EDMONTON COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10020

Date:	May 31, 2021
Order Number:	387071976-001
CSLAC File Number:	CSLAC-21-020

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair Don Fleming Christopher Samuel

DECISION

[1] On May 18, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard a review that was filed on April 7, 2021. The 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 March 22, 2021, was mailed on March 23, 2021 and required the following action:

Remove all wood, cement, pails, plastic, bath tubs, metal, cardboard, tires, 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: April 16, 2021

- [2] The subject property is located at 10850 96 Street NW, Edmonton.
- [3] The hearing on May 18, 2021 was held through a combination of written submissions and video conferencing. 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 a 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 written request for review was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

- *i) Position of the Applicant,*
- [7] The Applicant confirmed she had received the photographs that were taken by the Respondent on May 17, 2021.
- [8] The first set of photographs was taken on March 18, 2021 and since that time the Applicant has had a six foot high fence built. Prior to that someone had been dumping what appeared to be home construction materials in her yard. Since the fence has been built the back area has been immaculate.
- [9] All of the remaining materials on the property are for constructing raised garden beds. This includes the bathtub and the tires (they will be used for potato planters). The wood will be removed from the frames and will be recommissioned. This is a construction site and the work is ongoing. The chicken wired area is used for leaf composting. The Applicant has been focusing her work on the front yard and will now be focusing on the back.
- [10] The Applicant provided the following responses to questions from the Committee:
 - a) She has some soil in her compost bins and will be ordering more soil as required.

- b) She estimates that the project will be complete by the middle of July and will look presentable by the end of June.
- c) The construction debris that had been dumped, which included a number of tarps, was taken care of immediately. The Applicant paid someone to come and bag it up.
- d) The Applicant confirmed she lives at the property and all the remaining material belongs to her. She checks the alley daily to make sure no more dumping is occurring.
- e) She has been collecting the wood for this project over the last two years. It is old decking from a theatre set. She has decided to re-purpose it for gardening since it cannot be used for its intended use.
- f) She has moved some of the lumber into her back yard closer to where the raised beds will be located. She intends to finish one raised bed at a time and will add the plants prior to moving on to the next one. She can guarantee that all of the wood will be removed from the back driveway by the end of June.
- g) There was more debris in the yard prior to the March 18, 2021 pictures being taken and the fence being built.
- h) The greenhouse in the front yard is being used as a shed to store her lawnmower, rakes and various other tools.
- *ii)* Position of the Respondent, C. Perizzolo
- [11] Ms. C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.
- [12] On February 23, 2021 a Bylaw Officer attended the property in response to a citizen's complaint regarding the untidy and unsightly condition. The Officer observed a nuisance condition which included scrap wood, metal, cement blocks, cardboard and other debris. As a result of this inspection the officer issued a Notice to Comply on February 24, 2021.
- [13] A follow up inspection was conducted on March 18, 2021 and it was noted that compliance had not been obtained and all previously noted material was still on site. The officer took six photographs depicting the nuisance condition.
- [14] Section 6(2) of the *Community Standards Bylaw* (the "*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.

- [15] As a result of this inspection, the officer issued a section 545 *Municipal Government Act* Order on March 22, 2021, ordering the land owner to remove all material listed that was contributing to the nuisance and unsightly condition.
- [16] On April 9, 2021, the area supervisor spoke with the property owner advising of the requirements to achieve compliance. At that time advised that some of the material was being used to build planters. While she could not meet the deadline provided on the Order, she hoped to have the property cleaned in the coming months. The supervisor offered to provide an extension; however, Ms. Brant declined as she felt the Order was invalid and chose to appeal it.
- [17] Inspection photographs taken on May 17, 2021, show the current state of the property.
- [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] Based on the above information and the photographs provided to the Committee, the Respondent is satisfied that the Applicant has contravened Section 6(1) of the *Community Standards Bylaw* and is asking that the Order be upheld.
- [20] Ms. Perizzolo provided the following responses to questions from the Committee:
 - a) The value of the accumulated material is unimportant in terms of enforcing the *Bylaw*. Here there is an accumulation of material that is contributing to an untidy and unsightly condition as per a citizen's complaint.
 - b) There is no standard length of extension that is granted. The Officer will work with the property owner and will conduct weekly inspections to see if work is proceeding. Enforcement is only pursued if no progress has been made.
 - c) If the Committee were to uphold the Order, no enforcement would take place until the 30 day appeal period to the Court of Queen's Bench has expired. This means that effectively no enforcement action would occur until approximately the end of June.
 - d) Ms. Perizzolo confirmed that the front yard is now in acceptable condition and the focus is now on the rear yard and rear garage area.

