



COMMUNITY STANDARDS & LICENCE APPEAL COMMITTEE

AGENDA

March 1, 2018 – Hearing Room 7

1:30 PM
4:30 PM

Call to Order
Adjournment

MEMBERS

M. Banga, J. Dziadyk, S. McKeen

ITEM		ACTION
1.	CALL TO ORDER AND RELATED BUSINESS	
1.1	Call to Order	
1.2	Adoption of Agenda	
	<ul style="list-style-type: none"> March 1, 2018, Community Standards and Licence Appeal Committee agenda 	
1.3	Adoption of Minutes	
	<ul style="list-style-type: none"> February 1, 2018, 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 - W.B., 11004 - 95 Street NW, Order Pursuant to Section 545(1) of the <i>Municipal Government Act</i>.	
3.2	Appeal of Order - G.G., 13520 - 111 Street NW, Order Pursuant to Section 545(1) of the <i>Municipal Government Act</i>.	
4.	ADJOURNMENT	

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COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

MINUTES

February 1, 2018 – Councillor's Boardroom, City Hall

PRESENT

M. Banga, S. McKeen, J. Dziadyk

ALSO IN ATTENDANCE

S. McDonald, Office of the City Clerk

C. Ashmore, Law Branch

I. Russell, Office of the City Clerk

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DECISION SUMMARY

ITEM	DECISION
1.	CALL TO ORDER AND RELATED BUSINESS
1.1	Call to Order

Clr. M. Banga called the meeting to order at 9:42 a.m.

1.2 Adoption of Agenda

Moved S. McKeen:

That the February 1, 2018, Community Standards and Licence Appeal Committee Agenda be adopted.

In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

1.3 Adoption of Minutes

Moved S. McKeen:

That the November 16, 2017, and December 1, 2017, Community Standards and Licence Appeal Committee meeting minutes be adopted.

In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

2. EXPLANATION OF APPEAL HEARING PROCESS

Councillor M. Banga explained the hearing process and asked if anyone objected to any member of the Community Standards Licence Appeal Committee hearing the appeals. No one objected.

3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS

3.1 Appeal of the Decision to Refuse to Issue a City of Edmonton Driver's Licence - M.S. pursuant to the Vehicle for Hire Bylaw 17400.

Ms. S. Sidhu made a presentation on behalf of the Appellant, Mr. M. Sidhu. Mr. M. Sidhu was also present.

Ms. W. T. Ramirez, Business Licensing and Vehicle for Hire, made a presentation. She was accompanied by Ms. N. Jacobson of Law Branch and Ms. Ramirez and Ms. Jacobson answered the Committee's questions.

Mr. C. Ashmore, Law Branch, provided information and answered the Committee's questions.

The Committee met in private at 10:48 a.m., pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 11:21 a.m.

Moved J. Dziadyk:

The Committee upholds the decision to Refuse to Issue a City of Edmonton Driver's Licence to Mr. M. Sidhu.	Business Licensing and Vehicle for Hire
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In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

3.2

Appeal of Order - W. B. 11004 - 95 Street NW, Order Pursuant to Section 545(1) of the *Municipal Government Act*.

Councillor M. Banga explained the hearing process and asked if anyone objected to any member of the Community Standards Licence Appeal Committee hearing the appeals. No one objected.

The individual named on the property title, Mr. W. B., was represented by Mr. M. B. Mr. M. B. made a presentation and answered the Committee's questions.

The Committee voted to extend Orders.

Mr. J. Lallemant, Citizen Services Department, made a presentation and answered the Committee's questions.

Mr. C. Ashmore, Law Branch, provided information and answered the Committee's questions.

Photographs taken on May 2, 2017, and January 31, 2018, were provided to the Appellant, Members of the Committee and the Office of the City Clerk.

The Committee met in private at 12:17 p.m., pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 12.42 p.m.

Moved S. McKeen:

The Committee adjourns the hearing until March 1, 2018, so it can hear evidence from a Development Officer as to whether the structure could be a valid carport. At this time the committee is of the opinion that the property would be considered a nuisance as a result of the materials inside the structure at the time	Citizen Services Dept.
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the Order was issued.

In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

4. ADJOURNMENT

The meeting was adjourned at 12:43 p.m.

