



COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE SELECTION SHEET/AGENDA

August 20, 2015 – Churchill Building

9:30 a.m.
12:00 p.m.

Call to Order 3:30 p.m.
Lunch 4:30 p.m.

Recess
Adjournment

MEMBERS

T. Caterina, B. Anderson, M. Oshry

ITEM		ACTION
1.	CALL TO ORDER AND RELATED BUSINESS	
1.1	Call to Order	
1.2	Adoption of Minutes	
	<ul style="list-style-type: none"> July 9, 2015, Community Standards and Licence Appeal Committee meeting minutes 	
2.	EXPLANATION OF APPEAL HEARING PROCESS	
3.	COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS	
3.1	Appeal of Order – D.S., 8702 - 93 Street NW, Order Pursuant to Section 545(1) of the <i>Municipal Government Act</i>	Withdrawn
3.2	Appeal of Order – S.N., 11250 – 109 Ave NW, Order Pursuant to Section 546(1)(c) of the <i>Municipal Government Act</i>	Withdrawn
3.3	Appeal of Order – D.C., 4256 - 74 Street NW, Order Pursuant to Section 545(1) of the <i>Municipal Government Act</i>	
3.4	Appeal of Order 1610227 Alberta Ltd, 10110 - 96 Street NW, Order Pursuant to Section 546(1)(c) of the <i>Municipal Government Act</i>	Postponement Request
3.5	Appeal of Order - 1610227 Alberta Ltd, 9608 - 101 Avenue NW, Order Pursuant to Section 546(1)(c) of the <i>Municipal Government Act</i>	Postponement Request

ITEM		ACTION
3.6	Appeal of Order – B.N., 8912 - 151 Street NW, Order Pursuant to Section 546(1)(c) of the <i>Municipal Government Act</i>	Withdrawn
3.7	Appeal of Order – K.D., 226 - Lee Ridge Road NW, Order Pursuant to Section 545(1) of the <i>Municipal Government Act</i>	Withdrawn
4.	ADJOURNMENT	

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COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

MINUTES

June 18, 2015 – Churchill Building

PRESENT

T. Caterina, B. Anderson, S. McKeen

ALSO IN ATTENDANCE

S. McDonald, Office of the City Clerk
 C. Ashmore and C. Patterson, Law Branch
 T. Rowley and B. Webster, Office of the City Clerk

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3.5 Appeal of Order - C. B. F., 11343 - 104 Street NW, Order Pursuant to Section 545(1) of the <i>Municipal Government Act</i>	4	VARIED
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DECISION SUMMARY

ITEM		DECISION
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1. CALL TO ORDER AND RELATED BUSINESS

1.1 Call to Order

T. Caterina called the meeting to order at 9:30 a.m.

1.2 Adoption of Minutes

Moved T. Caterina

That the June 2, 2015 Community Standards and Licence Appeal Committee meeting minutes be adopted.

In Favour

T. Caterina, B. Anderson, S. McKeen

CARRIED

2. EXPLANATION OF APPEAL HEARING PROCESS

3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS

3.1 Appeal of Decision to Cancel Business Licence 100702492-001, 1735364 Alberta Ltd o/a Papyrus Lounge, 11124 - 107 Ave NW.

G. Lintz, Counsel for the Appellant, made a presentation and answered the committee's questions.

S. Renouf, Counsel for the Respondent, made a presentation and answered the committee's questions.

G. Lintz, Counsel for the Appellant, made a rebuttal presentation and answered the committee's questions.

S. Renouf, Counsel for the Respondent, made a rebuttal presentation and answered the committee's questions.

The Committee met in private at 11:07 am, pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 11:58 am.

Moved S. McKeen:

<p>The Committee upholds the decision of the Director, Licensing dated March 27, 2015, to cancel Business Licence 100702492-001 issued to 1735364 Alberta Ltd. operating as Papyrus at 11124 – 107 Avenue NW, Edmonton</p>	<p>Community Services Dept. Due Date: March 27, 2015</p>
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In Favour:

CARRIED

T. Caterina, B. Anderson, S. McKeen

3.2

Appeal of Order - A. L., 11312 - 83 Street NW, Order Pursuant to Section 546(1)(c) of the *Municipal Government Act*.

A. L., Appellant, made a presentation and answered the Committee's questions.

T. Courtoreille, Respondent, made a presentation and answered the Committee's questions.

A. L., Appellant, made a rebuttal presentation and answered the Committee's questions.

T. Courtoreille, Respondent, made a rebuttal presentation and answered the Committee's questions.

Moved T. Caterina:

<p>The Committee varies the order. You are therefore ordered to: Remove all wood, tables, metal, bags, plastic, car parts, carts, furniture, tarps, assorted materials, loose litter and 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. Remove all damaged, dismantled or derelict vehicles or motor vehicles, or trailers, whether insured or registered or not from the entire property.</p>	<p>Community Services Dept. Due Date: July 17, 2015</p>
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In Favour:

CARRIED

T. Caterina, B. Anderson, S. McKeen

3.3 **Appeal of Order - C. D. Stump, 251 - Lago Lindo Crescent NW, Order Pursuant to Section 545(1) of the *Municipal Government Act*.**

S. McDonald, Office of the City Clerk, advised the Committee that pursuant to an inspection conducted on the property, Administration has withdrawn the Order against this property because it is now in compliance with the Community Standards Bylaw 14600.