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iii) Rebuttal of the Applicant

- [21] Since the initial complaint and Order, a fence has been built and the construction debris has been removed.
- [22] She does not consider the material behind the garage as debris and the material inside of the rear yard is not visible unless someone looks over the six foot fence.
- [23] The fence is not visible in the March 18, 2021 photographs because the inspector walked up to the fence and took the photographs over the fence.
- [24] In response to a question from the Committee, Ms. Brant indicated that it would be possible to store materials inside the garage until she needs them.

iv) Rebuttal of the Respondent

- [25] The definition of nuisance condition in section 6(2) of the *Community Standards Bylaw* includes the words "whether or not it is detrimental to the surrounding area". It does not matter if the items cannot be seen from the alley, there is still a violation.
- [26] Further, has neighbours on either side of her who can see into her yard. The enjoyment of their own yards could be negatively impacted.
- [27] Ms. Perizzolo confirmed that the fence is not contributing to the unsightly condition of the property and is not cited in the Order.

v)

[28] had nothing further to add although she wondered why the neighbours needed to be looking over her fence.

Decision

[29] The Order is Upheld. The compliance date of the Order has been varied to June 30, 2021.

Reasons for Decision

- [30] 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*.
- [31] On February 23, 2021, the subject property was inspected by a Municipal Enforcement Officer with the City of Edmonton. As a consequence of the inspection, the Applicant (who is the registered owner of the subject property) was sent a Notice to Comply dated February 24, 2021 indicating that a Section 6(1) Nuisance on Land as defined in the *Community Standards Bylaw* 14600 was occurring on the subject property. The Notice provided 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: Wood, metal, cement blocks, cardboard, loose litter and debris. Please remove these items by taking them to the landfill, the nearest Eco or Recycle Stations, or putting them in our home or garage.

[32] On March 18, 2021 the subject property was reinspected. As a result of this reinspection an Order dated March 22, 2021 was issued requiring the Applicant to:

Remove all wood, cement, pails, plastic, bath tubs, metal, cardboard, tires, 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.

- [33] The Order indicated that the Applicant must comply before April 16, 2021.
- [34] The Applicant explained to the Committee that the items she kept on the subject property were to be repurposed for a raised bed garden and deck project and that the lumber located at the rear of the garage consisted mainly of sections of a theatre stage that had been placed there approximately two years earlier.
- [35] The Applicant requested this review because she felt that the main issue was the additional debris that unknown persons were dumping on her property and that by March 18, 2021 she had effectively dealt with the nuisance by removing the unauthorized debris and constructed a six-foot fence which adequately screened the rear of her property.
- [36] The evidence provided by the City was that the Order covered all of the identified materials, and the photos show a nuisance existed at the time of the reinspection on March 18, 2021 despite the removal of some of the debris or the newly constructed fence.
- [37] Based on the six submitted photographs taken on March 18, 2021, the Committee finds that a nuisance as defined in Section 6 of the *Community Standards Bylaw* was occurring on the subject property at that date. Therefore, the Committee concludes that the Section 545 Order was validly issued on March 22, 2021.
- [38] The Committee also heard that in the interim the Applicant made efforts to comply with the Order. The parties agree that the front yard is currently fully compliant. However, additional photos taken on May 17, 2021 show that the rear of the property, including the area behind the garage, remains in substantially the same condition as shown in the photos from March 18, 2021. The Applicant indicated that she is also dealing with items shown in the rear yard and driveway of the property, but her progress is weather dependent. During her oral submissions, she guaranteed to the Committee that the remaining items listed in the Order (apart from her compost pile) will all be repurposed and used to assemble her raised garden beds and backyard deck by the end of June, 2021.

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Even if the work cannot be fully completed by the end of June, the Applicant could store any unused materials inside her garage.

[39] Based on the information provided by the Applicant, the Committee finds it reasonable that the Applicant be afforded additional time to complete work at the subject property. Accordingly, the Committee confirms the Order and varies the date for compliance to June 30, 2021.