Chair

City Clerk



**EDMONTON
TRIBUNALS**

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Decision of the Committee

Appeal of Order 247000570-001; 11004 – 95 Street NW, Edmonton, Order Pursuant to Section 545(1) of the *Municipal Government Act*

**Hearing Dates: February 1, 2018 and
March 1, 2018**

Appellant: W. B

I. ISSUE

Whether the property in question is in a nuisance condition.

II. APPEARANCES AND EVIDENCE

In dealing with the Appeal of Order 247000570-001, the Community Standards and Licence Appeal Committee (the Committee) heard from:

Appellant: M. B (Representing W. B)

Respondent: J. Lallemand, Acting Coordinator, Complaints & Investigations
Citizen Services, Community Standards Branch

Exhibit A: Supporting documents and photographs from Appellant

Exhibit B: Photographs dated May 2, 2017, and January 30, 2018, from
Respondent

FEBRUARY 1, 2018, HEARING

III. SUMMARY OF APPELLANT'S POSITION

Mr. M. B appeared as the agent for Mr. W. B , the registered owner of the property.

Mr B acknowledged that there was some material inside the structure at the time of the May 2, 2017, photographs but this has since been cleaned up. He submitted photographs taken on July 12, 2018, which show significant changes to the property and the structure.

Mr. B referred to Section 9 of the Community Standards Bylaw. He provided the definition of “serious” from various sources and does not agree that the subject property shows “serious” disregard for general maintenance and upkeep.

The City is well aware that this is an unoccupied building and has ignored the regulations regarding unoccupied buildings contained in Section 10 of the Community Standards Bylaw. According to Section 10 an unoccupied building only needs to be secured. There is no mention in this section that repairs have to be done.

According to the photos provided the City’s main concern appears to be the garage. As shown in the photos the structure in question is open towards the front and the back. According to Alberta Building Code Section 9.35.2.1 a building that is less than 60 percent enclosed is considered to be a carport. As this structure is only 48 percent enclosed it is a carport, not a garage, and does not need to be secured.

Mr. E’s submission included several pages defining “nuisance” and photographs depicting:

- Nuisance on private property tolerated by the City
- Nuisance on City property
- Photographs of unoccupied, boarded up buildings in the vicinity showing the “character of the neighbourhood”
- Photographs of the subject property including photographs taken on July 12, 2017, by the Community Standards Branch

“Some” material in the garage does not constitute a nuisance and even if it did this material has been removed as per the July 12, 2017, photos. The photos also show that the property in question is well within the character of the neighbourhood and that the City itself does not hold itself up to the same standards it expects of its citizens. The order he received does not specify if the nuisance is public or private.

The current plan is to keep the structure as a carport. The structure was boarded up in the past; however, there were problems with break-ins. For this reason it has now been converted to a carport with a heavy wire fence surrounding it. The bylaw officer they worked with at the time had encouraged this enclosure which will be removed once the property is re-built and occupied. They hope this will happen this coming spring or summer.

Mr. B acknowledged that the latest pictures dated January 31, 2018, show there is some material in the garage again but this will be used to re-build the house. He doesn't believe this material significantly interferes with the neighbour's peaceful enjoyment of their property as they would have to drive by and peek into the garage to see it.

Simple inconveniences or annoyances do not qualify as a nuisance; when living in a city certain annoyances have to be tolerated. Smoke, noise pollution, or damaging a neighbour's property would be significant interferences.

Mr. B is not aware of what development permits are in place for the property or if a permit would be required to alter the structure to change it from a garage to a carport. If this is a requirement he would be willing to comply.

IV. SUMMARY OF RESPONDENT'S POSITION

On May 2, 2017, the area bylaw officer was on proactive patrol and noticed no doors or windows on the structure, and piles of materials inside. Since the property in question has a history of more than twenty property standard complaints the officer proceeded directly to a *Municipal Government Act* 545 Order.

Section 9 of the Community Standards Bylaw deals with Buildings and Structures:

9 (1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing 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) any damage to the building or structure;
- (a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;
- (b) any rot or other deterioration within the building; and
- (c) any inappropriate infiltration of air, moisture or water into the building due to peeling, unpainted or untreated surfaces, missing shingles or other roofing materials, broken or missing windows or doors, or any other hole or opening in the building.

