

Applicant: Friday, June 11, 2021 - noon

Respondent: Friday, June 11, 2021 - noon

June 15, 2021 Meeting

[36] The Community Standards and Licence Appeal Committee made and passed the following motion on June 15, 2021:

“That CSLAC-21-023 be raised from the table”.

[37] The Chair confirmed that no updated information was received from the Respondent and that the Applicant provided five new emails which had been reviewed by all of the Committee members.

iv) Position of the Applicant, B. E

[38] The Applicant feels he is being prejudiced because no written details of the other development compliance investigation which is apparently under way have been provided to him. He feels more weight is being given to the City’s position.

[39] There is no consistency between what needs to be removed according to C. Perizzolo’s verbal testimony versus what the Order states needs to be removed. She is not certain of what exactly has to be removed from the site but keeps insisting that there is an excessive accumulation of material which there isn’t. The Order, as it stands, has to be thrown out completely.

[40] C. Perizzolo made comments regarding the excessive accumulation of materials based on photos taken right at the end of winter and did not take the Applicant’s subsequent photos into account.

[41] The City seems to cherry pick which of its own rules it wants to enforce or implement. This started as a parking complaint which turned into a reason to allow the City to invade his backyard and find all sorts of problems. The Applicant referred to this as a bait and switch tactic.

[42] The Officer claimed there were barbeques in the Applicant’s driveway but he had to come up on the Applicant’s front step to photograph them. The barbeques were not visible otherwise.

[43] In her previous testimony, C. Perizzolo stated the six barbeques are excessive. This is purely opinion on her part. Why is a City bureaucrat able to determine what the Applicant does for a pastime?

[44] The Applicant provided the following responses to questions from the Committee:

- a) The yard was never in a nuisance state. When the first visit was made by the Officer, everything was packed away for the winter. Now the backyard is in the state it normally is when it is not winter.

- b) The original photos showed a covered rack with some lumber in it; however, at the May 18, 2021 meeting C. Perizzolo said this was allowable. The Applicant has since disassembled this rack and the wood has been made into firewood.
- c) The April 14, 2021 photos showed many bags of freshly raked leaves from nine giant columnar poplars. The Applicant had built a composter as a Covid project and was deciding if he should compost the leaves or not. The bags have since been stored in the trailer and will be either put out with the garbage or taken to an eco centre.
- d) There are now only three barbeques on the property for his personal use, one barbeque and a griddle are on the top deck and there is another covered barbeque in the backyard off the lower deck.
- e) The large industrial spool in photo No. 16 was being used by the Community League to flood the community rink. Rather than put it out for the garbage the Applicant is attempting to sell it on Kijiji.

v) *Position of the C. Perizzolo*

- [45] It is the City's submission that on April 14, 2021 there was a violation of the *Community Standards Bylaw* as demonstrated by the photographs. While each item alone may not contribute to the nuisance infraction, the property as a whole demonstrated an excessive accumulation of material as per Section 6(2) of the *Community Standards Bylaw*.
- [46] C. Perizzolo acknowledged that work has been completed on the property since the issuance of the Order and many of the listed items have been removed. However, there are still some items of concern that are remaining such as some office furniture on the front patio, another office chair in the back and a few remaining cardboard boxes, pails and other material. For the most part the work has been done.
- [47] C. Perizzolo provided the following response to questions from the Committee:
- a) When asked about the wording on the Order and whether it gives the City an inordinate amount of power and authority to remove everything on the list, C. Perizzolo clarified that the language used in the Order is standard language. When a yard is as full as the subject property it is difficult to pinpoint exactly what can stay and what has to go. Therefore, the Officer tries to be as inclusive as possible. The Officer would subsequently work with the property owner on an item by item basis prior to removing anything.
 - b) B. E. has recognized what needs to be removed and has removed most of the items listed on the Order.
 - c) Storage does not necessarily contribute to a nuisance condition unless it is an excess of storage. If the storage of material on a property is unrelated to a residential use,

the matter would be deferred to Development Services to see if a business is operating at the location.

- d) In this case the investigation arose as a result of a citizen's complaint. The question must be asked if this is a reasonable use of a residential property and is there an impact to anyone else.
- e) A citizen's complaint is not required to initiate an investigation. Officers also do proactive patrols.

vi) Rebuttal of Applicant

[48] The Applicant provided a rebuttal concerning the specific items identified by Ms. Perizolo as constituting a nuisance in the photos he provided which show the current state of the property. The desk is in the front yard because the Applicant uses it to work on his computer in the evenings. The office chair is in the backyard because his wife recently had knee surgery and uses it to re-pot plants. He doesn't understand why an office chair is forbidden to be outside.