WITHDRAWN

3.4 **Appeal of Order - H. B., 10230 - 130 Avenue NW, Order Pursuant to Section 546(1)(c) of the *Municipal Government Act*.**

Moved T. Caterina:

H. B. was not in attendance but Administration confirmed that the correspondence was properly sent.

T Courtoreille, Respondent, provided pictures to the Committee and Administration.

<p>The Committee upholds the order.</p> <p>You are therefore ordered to:</p> <p>Remove all auto parts, metal, wood, tarps, plastic, barrel, oil containers, all derelict snowmobiles/ vehicles, exercise equipment and all loose litter and 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.</p> <p>And thereafter maintain the property to prevent the reoccurrence of any unsightly condition detrimental to the surrounding area</p>	<p>Community Services Dept.</p> <p>Due Date: June 14, 2015</p>
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In Favour:

CARRIED

T. Caterina, B. Anderson, S. McKeen

3.5 **Appeal of Order - C. B. F., 11343 - 104 Street NW, Order Pursuant to Section 545(1) of the *Municipal Government Act*.**

C. F., Appellant, made a presentation and answered the Committee's questions.

T. Courtoreille, Respondent, made a presentation and answered the Committee's questions.

C. F., Appellant, made a rebuttal presentation and answered the Committee's questions.

T. Courtoreille, Respondent, made a rebuttal presentation and answered the Committee's questions.

Moved S. McKeen:

<p>The Committee varies the order. You are therefore ordered to: Remove all furniture, appliances, wood, metal, pipe, tires, aircraft parts, wire, cardboard, tree clippings, pails, plastic jugs, plastic containers, airplanes, aircraft fuselages, plastics, tiles, shingles, all items under tarps, loose litter and 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.</p>	<p>Community Services Dept. Due Date: August 28, 2015</p>
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In Favour:

CARRIED

T. Caterina, B. Anderson, S. McKeen

3.6 Appeal of Order - P. J. P., 9022 - 151 Street NW, Order Pursuant to Section 545(1) of the *Municipal Government Act*.

S. McDonald, Office of the City Clerk, advised the Committee that pursuant to an inspection conducted on the property, Administration has withdrawn the Order against this property because it is now in compliance with the Community Standards Bylaw 14600.

WITHDRAWN

4. ADJOURNMENT

Meeting was adjourned at 3:02 p.m.

Chair

City Clerk

Decision of the Committee

Appeal of Order 171952458-001; 11311 - 104 Street NW, Edmonton Order Pursuant to Section 545(1) of the *Municipal Government Act*.

Hearing Date: July 9, 2015

Appellant: [REDACTED] [REDACTED]

I. ISSUE

Should the Appellant be given additional time to comply with the order?

II. APPEARANCES AND EVIDENCE

In dealing with the Appeal of Order 171952458-001, the Community Standards and Licence Appeal Committee (the Committee) heard G. [REDACTED] Appellant and T. Courtoreille, Respondent.

The Committee viewed two sets of photographs of the subject property, dated June 9, 2015 and July 8, 2015, provided by the Respondent.

III. SUMMARY OF APPELLANT'S POSITION

G. [REDACTED] Appellant, requested to be granted more time to comply with the Order. He advised the Committee that he has requested photographs several times and has yet to receive anything from Administration. He expressed that if he had been given the photographs ahead of time he could have invested more time in identifying and remedying the situation. He also requested that the photographs be rejected as evidence, as he was not provided them in June when he originally asked for them.

The property in question is a rental property. The long term tenant of 21 years moved out at the beginning of last year, at which time the Appellant began exterior renovations on the house. The Appellant advised the Committee that he was stricken ill on a number of occasions, one of which left him bed-ridden. He did not fully recover until February of 2015. While ill, he was not in a condition to continue with the renovations on the property. His current intent is to continue the renovations, however, he has not done this type of renovation before and it is taking time to learn. The Appellant advised the Committee that, progress-wise, he has rented a bin for a month and has already redone the roof.

He was also given a separate Notice to Comply on his own residence at the same time as this Order, and thus was faced with the challenge of having to clean up two separate properties at the same time.