Photos taken on May 2, 2017, and January 31, 2018, were provided to the Board. Administration believes the current condition of the property meets the condition of nuisance to a building as there are openings that would allow wind, weather, etc. to get

into the building. The Community Standards Bylaw allows property owners to be held accountable for such violations.

Mr. Lallemand believes the structure is designed as a garage and cannot say for certain if it could be considered a carport or if a permit would be required to change the use to a carport. A Development Officer would be able to provide further information.

If the order is upheld and not complied with by the Appellant the City would use half inch-plywood to enclose every opening by using 3 ½ inch deck screws every 4 inches. This would prevent transients from entering the structure. If the Appellant were to install windows and doors the property would be considered to be in compliance.

The fact that this property is sitting vacant for so long contributes to the neglect of the structure. The wire was put around the building in 2002 and is no longer considered sufficient. The structure needs to be secured with doors, locks and windows as parties and other undesirable behaviour have continued.

V. REBUTTAL OF THE APPELLANT

This garage had no rear door when it was purchased around 2000 and they opened it up further since that time. The building was secured with wire after consultation with the bylaw officer at the time. The main concern was to secure the property to prevent mischief from occurring within the garage. It had been boarded up prior to this but transients were breaking in, drinking, sleeping in the garage and started a fire on one occasion. Since the property has been opened up and secured with wire there have been no more issues with vagrants or homeless people.

He is unaware of any bylaw stipulating that you can't have material in a garage.

As far as a building permit goes he has never built a carport or garage so he is not aware of what the permit requirements are. He would be more than happy to apply for the required permits.

The property has been vacant since it was purchased. Renovations have been started on a number of occasions but they have run into problems with not being allowed to complete the project for one reason or another. Due to the numerous delays caused by the City they have spent their time and effort on other properties and this project was put on the back burner. The property will likely be used as a rental once it is re-built.

MARCH 1, 2018, HEARING

I. APPEARANCES AND EVIDENCE

In dealing with the Appeal of Order 247000570-001, the Community Standards and Licence Appeal Committee (the Committee) heard from:

Appellant: M. B (Representing W. B)

Respondent: J. Lallemand, Coordinator, Complaints & Investigations
S. Watts, Development Officer

Exhibit A: Submissions from the Community Standards Branch which included two sets of photographs of the subject property taken on May 2, 2017 and February 28, 2018.

II. SUMMARY OF RESPONDENT'S POSITION

The Committee heard evidence from Mr. J. Lallemand and Ms. S. Watts, regarding the question raised at the hearing on February 1, 2018, as to whether or not the structure identified in the order could be classified as a carport.

An Accessory building can be a garage, carport, shed, playhouse, gazebo, etc. Just because a garage and carport are both classified as Accessory Buildings, the physical structures are not the same. The main difference is that a carport is not enclosed.

A development permit for this structure could not be found through a search of the property. However, the structure has been altered without a valid development permit for exterior alterations.

Development regulations, including location criteria, site coverage requirements and performance standards apply to both a garage and a carport.

Section 57.3 of the *Edmonton Zoning Bylaw* states that "in all non-industrial developments, the design and use of exterior finishing materials shall be to the satisfaction of the Development Officer who shall ensure, as far as reasonably practicable, that materials shall be used that ensure that the standard of the proposed buildings and structures shall be similar to, or better than, the standard of surrounding development". It was Ms. Watt's opinion that the garage/carport in its current state does not comply with performance standards.

Alberta Building Code 9.35.2.1 states that "where a roofed enclosure used for the storage or parking of motor vehicles has more than 60 percent of the total perimeter enclosed by walls, doors, or windows, the enclosure shall be considered a garage."

This structure has been altered without a development or building permit.

A development permit application could be made for exterior alterations existing without permits but further information would have to be provided by the Applicant to allow a thorough review of the development regulations and to ensure compliance with the performance standards.

The structural integrity of the building may have been compromised during the alterations which would be addressed by a Safety Codes Officer during the building permit review.

