

EDMONTON
COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

Citation: Applicant
of Edmonton), 2021 ABECSLAC 10044

v Community Standards and Neighbourhoods (City

Date: September 28, 2021
Order Number: 391817321-001
CSLAC File Number: CSLAC-21-044

Between:

and

The City of Edmonton, Community Standards and Neighbourhoods

Committee Members

Rohit Handa, Presiding Officer
Joel McDonald
Allan Bolstad

DECISION

[1] On September 21, 2021, the Community Standards and Licence Appeal Committee (the “Committee”) heard a request for review of an order that was filed on September 1, 2021. The request for review concerned the decision of Community Standards and Neighbourhoods to issue an Order pursuant to Section 546(1)(c) of the *Municipal Government Act*, RSA 2000, c M-26 (the “*Municipal Government Act*”). The Order was dated April 23, 2021 and was mailed on April 27, 2021 and required the following action:

Remove all furniture, wood, metal, plastic, plastic bags, bins, containers, buckets, grates, concrete blocks/bricks/pieces, poles, hoses, electronics, televisions, ATV’s, hot tubs, pallets, ducting, windows/frames, doors/closet doors, shelves/shelving units, industrial stoves/grills, furnace/air conditioner parts/pieces, large plastic totes, cardboard/boxes, poles, mats, tires/rims, carpet/underlay, cat scratching poles/houses, metal fence sections/parts, chain link fencing, ironing boards, chairs, air compressors, bags of concrete, hot water tanks, appliances/parts/pieces,

stoves, cabinets, snow blowers, waste bins, paint cans, electrical cords, hoses, tools, shovels, auto parts, glass, sinks, generators, hoists, jacks, crates, tarps, coolers, laundry baskets/hampers, wet/dry vacs/parts/pieces, bags/backpacks, planters, fertilizer spreaders, computers/hard drives/parts/pieces, umbrellas, toys, boots/shoes, pillows, blankets, foam, file cabinets, safes/parts/pieces, tables, oil drums and pylons from the entire property. Also remove all debris and loose litter from the entire property, and take any action or measures necessary to remedy the unsightly condition.

YOU MUST COMPLY WITH THIS ORDER BEFORE: May 31, 2021

- [2] The subject property is located at 6312 - 92 Avenue NW, Edmonton.
- [3] The hearing on September 21, 2021 was held through a combination of written submissions and video conference hearing. 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 Presiding Officer confirmed with the parties in attendance that there was no opposition to the composition of the panel.
- [5] The Presiding Officer outlined how the hearing would be conducted, including the order of appearance of parties, and no opposition was noted.
- [6] Prior to the hearing, the Committee raised a jurisdictional issue regarding when the appeal was filed. The Committee explained to the Applicant that it is constrained by the limitation period prescribed by Section 547(1)(b) of the *Municipal Government Act*, R.S.A 2000, c. M-26 ("*Municipal Government Act*"), which states:

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

...

(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.

[7] The Committee must therefore determine whether the Appellant filed the appeal within the 7-day limitation period. If the appeal was filed late, the Committee has no authority to hear the matter.

Summary of Hearing on Preliminary Matter

i) Position of the Applicant, _____, who was accompanied by

[8] _____ was in contact with two Municipal Enforcement Officers from the City and was told she had until the end of August to comply with the Order.

[9] She was not aware of the timeline to file an appeal to this Committee.

[10] The Municipal Enforcement Officers told her the City would work with her and they understood the position she was in.

[11] She reviewed section 546 of the *Municipal Government Act* and feels the items in her yard are not an issue. She does not understand why she cannot have her children's toys in the backyard.

[12] _____ is renovating her house due to damages made by a previous tenant. She has removed several items in her yard and is willing to send in photographs, if the Committee requires them. She is willing to comply with the Order but needs more time to do that.

[13] She reiterated that she was not aware of the appeal timelines or the appeal would have been filed on time.

[14] _____ and _____ provided the following information in response to questions by the Committee.

- a) They received a Notice of Entry at the end of March and the property was inspected on April 22, 2021. The Notice of Entry contained details on what items needed to be removed from the property, but did not include appeal information.
- b) The Municipal Enforcement Officers came to their house, but they only gave them the Notice of Entry and not the Order, and they did not receive the Order by mail.
- c) They removed the sidewalk and mail was not delivered to their house for a period of time. They called the post office to find out where their mail was and why it was not being delivered.
- d) They bought a security box and placed it at the edge of their property for mail to be delivered but they still did not receive their mail.
- e) They are unsure of when they started receiving mail but possibly at the end of June.

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

[15] Ms. C. Perizzolo did not attend the hearing but provided a submission that was considered by the Committee.

Decision on Preliminary Matter

[16] The Committee does not assume jurisdiction to hear the appeal.

Reasons for Decision

[17] The Order in question was issued pursuant to section 546 of the *Municipal Government Act*.

[18] Section 547(1) reads:

A person who receives a written order under section 545 or 546 may by written notice request council to review the order within

...

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

[19] Therefore, the Committee, who has been delegated the review powers by council through the *Community Standards and Licence Appeal Committee Bylaw 19003*, must determine whether the request to review the Order was made within 7 days after the date the order was received.

[20] The evidence before the Committee tendered by the City is that the Order was issued on April 23, 2021, as a result of an inspection performed on April 22, 2021.

[21] The *Interpretation Act*, RSA 2000, c I-8, (the “*Interpretation Act*”) states at section 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

...

- [22] The City provided evidence that the Order was mailed April 27, 2021. Therefore, the Committee can presume that receipt occurred on May 4, 2021 as indicated in the City's submission in accordance with the *Interpretation Act*.
- [23] However, this presumption can be rebutted in accordance with section 23(2) of the *Interpretation Act*:
- (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.
- [24] There is no evidence to suggest that subsection 23(2)(a) applies in this instance. Therefore, the onus rests with the Applicant, the addressee, to demonstrate that the document was not received.
- [25] The Applicant provided evidence that their mail service was disrupted for a period of time in the summer and that they were not receiving mail in a timely manner. However, this mail disruption ended at some point in the summer.
- [26] While the Applicant cannot recall the exact date on which mail service resumed, they did suggest that it was likely around the end of June or mid July when their service was restored.
- [27] Therefore, assuming the worst case scenario, the Committee can infer that the Order was received, or ought to have been received by the middle of July. Therefore, the appeal ought to have been filed by the third week of July in order to comply with limitation provisions of the *Municipal Government Act*.
- [28] The Applicant contends that the Order was never received. However, the Committee must weigh the evidence before it to determine the likelihood of this submission. The Committee heard that the Applicant received other correspondence from the City, including Notices of Entry.
- [29] Moreover, there is no suggestion that the Order was returned to the City. Therefore, the only reasonable interpretation supported by the evidence is that at some point between April 27, 2021 and the middle of July, the Applicant came into possession of the Order.
- [30] Whether they understood the contents of the Order at that time or otherwise did not give it their full attention is not a reason to extend the application of the limitation period. The onus is placed on the Applicant to satisfy the Committee that receipt was not effected. The Committee has determined on a balance of probabilities that the Order was received by the Applicant on or before the third week of July.

[31] Given that the written notice was filed on September 1, 2021, the Committee is of the opinion that the request was filed outside of the statutory limitation period.

[32] Therefore, the Committee cannot assume jurisdiction.

A handwritten signature in black ink, appearing to read "Rohit Handa". The signature is stylized with a large initial "R" and a horizontal line crossing through the middle of the letters.

Rohit Handa, Presiding Officer
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.