When questioned by the Committee, the Appellant responded that in his opinion his properties had been in an unsightly state for approximately two years. He is confident, however, that he can clean up his two properties and repair his fence within two months if allowed. However, he is not sure how he can complete the renovations as well as the cleanup within that time frame.

He would appreciate any help for his property and he is willing to meet with City staff in regards to help.

IV. SUMMARY OF RESPONDENT'S POSITION

T. Courtoreille, Respondent, said the initial investigation was conducted on May 22, 2015 as the result of two separate citizen complaints. A warning notice was sent to the Appellant on May 25, 2015. When voluntarily compliance was not obtained, an additional inspection was conducted on June 9, 2015, at which point a 545 Order was issued. There have been seven distinct complaints about this property in the past five years, all of which have been resolved with voluntary compliance.

The Respondent advised the Committee that a full site inspection has not been conducted as there was a lot of vegetation on the property that was hindering the Bylaw Enforcement Officers' view. He anticipates that some of the vegetation on the property will have to be removed. It would likely cost a minimum \$4000 to clean up the property, per discussions with a contractor.

The Administration has been trying to track down the Appellant for quite some time. He does not own a phone and has not responded to requests for conversation. There is a lock on his gate and they were unable to get any information about him. They were able to locate a distant relative who provided Administration with a small amount of information about the Appellant. The lack of ability to have a conversation with him has limited their ability to get help for him and determine his eligibility for said help. The Respondent confirmed that he would be willing to work with the Appellant.

The Administration believes that the property shows a serious disregard for general maintenance and upkeep and meets the condition of a nuisance on land as identified in

Section 6 of the Community Standards Bylaw and therefore requests that the Order be upheld.

V. DECISION

The Committee varies the Order to include the removal of any vegetation that is otherwise required to enforce the order.	Community Services Dept. Due Date: July 2, 2015
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VI. REASONS

Disclosure

Mr. [REDACTED] argued that the introduction of photographs, which had not been provided to him prior to the hearing, was an ambush and should therefore be excluded from evidence.

The *Community Standards and Licence Appeal Committee Bylaw (Bylaw 15166)* does not require the exchange of information prior to a hearing for certain hearings including hearings about nuisance properties. This is likely an attempt within the Bylaw to balance fairness against the strict formalism of a Court proceeding. There are certain types of hearings that deal with more significant issues, including business licence appeals, that require pre-hearing disclosure of information. A determination of the issues on cases that deal with nuisance properties are less serious in nature and therefore can be dealt with in a less formal manner usually not requiring pre-hearing disclosure.

Certainly there may be times that information should be exchanged prior to these hearings to avoid an ambush at a hearing. This would depend on the nature of the evidence and the nature of the arguments. However it is difficult to see how photographs of the property at issue could ever be an ambush. The property owner would be well aware of the nature and condition of his own property. In fact Mr. [REDACTED] admitted that these particular photographs accurately portrayed the condition of his property. The Committee therefore rejects the arguments that evidence such as pictures of the property should be excluded from this hearing.

Nuisance

There does not appear to be any dispute about whether there is in fact a nuisance on the property. However, for the sake of completeness, the Committee clearly finds that based on a review of the photographic evidence there is an excessive accumulation of material on the property which constitutes a nuisance under Section 6(2)(a) of *Community Standards Bylaw 14600*.

Time to Clean Up

Mr. [REDACTED] has made it clear that he is requesting additional time to clean up his property. His request is for an additional 2 months. Section 549(1)(d) indicates that the City cannot enforce against the property owner until the appeal periods have passed on the property. Section 548(1.1) allows 30 days to appeal this type of order. There would also be additional time for the decision to be mailed out to the parties adding a minimum of another 7 days under the *Interpretation Act* RSA 2000 Chap I-8. Even though the Committee is upholding the Order, in effect the property owner has a minimum of another 37 days to remedy the problems on the property. While the Committee finds it reasonable to allow some additional time to remediate the property given the prior medical issues, it also needs to weigh that against the rights of the community to ensure that nuisances within neighborhoods are remediated. As such the amount of time prior to enforcement of this order is considered by this Committee to be sufficient to remedy the problems on the property.

The Construction Materials

Another of Mr. [REDACTED] concerns was that any construction materials on his property should remain. The Order does not make mention of construction materials, and the photographs do not show any construction materials. It is not clear to this Committee exactly what materials Mr. [REDACTED] believes are construction materials. Certainly if there are valuable materials in his back yard that are being used for a legitimate construction project, the spirit of the Order does not appear to require their removal.

Mr. [REDACTED] was also concerned that he be allowed to continue with the renovations. The Committee asked whether he believed that he could keep the property tidy and without nuisance during his renovations and he indicated that he could. As long as the property does not become a nuisance during the renovation project this Committee sees no reasons why the renovation cannot proceed assuming that Mr. [REDACTED] has all the appropriate approvals and permitting.