Ms. Watts provided the following information in response to questions from the Committee:

- a) A Compliance Certificate found during the property search noted the existence of this structure as a non-conforming building but did not indicate compliance with the development regulations contained in the *Edmonton Zoning Bylaw*. The search also identified a development permit issued in 2007 for alterations to the house but nothing for the accessory building.
- b) The main concern is not whether this structure is a garage or a carport but that it has been altered without valid permits.
- c) The photographs taken on February 28, 2018, show that the structure has been altered since photographs were taken on May 2, 2017, by the removal of an additional wall. Alterations are ongoing without valid permits.
- d) Mr. B should apply for a development permit for the exterior alterations that have been completed without a development permit. This would require the submission of accurate information to allow a thorough review by the Development Officer.
- e) The structure is too close to the side lot line but this could be addressed through the granting of a variance. However, the building would have to be finished to comply with the performance standards pursuant to Section 57.3 of the *Edmonton Zoning Bylaw*. The structural integrity of the building would then be assessed by a Safety Codes Officer through the building permit process.

Mr. Lallemand noted that when the order was issued on May 2, 2017, the photographs illustrate that the structure had 3 walls and according to Alberta Building Code 9.35.2.1 was considered a garage.

It was his opinion based on the photographs taken on February 28, 2018 that illustrate the removal of a second wall, that the Appellant wants the structure to be a carport. If this is the case, the structure should be sealed and applications made for the proper development and building permits.

In response to a question, Ms. Watts estimated that the development permit review could be completed in two to three weeks and the building permit review may take an additional six weeks.

III. SUMMARY OF APPELLANT'S POSITION

Mr. M. B. appeared as the agent for Mr. W. B. , the registered owner of the property.

He is prepared to do whatever is necessary to obtain proper permits for a carport. He called 311 following the hearing that was held on February 1, 2018, to inquire about the permitting process and was advised to wait until after today's hearing.

He is not prepared to enclose the building, as directed in the order, during the development application process because of previous problems with squatters and break-ins when the structure was enclosed.

It was his opinion that the photographs submitted today do not reflect the current state of the building with the improvements that have been completed.

This structure will be used as a carport to provide parking and storage for tenants of the single detached house that will be used as a rental property. The house is currently under construction and is uninhabitable. It is his intent to have the house ready for tenants some time in 2018.

Development permits have been issued for the interior renovations to the house.

An additional wall was removed from the structure to remove any possible hiding spaces for squatters. He does not want to enclose the structure during the permitting process because it is his intent to use it as a carport not a garage.

The building was secured with wire after consultation with the bylaw officer at the time in order to secure the property to prevent mischief from occurring inside the garage. For the last 5 years bylaw officers have driven by and it was never a problem. Now all of a sudden it is a problem.

The order requires enclosure of the structure as a garage. However, it is his wish to use the structure as a carport to avoid past problems which in his opinion created a nuisance in the neighbourhood.

It was his opinion that the order is not valid because the structure is a carport not a garage according to the Alberta Building Code. Additional information required by the Development Officer will be discussed during the permitting process.

IV. REBUTTAL OF THE RESPONDENT

The Appellant states that the structure is a carport but it is not being used to store motor vehicles. The submitted photographs clearly illustrate that the structure is being used to store construction materials.

The order was issued on May 2, 2017, pursuant to Alberta Building Code 9.35.2.1 that defines the structure as a garage. The only reason it could be determined that the structure is a carport is the result of illegal alterations that have been made to the structure.

V. DECISION

The Committee upholds the Order and the Appellant has 30 days to apply for a Development Permit for the Garage. The wire fence surrounding the building shall be removed immediately.	Citizen Services Dept. Due Date: March 1, 2018
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VI. REASONS

The crux of this case relates to a garage¹ in a residential neighborhood. The garage has been modified in such a way that it is now open to the elements with doors and windows having been removed. There are items being stored within the garage that are clearly visible to the community, and to some extent these items are being stored in a haphazard way. However, these materials were not part of the order that was issued against the property. The order was issued against the structure since it had been modified in such a way that opens it up to the elements, and the structure also shows signs of damage.

The structure originally appears to have been built to the standards of an enclosed garage with doors and windows in place. The Appellant indicates that he made modifications to the garage as a result of vandalism and vagrants breaking into the property and using it for shelter and parties. Since it has been opened up, the issues appear to have resolved themselves. While this may be true, it does not alter the analysis of whether the garage is a nuisance under the bylaw.

¹ Throughout these reasons the Committee has referred to the structure as a garage for ease of reference. It is recognized that there appears to be little difference between a garage and a carport pursuant to the zoning bylaw, although there may be differences as it relates to building code issues.