[49] On May 18, it was mentioned that wood for projects is allowed as long as it is neatly stacked, which was the case here.

[50] When the Officer came in April he did not specify exactly what needed to be removed. The Applicant requested that everything be put in black and white so he would know exactly what was being identified.

[51] The Applicant is basically appealing this Order due to the way it is written and because it requires him to remove everything.

Decision

[52] The Committee cancels the order.

Reasons for Decision

[53] This is a review of an order issued to the Applicant pursuant to section 545 of the *Municipal Government Act*. Section 545 states:

Order to remedy contraventions

545(1) If a designated officer finds that a person is contravening this or any other enactment that the municipality is authorized to enforce or a bylaw, the designated officer may, by written order, require the person responsible for the contravention to remedy it if the circumstances so require.

(2) The order may

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

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

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

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

[54] Section 547 of the *Act* provides that a person who receives a written order issued pursuant to section 545 may request a review of that order:

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.

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

[55] In section 8(1)(b) of the *Community Standards and Licence Appeal Committee Bylaw 19003*, Edmonton City Council has delegated its authority under section 547 of the *Act* to this Committee. The Community Standards and Licence Appeal Committee has the authority to conduct a review of the Order and to then confirm, vary, substitute or cancel the Order.

[56] In this review, the Committee heard that the property at issue was the subject of a complaint in 2021 which brought it to the attention of the City and that a Municipal Enforcement Officer visited the property and observed a nuisance condition.

[57] Consequently, a Notice of Entry dated March 24, 2021 was sent to the registered owners of the property which stated:

NOTICE OF ENTRY

March 24, 2021

TO: B E
10367 146 STREET NW
EDMONTON, ALBERTA T5N3A3

AND TO: L E
10367 146 STREET NW
EDMONTON, ALBERTA T5N3A3

Dear Sir / Madam:

Pursuant to Section 542 of the *Municipal Government Act*, you are hereby notified that a Municipal Enforcement Officer will be entering onto the land at **10346 146 Street NW** in Edmonton, Alberta, on **April 14 or 15**, in order to conduct **an inspection** for the purposes of determining contraventions of the Community Standards Bylaw 1400 at the property in relation to file reference number 389873149-001.

If you require any additional information regarding this matter, please contact Municipal Enforcement Officer Marko at 780-691-5067.

Municipal Enforcement Officer #110
Complaints and Investigations Section
Community Standards and Neighbourhoods Branch
Citizen Services Ref.: 389873149-001

- [58] On April 14, 2021, a Municipal Enforcement Officer and a Development Compliance Officer visited the property.
- [59] In the presence of the Applicant, the Municipal Enforcement Officer inspected the property and took 26 photographs which were submitted to the Committee as evidence of a nuisance condition. There was a verbal discussion about the condition of the property and a discussion about what items were contributing to the nuisance condition. The parties disagree about the content of these discussions.
- [60] Subsequently the Order under review which is dated April 15, 2021 was sent to the registered owners of the property. It states in part:

As a result of an inspection of the property on April 14, 2021.

Being an employee of the City of Edmonton having the delegated power, duties, and functions of a designated officer for the purposes of section 545, I find that you are in contravention of The City of Edmonton's Community Standards Bylaw #14600, Section 6(1), Nuisance on Land.

YOU ARE THEREFORE ORDERED TO:

Remove all garbage, garbage bags, recyclables, wood, metal, plastic, cardboard, fabrics, construction materials, renovation materials, automobile parts, tires, wheels, spools, rugs, carpets, pallets, pails, containers, coolers, household items, furniture, furniture parts, tables, chairs, planters, pots, yard equipment, hoses, drainage hoses, cables, barrels, ladders, tools, appliances, electronics, fans, vacuums, barbeques, barbeque parts, holiday decorations, 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.

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 13, 2021

[61] The order also contains excerpts from the *Act* setting out various consequences for non-compliance and the procedure to request a review of the Order.