**EDMONTON COMMUNITY STANDARDS
AND LICENCE APPEAL COMMITTEE**

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The Vegetation

The Order itself did not mention vegetation but the Committee heard that it might be necessary to deal with some of the vegetation in order to carry out the terms of the Order. The Committee therefore finds it reasonable to vary the Order to ensure that any vegetation

that needs to be removed in order to ensure that the Order can be carried out may be dealt with.



T. Caterina, Chair

August 11, 2015
Date

Decision of the Committee

Appeal of Order 173565599-001; 7805 – 114 Street NW, Edmonton; Order Pursuant to Section 546(1)(c) of the *Municipal Government Act*.

Hearing Date: July 9, 2015

Appellant: [REDACTED]

I. ISSUE

Whether the land is a nuisance by showing serious disregard for general maintenance and upkeep as per Section 6 of the *Community Standards Bylaw*.

II. APPEARANCES AND EVIDENCE

In dealing with the Appeal of Order 173565599-001, the Community Standards and Licence Appeal Committee (the Committee) heard from M. [REDACTED] Appellant, and T. Courtoreille, Respondent.

The Committee viewed three sets of photographs of the subject property provided by the Respondent dated June 3, 2015, June 15, 2015 and July 8, 2015. There was also an email dated June 2, 2015 from Waste Management Services with some photographs. The Respondent also provided copies to the Appellant.

The Committee viewed a photograph of the subject property provided by the Appellant.

III. SUMMARY OF APPELLANT'S POSITION

M. [REDACTED] Appellant, said that he is suspicious about the entire protocol regarding natural justice and procedural fairness. He had asked for disclosure prior to the hearing and was told that the Respondent was not obligated to provide any. He thinks it is unfair to come into the hearing blind. He advised the Committee that he filed a Charter notice because the Bylaw Officer said he was taking photographs over the top of his fence which is against his privacy. He felt that his rights were infringed on per Section 8 of the Canadian Charter of Rights and Freedoms.

According to the *Municipal Government Act*, unsightly land has to show signs of serious disregard. He said that in his opinion his property does not show any such signs of

disregard. The grass is mowed and there no weeds. His roof is in good condition, and there are no derelict vehicles being stored on the property. He stated that this property is on a major thoroughfare where 30,000 cars a day drive within 7 feet of his property and yet there has never been a complaint from passersby. There are some items stored in his yard but he feels that it is not inappropriate as it is his yard, and he pays taxes on it. He does acknowledge, however, that there is room for improvement regarding general cleanliness.

Mr. [REDACTED] advised the Committee that his sole neighbour to the east expressed concern that the backyard was getting messy. He agreed to clean it up and as a result a number of garbage bags were placed in the back for pickup. This prompted a call from the city. He believes the Order is invalid as it does not conform to the *Municipal Government Act*. He had set up a huge yard sale and removed about half of the items, and he is in the process of cleaning up the rest of the items. He presented the Committee with a photograph of his yard sale, and told the Committee that he does not need a business licence or a permit to have a yard sale. The material was accumulated over a few years. The yard sale occurred on July 7 to 8, 2015. He started setting up for it after the incident mentioned previously wherein his neighbour expressed concern over the state of his back yard. Some of the material was already in the backyard and some was brought out from his garage to set up for the sale.

The wording on the City Bylaw uses the term “nuisance” to refer to problematic properties and in Mr. [REDACTED] opinion there is no nuisance on his property as there have been no complaints. The Order itself says to remove all garbage bags, cardboard and loose litter and debris. He is assuming by this that the only time the Bylaw Officer came out is when he had put his garbage into the alley.

If Administration decides to uphold this Order, he would like some time for cleanup. He admits that there are probably too many accumulated materials on his property and he has made attempts to remove some of it. He would like additional time to remove more.

When questioned, he stated that he owns a junk removal company. He refused to comment on if he stores material from his business on this property.

IV. SUMMARY OF RESPONDENT’S POSITION

T. Courtoreille, Respondent, advised the Committee that on June 2, 2015 Administration received two complaints. One was from a citizen and one was from Waste Management Services. Waste Management Services had advised that they would not be removing the garbage as the waste did not comply with the *Waste Management Bylaw*. A follow up visit from Bylaw Enforcement confirmed this, and an Order and ticket were issued. The Bylaw Officer was able to see between the fence into the yard and suspected a larger issue in the rest of the yard. A June 15, 2015 investigation confirmed that the yard was in a nuisance

state. Administration determined it acceptable to continue ahead with the same 546 Order that was originally issued as it effectively covered all the issues Administration had with the property.

The photographs were taken over the fence from an adjacent property. This is a normal procedure for bylaw enforcement. Under Section 542 they must obtain necessary evidence to enforce bylaw orders

There have been two previous instances over the past five years where Administration has been involved with this property.