The photographs that were taken on May 2, 2017, show peeling paint on the eavestrough and missing siding near the windows. In addition, the garage door has been entirely removed along with several windows. Since that time (and after the order was issued) the rear wall of the structure appears to have been completely removed, although some of the other damage referenced in the order appears to have been repaired.

The Appellant claims that there is no nuisance since he is using the garage as a carport and there is nothing wrong with having it open to the elements. After initially hearing from the parties, the hearing was adjourned so that more information could be obtained about the development status of the garage. It turns out that the modifications that were done to the garage were done without a development permit or building permit. In other words the modifications are currently illegal. That is not to say that a development permit could not be obtained for the garage relating to the modifications that were made. If permits were applied for, they would have to go through the standard process which could also include appeals to the subdivision and development appeal board in certain circumstances. This Committee does not have a role in saying whether permits should or would be issued. At the end of the day permits may or may not be issued for the modifications (or other related modifications). All that can be said is that the evidence shows that the modifications were done without such permits in place and the structure, at this time, is therefore a non-compliant (illegal) structure.

The main issue in this hearing is whether the building, when the order was issued, was a nuisance. A nuisance relating to a building is defined in Section 9(2) and prohibited by Section 9(1) of the *Community Standards Bylaw* 14600.

9 (1) A person shall not cause or permit a nuisance to exist in respect of any building or structure on land they own or occupy.

(2) For the purpose of greater certainty a nuisance, in respect of a building or structure, means a building or structure, or any portion thereof, showing 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) any damage to the building or structure;
 - (a.1) any graffiti displayed on the building or structure that is visible from any surrounding property;
- (b) any rot or other deterioration within the building; and
- (c) any inappropriate infiltration of air, moisture or water into the building due to peeling, unpainted or untreated surfaces, missing shingles or other roofing materials, broken or missing windows or doors, or any other hole or opening in the building.

A nuisance in respect of land is also prohibited and defined in Section 6 of the same bylaw.

6 (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;

The role of this Committee is to determine whether the order was valid at the time that it was issued. The order relates to repairing the building, replacing doors and windows, and repairing exterior surfaces. The order is clearly issued pursuant to Section 9 of Bylaw 14600 and relates to the building or structure.

At the time that it was issued, there were various piles of materials in the garage that were clearly visible to the neighbors. This material would likely make the property a nuisance on land under Section 6 of Bylaw 14600. However, the order does not relate to nuisance on land and only relates to whether the building is a nuisance. Section 6 and the material inside the building is therefore not directly relevant.

Many of the arguments and much of the material that was presented by the Appellant to this Committee dealt with definitions of what is or is not a nuisance. Much of this information comes from criminal and tort law. The Appellant spent much time attempting to convince the Committee that this building is not a nuisance under these other definitions. However, what the Appellant fails to understand and recognize in his arguments is that this type of nuisance is slightly different than it is in the other areas of law that he is referencing (although perhaps somewhat related in some ways), and deals with issues about community standards and what is generally acceptable within a community, as opposed to something which directly impacts a neighbor. In addition, there is already a definition of nuisance within the bylaw. Section 9(2) outlines a number of items that make a property a nuisance. Instead of looking for a definition of nuisance within other areas of law, the Appellant should have been examining the items outlined in this section of the Community Standards Bylaw since that is the definition that binds this Committee.

The pictures taken on May 2, 2017, show a number of issues which meet the definition of nuisance under the bylaw. These include the peeling paint on the eavestrough and the missing siding near the window. These two examples mean that the property was a nuisance under Community Standards Bylaw 14600. The evidence suggested that these issues may have been resolved after the order was issued. For example the siding on the building now appears to have been replaced. However, what has been done since the order has been issued does not make the order any less valid. The Committee must look at the

property at the time the order was issued and determine whether it was a nuisance at that time. The damage to the siding and the peeling paint means that this property was a nuisance when the order was issued.