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Ms. K. 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 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: v Community Standards and Neighbourhoods (City of Edmonton), 2021 ABECSLAC 10024

Date:	May 31, 2021
Order Number:	390573919-001
CSLAC File Number:	CSLAC-21-024

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Kathy Cherniawsky, Chair Don Fleming Christopher Samuel

DECISION

[1] On May 18, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard an application that was filed on April 20, 2021. The application 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 1, 2021, was mailed on April 7, 2021 and required the following action:

Remove all garbage, garbage bags, recyclables, cardboard, plastic, metal, wood, concrete pipe, construction materials, renovation materials, plywood, lumber, containers, fuel containers, coolers, tools, saws, tables, ladders, hoses, yard equipment, auto parts, wheels, tires, rims, bumpers, pallets, sinks, counter tops, appliances, microwaves, ceiling fans, carpet, fabrics, tarps, 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 3, 2021

- [2] The subject property is located at 10323 146 Street NW, Edmonton.
- [3] The review 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:
 - 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 review 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 application for review was filed on time, in accordance with Section 547 of the *Municipal Government Act*.

Summary of Hearing

- *i) Position of the Applicant,*
- [7] The Applicant is not contesting that the yard was messy. He was in the hospital in July and August and was not physically able to do any work last fall. He is unable to walk on snow and was just starting to clean up when he received the notice. The clean up was completed in approximately a week.
- [8] He is not objecting to the notice but is objecting to the ticket that came with the notice.
- [9] provided the following responses to questions from the Committee:
 - a) A ticket in the amount of \$250.00 arrived on the same day as the Order in a separate envelope. When he called the number on the ticket, he was advised that the amount would be added to his tax roll.
 - b) He was not aware that the City was interested in his property until he received the Order in the mail on April 6, 2021.

- *ii)* Position of the Respondent, C. Perizzolo
- [10] Ms. C. Perizzolo, Acting Coordinator, Complaints and Investigations, appeared on behalf of the City of Edmonton.

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- [11] She did not provide any submissions since was not contesting the validity of the Order and provided the following responses to questions from the Committee:
 - a) She offered to contact the Applicant after this hearing to discuss tickets and the appeal process regarding them.
 - b) She confirmed that it is her understanding that this Committee only deals with Orders and does not deal with tickets that impose fines.
 - c) The Order was issued without a prior Notice to Comply because of an extensive history of bylaw investigations.
 - *iii)* Rebuttal of the Applicant
- [12] The Applicant felt there should have been some communication from the City asking him to clean up his yard prior to the ticket being issued.
- [13] He is appealing the Order because there were no steps taken prior to the issuance of the Order. If the Order is deemed invalid, then the ticket would also be invalid.
- [14] The Order is excessive and extreme. There was no communication from the City and as soon as he was able to clean up it was completed.
- [15] In response to a question from the Committee, he advised that he does not yet have a court date to appeal the ticket that was issued.
 - iv) Rebuttal of the Respondent
- [16] Ms. Perizzolo had no further submissions and provided the following responses to questions from the Committee:
 - a) She confirmed that both the Order and the ticket were issued at the same time. The ticket was for a violation of the *Community Standards Bylaw* and the Order was issued to provide instructions to the citizen to have the site remedied.
 - b) In this case, the Officer went directly to a section 545 *Municipal Government Act* Order without first issuing a Notice to Comply. Since 2008, there have been 36 bylaw violations, 20 of which have been nuisance on land violations. She is not certain if this is the first time a ticket has been issued, but she can confirm that numerous Notices to Comply and *Municipal Government Act* Orders have previously been issued.

- c) is aware of what constitutes a nuisance on land and the work that needs to be done. There is nothing in the *Bylaw* that requires a Notice to Comply to be issued prior to the issuance of a *Municipal Government Act* Order.
- d) When referred to costs being added to the tax roll, he may have been referring to the paragraph on the second page of the *Municipal Government Act* Order which states:

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-occurrance 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.

- e) The Order deals only with remedying the situation. The ticket and its dispute is an independent process, outside of this Committee's authority and process.
- v) Applicant's Final Statement
- [17] can only recall three specific times where he has received compliance Orders from the City. He does not understand how the City is coming up with more than 30 occurrences.

Decision

[18] The Order is confirmed.

Reasons for Decision

[19] 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* which 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.