The garbage that was the source of the original complaint and was photographed in the back alley is now gone. It was present for the first two inspections but removed prior to the third one, however, in the opinion of the Administration, the nuisance state of the property still stands.

Administration believes that the property shows a serious disregard for general maintenance and upkeep and meets the condition of nuisance on land as identified in Section 6 of the *Community Standards Bylaw* and therefore requests that the Order be upheld. Also, given the ongoing issues with this property and the appellant's other properties, the Administration requests that a forward looking statement be added to this property. This statement would allow them to have a more immediate response to any future issues. There are also other properties within the City for which there has been enforcement action with Mr. [REDACTED]

When asked if there were any photographs of the yard from June 15, 2015, the Respondent replied that there weren't any pictures due to the fact that the initial complaint was from Waste Management Services regarding the garbage collection outside of the yard. Mr. Courtoreille said citizens are allowed to have 3 garage sales per year for no longer than 3 days at a time. Anything beyond three garage sales per year or any garage sales more than three days at a time would require a home based business licence.

When asked about the *Waste Management Bylaw* standard, Mr. Courtoreille said it allows for typically 3 garbage cans that are well maintained, closed and secure. In extenuating circumstances, 4 or 5 garbage cans are allowed. Mr. Courtoreille indicated that the amount of garbage seen on this property for garbage pickup is well beyond the expectation of the Bylaw.

Rebuttal of the Appellant

Mr. [REDACTED] indicated that he was not aware of the two complaints being filed over five years. He said he has not seen a prior Notice to Comply on his property and does not agree with

the statement that there are “numerous complaints across the city.” He said that particular information should be stricken from the record as it is contrary to the administration of justice and is irrelevant to this hearing. Furthermore, he was not aware of the regulations for garbage pickup and felt any answers he was given by the city in that regard were very vague.

V. DECISION

<p>The Committee upholds the Order.</p> <p>You are therefore ordered to:</p> <p>Remove all garbage bags, cardboard and all loose litter and 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.</p>	<p>Community Services Dept.</p> <p>Due Date: July 2, 2015</p>
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VI. REASONS

Procedural Fairness and Disclosure

Prior to the commencement of the hearing Mr. [REDACTED] raised concerns that he did not believe that the principles of procedural fairness and natural justice were being followed by the Committee. Other than a discussion about the lack of disclosure prior to the hearing, and perhaps an inability to cross-examine, it was not clear from his arguments what specific things he was claiming were unfair about the procedures followed by this Committee. As an example, he stated that in a courtroom he would be innocent until proven guilty and it was unclear whether this Committee acted the same way. In response to this statement he was informed that this was an administrative proceeding based on the *Municipal Government Act* RSA 2000 Chap M26 (*MGA*) and the *Community Standards Licence Appeal Committee Bylaw* (Bylaw 15166) (“CSLAC Bylaw”) and not a criminal court. He stated he understood this was not a criminal court but later made similar statements again without explaining what was unfair about what was taking place.

Given that Mr. [REDACTED] specifically mentioned issues with disclosure and alluded to cross examination, it is necessary to respond to those two issues directly.

The *CSLAC Bylaw* does not require the early exchange of information for certain hearings, including hearings about nuisance properties. There are other types of hearings which deal with more significant issues, including business licence appeals, that require prehearing disclosure of information. Having two different types of hearings is likely an attempt in the bylaw to balance the fairness of the process against having to follow the strict formalism of a Court proceeding, and basing this distinction on the nature of the hearing as well as the relative severity of the consequences of the decision. Given that the evidence in hearings dealing with nuisance properties, weed control and unsightly properties will usually be limited to photographs of what is taking place on the property, there is really nothing unfair about this distinction. If all the documentary evidence is simply photographs of the property, there is nothing that could ever ambush the property owner.

The *CSLAC Bylaw* makes it clear that there shall be no cross examination in hearings conducted by this Committee. Hearings dealing with nuisance properties, weed control, and unsightly properties are not the types of hearings where cross examination would typically be necessary to challenge the submissions of a party. What this Committee is dealing with are questions about what a property looks like and whether it qualifies as a nuisance or an unsightly property and as such there is no need to cross examine on issues when the majority of the evidence is found in photographs.

Certainly there may be times that information should be exchanged prior to these hearings to avoid an ambush at a hearing. There may also be times when a party wishes to suggest that the Committee ask certain questions of the other side. These situations would depend on the nature of the evidence and the nature of the arguments. In this case we are dealing with a simple issue relating to whether the property qualified as an unsightly property under the legislation and it therefore does not appear to be unusual in any way.

The Committee therefore rejects the arguments that there is anything unfair about the procedures of this Committee in this case.