In addition to the missing siding and peeling paint there are also missing windows and doors which are allowing the infiltration of air, moisture and water into the structure. The Appellant deliberately removed these items to deal with other issues. However, by removing the doors and windows the Appellant has created a situation where air, moisture and water is now infiltrating into the structure. While the evidence does not show that there is resulting rot within the building, it is clear that having a building open to the elements could lead to rot and resulting structural damage. While these modifications were well intentioned, they still qualify as a nuisance under the bylaw. Right now when looking at the garage you would expect it to be enclosed. It was obviously built as a standard garage with doors and windows. The building was not constructed in such a way that it was open to the elements. At this time having the building open to the elements allows for the “inappropriate” infiltration of air, water and moisture. Given that the modifications were not authorized, the windows and doors are missing off a structure that was designed to have them, and this means the building is a nuisance.

The Appellant has made it clear that he no longer wants a garage, but wants this structure to be an open air carport. Where the issues with the modifications to the structure become complicated is that it may be possible to get both a development permit or building permit to continue to use this property as a “carport”. Such permitting may not require any additional modifications, or it might require substantial modifications. The Appellant has indicated that he is willing to make whatever modifications are necessary and that his goal is to have the structure operate as a carport as opposed to a garage to make sure that the problems with break-ins and vagrants do not recur. If, after going through the permitting process, it was deemed that this garage could continue to be used as a carport, then the issue with “inappropriate” infiltration of air, water and moisture would disappear since the building would have been approved as an open air structure.

Given this unique situation, we would vary the order to add a clause that allows the Appellant to seek the appropriate permits for this structure to turn it into a valid legal structure that he can use as a carport (assuming that this is even possible without demolishing the structure). We would allow 30 days from the date of this decision for the Appellant to apply for a development permit. If no application is made within that time frame, the City would be able to enforce the order.

However, the Committee also does not want to see this matter drag on. The community has a right to a quick resolution of these issues. The Committee understands that it will take some time to allow the permitting process to proceed and enforcement cannot take place until a reasonable period of time has expired to allow that to happen. The Committee has no reason to believe that the Appellant will deliberately impede or delay this process, but should this happen this Committee would expect that the City would take appropriate enforcement efforts at that time so that this order is complied with.

The last issue that the Committee wants to comment on is the wire that has been placed to enclose the structure. This wire should be removed immediately. The Committee finds that it is both an eyesore and would constitute a nuisance since it shows a lack of maintenance on the property, and still allows the infiltration of air, water and moisture. Section 10 of the Community Standards Bylaw talks about securing doors and windows with wood, not wire, if a building is not occupied. If the purpose of the wire is to protect the items that are stored within the carport, this is not compelling. If the Appellant truly wants this structure to be a carport, it would not be allowed to be surrounded in wire to protect items stored within. A carport is intended to cover cars, and by enclosing the structure in wire, it actually prevents the use of the building as a carport.

MB.
Councillor M. Banga

2018 MARCH 15
Date



**EDMONTON
TRIBUNALS**

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Decision of the Committee

**Appeal of Order 267478691-001; 13520 – 111 Street NW, Edmonton, Order
Pursuant to Section 545(1) of the *Municipal Government Act*.**

Hearing Date: March 1, 2018

Appellant: G G

I. ISSUE

Whether the Order was properly issued by the City of Edmonton and whether the property in question is in a nuisance condition.

II. APPEARANCES AND EVIDENCE

In dealing with this appeal, the Community Standards and Licence Appeal Committee (the Committee) heard from:

Appellant: Mr. G G

Respondent: Mr. J. Lallemand, Coordinator, Complaints & Investigations,
Citizen Services, Community Standards Branch
Ms. K. Tipton Supervisor, Complaints & Investigations

Exhibit A: Written submission and photograph from Appellant

Exhibit B: Written submission and photograph from Appellant

Exhibit C: Written submission and photograph from Appellant

Exhibit D: Copy of the Order and photographs from Community Standards

Written Submissions:

The Committee reviewed documents provided by Mr. G and submissions from the Community Standards Branch which included two sets of photographs of the subject property taken on January 5, 2018 and February 28, 2018.

III. SUMMARY OF APPELLANT'S POSITION

Mr. G questioned the actions of the Officer who visited his property in January when the temperature was -32 and advised him that he had 14 days to remove the vehicles from his property. It was his opinion that this was cruel and unfair and he made many attempts after that visit to call the Officer but his calls and messages were not returned.

Photographs of other properties that he considered to be nuisance properties in his neighbourhood were submitted for comparison purposes. He questioned why Bylaw Enforcement Officers have not taken action against those property owners.