[20] Section 547 of the *Municipal Government Act* provides a mechanism for recipients of orders to have them reviewed by City Council:

(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.
- [21] Edmonton City Council has delegated the responsibility to conduct the reviews under section 547 to this Committee through the *Community Standards Bylaw*.
- [22] The Order under review is addressed to the Applicant at the subject property and states in part:

As a result of an inspection of the property on March 31, 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, cardboard, plastic, metal, wood, concrete pipe, construction materials, renovation materials, plywood, lumber, containers, fuel containers, tools, size, tables, ladders, hoses, yard equipment, auto parts, wheels, tires, rims, bumpers, palates, sinks, countertops, appliances, microwave, ceiling fans, carpet, fabrics, tarps, 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 03, 2020

- [23] The Order also provides information about non-compliance, the additional consequences of non-compliance and the procedure to request a review.
- [24] At the outset of the hearing, the Applicant indicated that he was not contesting that the subject property was a mess, nor objecting to the "notice". He was objecting to a ticket which included a fine that came separately, but contemporaneously, with the Order. However, later in the hearing, the Applicant indicated he was appealing the Order for three reasons:
 - a) it was excessive and extreme;
 - b) it was issued without any prior communication or warning; and
 - c) he had promptly complied with the Order to clean up as soon as he was able.
- [25] The 26 photos taken during the March 31, 2021 inspection and submitted to the Committee show all of the items listed in the Order were present on the property and that many items appear to have been in place for a significant amount of time. The Applicant indicated the items had been accumulating over a period of several months.
- [26] Based on these photos and the Applicant's acknowledgement that the property was a "mess" which needed to be cleaned up, the Committee finds that a nuisance, as defined in section 6(1) of the *Community Standards Bylaw* was occurring on the subject property. Therefore, the Committee finds that the Order issued pursuant to section 545 was valid.
- [27] The Committee then considered whether the Order should be cancelled because the Applicant was not sent a Notice to Comply prior to the issuance of the Order. The Committee considered the following factors:
 - a) Based on the photos and the Applicant's submissions, the Committee found that the items listed in the Order had accumulated over a period of several months going back to at least the summer of 2020.
 - b) There is no provision in the Bylaws, requiring the City to issue a Notice of Compliance or any other type of forewarning prior to the issuance of a Section 545 Order.
 - c) The Committee heard that although the City often issues a Notice to Comply prior to a Section 545 Order, it does not always do so. In this instance, the City issued the Order directly after the March 31, 2021 inspection due to the state of the property and a documented extensive history of similar proceedings.

- d) Although the parties disagreed on the precise number of infractions, it was common ground that the subject property had a history of prior Orders:
 - The City indicated that since 2008, City records show 36 bylaw violations associated with the property (20 involving nuisance on land violations) and numerous Notices to Comply and Section 545 Orders have also been issued.
 - ii) The Applicant strongly disputed the stated record and indicated that to his knowledge he had only received three prior Orders from the City.
- [28] Given these circumstances, the Committee was not persuaded that the Order should be cancelled solely because it was issued immediately after the March 31, 2021 inspection without any prior communication concerning the condition of the subject property.
- [29] Furthermore, the Committee is not persuaded by the fact that the Applicant promptly followed the Order to bring the property into compliance is relevant to whether or not the Order was properly issued in the first place.
- [30] For the above reasons, the Committee confirms the Order.
- [31] The Committee notes that the validity of the ticket and associated fines are not issues within the authority of this Committee and are dealt with through a separate forum. The Committee makes no comment upon them.

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Ms. K. 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 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.



May 19, 2021

RE: Appeal of Order 389873149-001; 10367 - 146 Street NW Order Pursuant to Section 545(1) of the *Municipal Government Act* File: CSLAC-21-023

Postponement Decision

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

Appellant: Friday, June 11, 2021 - noon

Respondent: Friday, June 11, 2021 - noon

Reasons for Decision:

[1] On May 18, 2021, the Community Standards and Licence Appeal Committee (the "Committee") heard an appeal that was filed on April 20, 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 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.

- [2] During the hearing, it became apparent that the Appellant had not received all of the evidence provided to the Committee by the Respondent.
- [3] The meeting will 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.
- [4] You will be advised of the time of the hearing in future correspondence.

Should you require further information in this regard, please contact the Community Standards and Licence Appeal Committee at <u>cslac@edmonton.ca</u>

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Ms. K. Cherniawsky, Presiding Officer Subdivision and Development Appeal Board