The Charter of Rights and Freedoms

Mr. [REDACTED] also indicated at the start of the hearing that he was raising an issue under the Charter of Rights and Freedoms (“Charter”) and his privacy had been breached by the City taking photographs of his property. After questioning about which aspect of the Charter he was claiming was in play, Mr. [REDACTED] finally indicated that taking photographs breached his rights under Section 8 of the Charter the right against unreasonable search and seizure. He provided no case law to support his position, and only made brief arguments focusing on the importance of his privacy rights. It is not clear what remedy he was seeking for this alleged Charter breach.

The Committee has concerns about an individual who comes before the Committee to argue about a Charter breach and then has to be questioned in depth to attempt to determine exactly the nature of the breach, and which section of the Charter they are claiming has been breached. Parties should come to this hearing being fully prepared to argue the case. Obviously any claim about a Charter breach can have significant implications. Simply waiving the Charter flag without identifying how the Charter has been breached, and without providing full argument as well as the remedy being sought can lead to complications and delays which, in a case such as this where the issue is whether a property is unsightly, may not be warranted.

However, insofar as Mr. [REDACTED] raised this as an issue before the Committee, the Committee did deliberate on this topic. The Committee finds that to the extent that it has any jurisdiction to deal with this issue, there has not been an unreasonable search or seizure in this case.

The jurisdiction of this Committee is to consider the Order that has been issued to Mr. [REDACTED] pursuant to Section 547 of the *MGA*. The Committee is not a designated decision maker on Constitutional Issues under the *Administrative Procedures and Jurisdiction Act* RSA 2000 Chap A3, and has no specific jurisdiction as it relates to the determination of Charter issues. However, there is little question that every tribunal needs to take into account the principles and values found within the Charter in making decisions.

The Charter does not state that every search is a breach of the Charter, only an unreasonable search. In this case, there is no personal or confidential information in the photographs, nor was there any intent to gather any. The photographs do not depict any persons and are simply an attempt to show what is visible from the neighbor's yard and from other public areas. To some extent you could often obtain the same information from Google Maps or another similar service that takes satellite photography. Further, anyone that took the time to peer over Mr. [REDACTED] fence would get the same view of the property.

It is the view of the Committee that even if some form of privacy rights are engaged by the contents of a person's backyard, such rights would be minimal. Everything that is shown in the photographs can already be seen by his neighbor, and simply putting up a fence does not create some form of barrier against the public or the state looking into the backyard. Just because the images were captured by photograph does not somehow make viewing his property an unreasonable search.

If Mr. [REDACTED] is correct that no one can take photographs of his backyard, whether from a neighbor's property or a public area, it would be impossible for this Committee to meet its mandate of determining whether properties are unsightly or a nuisance. The proof of such allegations are the photographs of the property and without them, there would be no evidence upon which this Committee could decide. Further, it is not only the rights of Mr.

█ that are in play here, there are also the rights of the public to ensure that properties are not unsightly or a nuisance. As such, even if there is some minimal breach of the Charter rights here, the breach would be justified since there are also wider public interest considerations at play in the legislation.

It is important that this was not a case where the municipality entered a property without permission. Certainly if the Municipality entered onto Mr. █ property without providing notification, or after he objected to the municipality entering the yard without a Court Order, the facts could lead to a different result.

The Committee therefore finds that there was no unreasonable search or seizure, and that even if there was a minor breach, such a breach was justified to ensure that the interests and rights of the broader community could also be taken into account.

Is the Property Unsightly?

The main issue before this Committee is whether the property was unsightly. Mr. █ focused on the argument that the property did not “show” signs of a serious disregard for general maintenance or upkeep. He seemed to place a lot of emphasis on the word “show”, although did not explain how he felt that word changed the interpretation of the definition.

There was some discussion during the hearing that Mr. █ runs a junk collection business. The Committee is strongly suspicious that Mr. █ collects stuff in his junk collection business and then sells it at yard sales. However, the Committee is not here to decide whether Mr. █ is running an illegal home based business. Instead the Committee must decide, based on the evidence, whether his property is unsightly.

Unsightly conditions are defined under the *MGA* as:

546(0.1) (b)(ii) in respect of land, includes land that shows signs of a serious disregard for general maintenance or upkeep.

The initial photographs that were taken of the alley show a large amount of material that was apparently left for pick up by Waste Management Services, some of which was in bags, and other material which was loose. Mr. █ testified that he cleaned up his yard based on a request by his neighbor who had expressed concerns about the state of the yard. If all of the material in the alley came from the back yard, this gives the Committee a good insight as to how bad the yard was before Mr. █ began to clean.

Whether a property is unsightly or not is somewhat subjective. Different neighbourhoods of the City would have different standards. In some cases, what is unsightly to one person may not be unsightly to another. The purpose of having a provision that allows a municipality to

order that unsightly properties be remedied is to ensure that community standards are met by all people living in the City of Edmonton. This Committee, which consists of elected officials, is in the best spot to determine the standards that are acceptable within a community.