Mr. G asked the Committee to take the necessary steps to correct his Tax Account that still contains a cleanup charge of \$1,100.00 for his property.

Mr. G provided the following information in response to questions from the Committee:

- a) Most items, with the exception of the vehicles, are only stored on his property temporarily, no longer than 24 hours.
- b) The lawnmower is there so that he can cut the grass, he uses the wood for heating during the winter. The bikes only stay until they are fixed and sold for between \$10 and \$20. The wire will be used to fix the fence along the rear lane.
- c) The fence has been extended to improve safety, a No Trespassing Sign and a security camera have been installed, vehicles and bicycles were sold at a loss in an attempt to clean up his yard because of the harassment and cruelty of the Enforcement Officer. During this time the Officer did not respond to numerous telephone calls or letters that were sent to address the situation.

IV. SUMMARY OF RESPONDENT'S POSITION

Mr. Lallemand advised the Committee that on November 28, 2017, a bylaw officer attended the property in question based on a citizen complaint.

The officer observed three damaged derelict vehicles covered with snow, one without wheels. Based on these findings a Notice to Comply and a Notice of Entry were sent to the property owner. A review of the property revealed 19 prior bylaw complaints and investigations.

The officer made many attempts to contact the property owner without success.

The property was re-inspected and photographed on January 5, 2018. Due to the untidy and unsightly state of the property, it was found to be in a nuisance on land

condition and an Order was issued pursuant to section 545(1) of the *Municipal Government Act*.

Administration provided the Committee with two sets of photographs. The first set was taken on January 5, 2018, on the day of inspection. The second set was taken on February 28, 2018 and accurately shows the condition of the property. Many attempts have been made to come to some resolution since the order was issued.

An officer visited the site approximately one week ago and found that little had changed and the property was in the same state as when the order was issued. However, when the officer visited the site on February 28, 2018, a significant improvement was noted.

Therefore the order can be varied to remove the requirement to remove all damaged, dismantled or derelict vehicles, whether registered or insured from the site.

Mr. Lallemand provided the following information in response to questions from the Committee:

- a) A silver car remains on site. There is no concern about the car itself, only the material that is being stored inside the car. This should be removed and disposed of.
- b) He estimated that all of the remaining items could be removed from the site in two truckloads to the landfill.
- c) All resident complaints are reviewed. While community standards are the same for the entire city, it was acknowledged that they are sometimes applied differently based on the location of the neighbourhood and the discretion of the officer.
- d) A derelict motor vehicle is one that does not move, is not operational, and remains in one place for a long period of time.
- e) Even though vehicles have been removed from the site and there is some improvement, the current condition of this property still meets the definition of a nuisance property under Section 6 of the Community Standards Bylaw. Hot water tanks, wood, plastic and fencing are still being stored in the rear yard. The wood, plastic and fencing may be allowed to remain if the material was stacked neatly and served a purpose.
- f) The order can be varied because the damaged, derelict and dismantled vehicles have been removed from the site. The concern about the remaining vehicle is not the vehicle itself but the material being stored inside.

- g) Exhibit C references a Tax Account Submission as the result of a cleanup of this property by the City of Edmonton.

In response to a concern raised by the Committee, Mr. Lallemant advised that every citizen complaint is investigated in the same manner.

V. REBUTTAL OF THE APPELLANT

People keep things for different reasons. Cars are important to him. The only remaining car has a black windshield which makes it impossible to see anything inside the car. Material was only stored inside the car on a temporary basis.

He intends to use the tarp and the plastic to build an enclosure to protect the car. The bicycles have been removed from his property. The rear yard is fenced and no one should be concerned about what is behind the fence.

He received a letter from the City in 2012 advising him that his lawn was too long and had to be cut. The City cut his lawn at a cost of \$300. There was a fridge in the rear yard because he did not have anyone to help him move it inside. When he returned from working out of town the fridge was gone and he had to purchase a new one at a cost of \$800.

He has cleaned up his property to the best of his ability at this time of year and felt that it was not out of character with the state of other properties in his neighbourhood. He asked the Board to void the order.