[62] Section 6(1) and (2) 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;

(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;

(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;
- (e) production of excessive dust, dirt or smoke;
- (f) production of any generally offensive odours;
- (g) any tree, shrub, other type of vegetation or any structure:
 - (i) that interferes or could interfere with any public work or utility;
 - (ii) that obstructs any sidewalk adjacent to the land; or
 - (iii) that impairs the visibility required for safe traffic flow at any intersection adjacent to the land; and
- (g.1) any accessible excavation, ditch, drain or standing water that could pose a danger to the public; and
- (h) any construction project or activity not completed within five years of the date the building permit for the project or activity was issued by the City or, within five years of starting construction.

- [63] In his written request for review, oral submissions and written submissions, the Applicant objected to the Order on multiple grounds which the Committee considered in this review.
- [64] The Applicant first objected to the Order on the basis that the concept of an overriding standard to which all properties must adhere is a “total myth.” As there is no reference manual or rule book as to what is allowed or not on any property, anything can exist until a complaint is made. He submitted “photos of surrounding properties that would appear to violate any kind of community standard if there was a standard in place.”
- [65] The Committee disagrees and notes that the standard of nuisance is defined in the *Community Standards Bylaw* and the authority to pass that *Bylaw* comes from the *Municipal Government Act*. It is this Committee’s responsibility to make a determination about whether that standard has been breached as alleged in the specific Order under review based on the submissions before it respecting the subject property. The state of other properties and any pending investigations concerning them are not at issue before the Committee, nor relevant to this review. In the Committee’s opinion, these comments are not persuasive with respect to its authority to review the Order or with respect to whether or not the Order should be confirmed, varied, substituted or cancelled.

- [66] The Applicant argued that the Order should be dismissed because he did not have sufficient evidence about the complaint which the City alleged had prompted this matter. Further, the City Bylaw Complaint Process lists steps required to report a bylaw infraction which include a direct discussion with your neighbour before a complaint can be made. No neighbour had approached him as required.
- [67] The Committee notes that a complaint is not a prerequisite for the issuance of an order under section 545 of the *Act*. Therefore, the Committee does not find these grounds of review germane or persuasive.
- [68] The Applicant argued that the Order should be thrown out because the last line of the first paragraph of the Notice of Entry dated March 24, 2021 refers to a “Community Standards Bylaw 1400” which does not exist.
- [69] The correct reference is *Community Standards Bylaw 14600*. The Committee finds the reference to 1400 to be an obvious clerical error of no consequence. The Committee notes that despite this error, the Applicant allowed the Municipal Enforcement Officer entry to the property and he was in no substantive way hindered from advancing his case in this review.
- [70] The Applicant referred the Committee to a file number for a prior Notice of Entry and inspection which he indicated had occurred in 2019. No documents or other details were submitted to the Committee respecting the 2019 incident. He stated that in 2019 the property was in substantially the same condition as it is now. As no section 545 order had been issued at that time, he assumed that no nuisance was occurring in 2019. Therefore, by the same standard, how could there be any nuisance in the current situation. The Committee does not find description of a prior incident persuasive or relevant to the matter before the Committee. The matter before the Committee is whether, based on the submissions of the parties, the Order dated April 15, 2021 should be confirmed, varied, substituted or cancelled.
- [71] Finally, the Committee considered the Applicant’s objections about the substance of the Order. He argued:
- a. the concept of “excessive” in section 6 is subjective and as he uses a significant proportion of the photographed and listed items in the enjoyment of his property, they cannot be excessive;
 - b. the only excessive accumulation on the property at the date of inspection was the 15 barbeques lined up on the driveway which he has since addressed,
 - c. the Order was overly broad and, if literally interpreted, could include almost every object on his property, including his home.
- [72] The Order directs the Applicant to:
- Remove **all** garbage, garbage bags, recyclables, wood, metal, plastic, cardboard, fabrics, construction materials, renovation materials, automobile parts, tires,

wheels, spools, rugs, carpets, pallets, pails, containers, coolers, household items, furniture, furniture parts, tables, chairs, planters, pots, yard equipment, hoses, drainage hoses, cables, barrels, ladders, tools, appliances, electronics, fans, vacuums, barbeques, barbeque parts, holiday decorations, 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.**[Emphasis added]

- [73] Based on the 26 submitted photos taken during the on-site inspection, the Committee is satisfied that a nuisance as defined in section 6(2)(a), of the *Community Standards Bylaw* was in fact occurring on the property at the time that the Order was issued.
- [74] However, for the following reasons, the Committee is cancelling the order.
- [75] A section 545 Order can trigger extraordinary powers for the City and significant consequences for the Applicant who is also the property owner. Those consequences are laid out in the Order itself:

OFFENCE FOR NON-COMPLIANCE:

Pursuant to section 557(c) of the *Municipal Government Act* (hereinafter referred to as the "*Act*") **a person who contravenes or does not comply with an order under section 545 is guilty of an offence and liable to prosecution.**

Pursuant to section 566(1) of the *Act* a person who is guilty of an offence is liable,

- (a) to a fine of not more than **\$10,000** or,
- (b) to **imprisonment** for not more than one year, or to **both fine and imprisonment.**

ADDITIONAL CONSEQUENCES FOR NON-COMPLIANCE:

Pursuant to section 549(1) of the *Act* if a person fails or refuses to comply with an order under section 545 the municipality may take **whatever actions or measures are necessary to remedy a contravention of a bylaw or to prevent a re-occurrence of the contravention.**

Pursuant to section 549(3) of the *Act* the expense and costs of an action or measure taken by the municipality **are an amount owing to the municipality** by the person who contravened the bylaw.

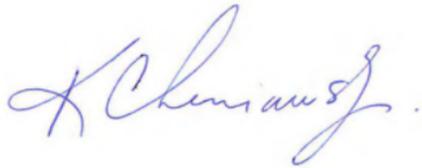
Pursuant to section 553(1)(c) of the *Act* when a person owes money to a municipality under section 549(3) the municipality **may add the amount owing to the tax roll or a parcel of land if the parcel's owner contravened the bylaw and the contravention occurred on all or part of the parcel.**

If you fail to comply with the provisions of this order the City of Edmonton will, at its election, take action to enforce the order by taking **whatever actions or**

measures are necessary to remedy the contravention of the bylaw or to prevent the re-occurrence of the contravention, all expenses and any costs of which will be an amount owing to the City and will be placed on the tax roll of the property if section 553(1)(c) permits.

- [76] The *Act* authorizes a municipality to issue an order directing a person to clean up a property if they are violating a specified bylaw. It further provides that if the cleanup does not happen within a specified time, then the municipality has the right to take action to achieve compliance with the order at the expense of the person receiving the order and that those costs can be added to the tax roll for the property. In the Committee's opinion, given these consequences, it is essential for the recipient of a Section 545 order to clearly understand the extent of the alleged infraction (in this case the nuisance) and what actions are required for compliance.
- [77] During the review, the City acknowledged that the Order was overly broad given: the use of the term all; the extensive list of offending items, many of which are everyday items associated with residential use; and, the additional generic catch all residual category. The Committee heard that this breadth was deliberate. According to the City it is difficult to determine what materials must be removed when a yard is full and that the line between storage and reasonable residential use is difficult to draw. Here, the Municipal Enforcement Officer tried to be as inclusive as possible in the original order as a method to open further discussion and prompt the Applicant to work with the Municipal Enforcement Officer to come to an agreement regarding what can stay and what has to be removed and to ultimately achieve compliance.
- [78] The City also indicated that based on the views of the property in the most recent photos submitted by the Applicant, most of the work has been done and many of the listed items have been removed. The Committee considered that these photos also show that dozens of the objects identified in the Order and that would be subject to the Order remain on the property, and the City could identify only a few visible objects in the photos that in their opinion would still constitute a nuisance.
- [79] Based on all the material before it in this particular review, the Committee agrees with the Applicant that the Order was unreasonably over-inclusive and excessive. No reasonable person could be expected to comply with the Order.
- [80] Finally, the Committee considered the evidence about the most current state of the property. The Applicant submitted photographs from April 25, 2021, April 27, 2021, May 6, 2021, May 7, 2021 and June 10, 2021. No updated photographs were provided by the City. In the Committee's view there is insufficient evidence before it about the full state of the property to make a determination about whether or not a nuisance is continuing to exist on the subject site or to substitute a new section 545 Order. Therefore, the Committee makes no findings or comments on the current status of the property.

[81] For the above reasons, the Order is canceled.

A handwritten signature in blue ink, appearing to read "K. Cherniawsky". The signature is fluid and cursive, with a large initial "K" and a long, sweeping tail.

Ms. K. Cherniawsky, Chair
Community Standards and Licence Appeal Committee

cc: B. E
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 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.