General maintenance or upkeep can include a failure to cut the grass, deal with weeds, or remove garbage. It would also include a situation where material is piled up in a yard to create an accumulation of material for an extended period of time. If there is too much material in the yard it can lead to infestations of vermin such as mice, and can also simply lead to eyesores for neighbors and the surrounding community.

In this case the neighbor was forced to complain to Mr. [REDACTED] to get him to clean up his yard. All of that material was then placed in the alley but was not picked up by Waste Management Services. In fact there were so many bags of garbage that it exceeded the limits of pick up by the garbage collectors. The photographs of the alley clearly show an unacceptable condition in the alley and the conditions shown are, in the opinion of this Committee, clearly unsightly.

The photographs taken after the Order was issued also show an excessive accumulation of material in the backyard. These photographs are complicated by the fact that Mr. [REDACTED] was having a yard sale. It is therefore unclear how much of the material was there because of the yard sale and how much of it had nothing to do with the yard sale. Given that the neighbor had complained to Mr. [REDACTED] prior to the Order being issued about his back yard, it is no stretch to think that some of the material predated the yard sale. In any event, the accumulation of material in the back yard would also be unsightly. If it was only there for a short time, such as a few days, to accommodate the yard sale, this would be of less concern to the Committee.

Detrimental to the surrounding area

Section 546(0.1) of the *MGA* defines detrimental to the surrounding area to include “causing the decline of the market value of property in the surrounding area”. Since the word “includes” is found in the definition, this Committee is not limited to looking solely at market values of property. Instead the Committee needs to consider whether the unsightly issue could have some impact on the surrounding area.

When there are significant issues with the maintenance and the upkeep of property, the entire community suffers. This can lead to various issues including disputes between neighbors, people avoiding the area, health issues, vermin moving in, etc.

While there was no specific argument made as to whether the conditions were detrimental to the surrounding area, the Committee concludes that when a property has issues as

significant as the ones shown in the photographs, this sets a bad example for the entire area and creates a negative stigma on the area. This stigma is detrimental to the entire community.

Has the Order Already Been Complied With?

There was evidence before this Committee that the garbage bags in the back of the property near the alley are now removed and that the problems in the alley are now resolved. Just because a property has been remediated since the Order was issued does not mean the Order was invalid. It simply means that the Order has now been complied with and no further action is necessary on that portion of the property.

An interesting issue is whether the Order only covers the area in the alley, or is also intended to cover the remainder of the property. The Order requires the removal of garbage bags, cardboard, and all loose litter, and the photographs from the time that the Order was issued relate solely to the alley. Both of these facts suggest that the Order only covered the alley.

However, the Order also clearly states that the items must be removed from the *entire property* and also refers to *any other items*. Subsequent photographs show the backyard and the accumulation of material extending into the backyard, although those photographs are complicated by the fact that Mr. [REDACTED] was having a garage sale. However, the Committee also heard testimony from Mr. [REDACTED] that his neighbor was the one that complained to him about the state of the backyard prior to the Order being issued. This indicates there was also a problem in the backyard around the time the Order was issued. The Committee finds that given the clear wording in the Order, the Order is intended to cover the problems on the entire property. If the material in the backyard in the photographs relates to the yard sale, the Committee expects that Mr. [REDACTED] will remove those items that did not sell, or place such items into his sheds, to make sure that his property is no longer unsightly.

Mr. [REDACTED] suggested that this might take two to three months to remedy the remainder of his property. The Committee is unclear why it would take that long to remediate the property if all Mr. [REDACTED] needs to do is move the material back into the sheds. It is not reasonable to ask a neighbor to put up with the problems on the property for that length of time. Given that Section 550(1)(d) indicates that no enforcement of this order can take place until the appeal periods have expired, Mr. [REDACTED] has sufficient time to remediate the property under the timelines imposed by the Order.

Request to add a Forward Looking Clause

During the hearing the City made a request for the Committee to vary the Order to add a statement that Mr. [REDACTED] would have to continue to maintain the property so that it does not

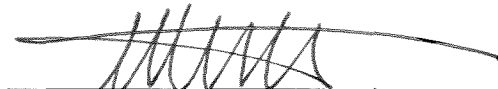
**EDMONTON COMMUNITY STANDARDS
AND LICENCE APPEAL COMMITTEE**

Office of the City Clerk
Churchill Building
10019 – 103 Ave., Edmonton, AB T5J 0G9
Ph: 780-496-5026 Fax: 780-496-8199
Email: CSLAC@edmonton.ca

return to an unsightly condition. Such a statement would allow the City to enforce against the property owner without having to issue any additional Orders. Part of the reason that the City made this request is that Mr. [REDACTED] has several other properties in Edmonton which have been subject to other nuisance Orders.

The Committee finds that there are two problems with this request. First, this request essentially would have changed the nature of the hearing and would have resulted in an ambush of the property owner. The property owner would have had no way to know that the City was going to make such a request and certainly no way to know that the City was going to base this request on issues relating to other properties. Should the Committee have granted this request it would have resulted in the exact procedural unfairness that Mr. [REDACTED] was concerned about since it would have ambushed the property owner about what the real issues were in this hearings.

Second, there was a lack of evidence to support such a request. The oral evidence suggested that there were a minimal number of prior investigations on this property. There was some oral testimony but almost no detail about the investigations on other properties. The evidence that was presented to this Committee simply did not come close to establishing the need for a forward looking statement.



T. Caterina, Chair

August 11, 2015
Date



COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

MINUTES

July 9, 2015 – Churchill Building

PRESENT

T. Caterina, M. Oshry, S. McKeen

ALSO IN ATTENDANCE

S. McDonald, Office of the City Clerk
 C. Ashmore, Law Branch
 T. Rowley and B. Webster, Office of the City Clerk

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DECISION SUMMARY

ITEM		DECISION
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1. CALL TO ORDER AND RELATED BUSINESS

1.1 Call to Order

Councillor Caterina called the meeting to order at 9:32 am.

1.2 [Adoption of Minutes](#)

Moved T. Caterina:

That the June 18, 2015, Community Standards and Licence Appeal Committee meeting minutes be adopted.

In Favour :

CARRIED

T. Caterina, M. Oshry, S. McKeen

2. [EXPLANATION OF APPEAL HEARING PROCESS](#)

3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS

3.1 [Appeal of Order - G. K., 11311 - 104 Street NW, Order Pursuant to Section 545\(1\) of the *Municipal Government Act*.](#)

G. K., Appellant, made a presentation and answered the Committee's questions.

T. Courtoreille, Respondent, made a presentation and answered the Committee's questions.

Two sets of photographs, taken on June 9, 2015 and July 8, 2015, were provided to the Appellant, Members of the Committee and the Office of the City Clerk.

The Committee met in private at 10:13 am, pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 10:20 am.

Moved T. Caterina:

<p>The Committee varies the order. You are therefore ordered to:</p> <p>Remove all televisions, metal, appliances, bicycle parts, tires, barrels, doors, vehicle parts, Styrofoam, furniture, plastic containers, electronics, cut branches, pipe, wood, wire, cardboard, plastic jugs, old lawn mowers, eavestroughs, railings, old satellite dish, pails, all the materials from under the tarps, loose litter and 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.</p> <p>Also cut the long grass through out the entire property.</p> <p>Remove any vegetation.</p>	<p>Community Services Dept.</p> <p>Due Date: July 2, 2015</p>
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CARRIED

In Favour:

T. Caterina, M. Oshry, S. McKeen

3.2 [Appeal of Order - J. T., 5116 - 206 Street NW, Order Pursuant to Section 545\(1\) of the *Municipal Government Act*.](#)

S. McDonald, Office of the City Clerk, advised the Committee that Administration has withdrawn the Order against this property.

3.3 [Appeal of Order - H. M., 15505 -93A Avenue NW, Order Pursuant to Section 545\(1\) of the *Municipal Government Act*.](#)

S. McDonald, Office of the City Clerk, advised the Committee that Administration has withdrawn the Order against this property.

3.4 [Appeal of Order - M. P., 7805 - 114 Street NW, Order Pursuant to Section 546\(1\)\(c\) of the *Municipal Government Act*.](#)

M. P., Appellant, made a presentation and answered the Committee's questions.

T. Courtoreille, Respondent, and Nancy Jacobsen, Law Branch, made a presentation and answered the Committee's questions.

Three sets of photographs, taken on June 3, 2015, June 15, 2015, and July 8, 2015, were provided to the Appellant, Members of the Committee and the Office of the City Clerk.

The Committee met in private at 11:10 am, pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 11:57 am.

Moved T. Caterina:

<p>The Committee upholds the Order. You are therefore ordered to: Remove all garbage bags, cardboard and all loose litter and 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.</p>	<p>Community Services Dept. Due Date: June 18, 2015</p>
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In Favour:

CARRIED

T. Caterina, M. Oshry, S. McKeen

3.5

[Appeal of Order - BDO Canada Ltd., 10415 - 96 Street NW, Order Pursuant to Section 545\(1\) of the *Municipal Government Act*.](#)

S. McDonald, Office of the City Clerk, advised the Committee that Administration has withdrawn the Order against this property.

3.6

[Appeal of Order - BDO Canada Ltd., 9528 - 104 Avenue NW, Order Pursuant to Section 545\(1\) of the *Municipal Government Act*.](#)

S. McDonald, Office of the City Clerk, advised the Committee that Administration has withdrawn the Order against this property.

4. ADJOURNMENT

The meeting adjourned at 11:58 am.

Chair

City Clerk