Mr. G provided the following information in response to questions from the Committee:

- a) The tarp will be used to construct a tent to protect the car, the wire and posts will be used to build a fence and there is not too much more left in his yard. It was his opinion that the yard has been cleaned up and the order should be overturned.
- b) An Officer invaded his property in 2012, cut the grass at a cost of \$300 and took his fridge that cost him \$800 to replace.
- c) He has called the telephone number on the order in an attempt to discuss the situation with the officer. None of his telephone calls or messages were returned.
- d) It was his opinion that the photographs submitted by Administration were not taken on February 28, 2018 because the fence had already been installed.

- e) He is still working on cleaning up the site. Progress has been made but there is still more to be done.

VI. REBUTTAL OF THE RESPONDENT

Administration makes every attempt to work with citizens to resolve the situation prior to the appeal hearing. He noted approximately 40 telephone calls made to the Appellant from the Officer, Supervisor and himself without any success in resolving the matter.

Mr. Lallemand confirmed that the photographs submitted were taken on February 28, 2018. A Notice of Entry was sent to the Appellant 7 days prior to the site visit. The Officer attending the site took photographs in the morning and sent them directly to him so that they could be time stamped.

It was his opinion that the Appellant has adequate time to clean up his site to comply with the order in the additional 37 days provided as a result of the appeal hearing. Administration is willing to assist the Appellant to resolve the situation.

VII. DECISION

<p>The Committee upholds the Order.</p> <p>You are therefore ordered to:</p> <p>Remove all damaged, dismantled or derelict vehicles, whether registered or insured or not, household items, bicycles/bicycle parts, concrete, construction materials, fencing materials, eavestrough, wood, toilets, autoparts, 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>Citizen Services Dept.</p> <p>Due Date: January 30, 2018</p>
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VIII. REASONS

Most of the arguments of the Appellant surround questions about the actions of City employees investigating and enforcing issues relating to his property over the last number of years. He made claims that the City, during the enforcement process, “stole” items from him and somehow this constitutes financial abuse or violation of his rights under human rights legislation. All of these arguments are irrelevant to the question of whether the order that was issued to him on January 8, 2018, was a valid order, and whether at that time there was a nuisance condition on his land.

The role of this Committee is not to determine whether enforcement on prior orders that were issued constituted theft or whether they were proper enforcement action. The

role is not to determine whether the municipal enforcement officer was not returning phone calls (although in this case there was substantial evidence that suggests that the enforcement officer was attempting to do so but could not leave messages since there was no voice mail). The role is not to decide whether other properties in the neighborhood also form nuisances, or to conduct a step-by-step inquiry into those other properties, whether orders have been issued, and what steps have been taken to clean them up. Instead, the role of this committee is to determine whether the order of January 8, 2018, was valid when it was issued. This committee can determine that the order was valid, a different order should have been issued, more time to clean up the property should have been granted, or no order should have been made at all.

To some extent this means what takes place after an order is issued is not relevant. While this Committee often looks at photographs of what the property looks like at the time of the hearing (and often the Committee does find this useful), the Committee must always keep in mind that the critical evidence is what the property looked like at the time that the order was issued. It is only with the evidence relating to what it looked like at the time the order was made that this committee can make a decision about whether the order was valid. Looking at whether the property was cleaned up after the order was issued cannot change the analysis of whether the order itself was valid. This case provides a perfect illustration of this concept.

The order that was issued requires the removal of derelict vehicles from the yard. The Respondent recommended to the Committee that the order be varied since the vehicles had been removed after the order was issued. However, since the vehicles were on the property at the time that the order was issued, it does not need to be varied if those vehicles formed part of the nuisance. The finding of this Committee is that those derelict vehicles formed part of the nuisance and were therefore a valid part of the order. If the Committee were to vary the order that would suggest that the order when it was issued should not have contained any reference to the derelict vehicles. This would be necessary if the vehicles were never there, or were already removed prior to the issuance of the order. In this case, the removal of the vehicles after the order was issued simply shows that the Appellant has complied with that part of the order, not that the order was invalid. Whether the order was valid at the time it was issued cannot be confused with whether a valid order has since been complied with.

This Committee will often opine whether an order has been complied with when reviewing recent photographs. However, even if an order is fully complied with after the fact, this does not mean the order was not valid or was not necessary. This Committee in reviewing whether an order has been complied with is simply an exercise that may or may not be useful to the parties depending on the circumstances.

Ultimately the finding of the Committee in this case is that the order that was issued was valid. At the time it was issued, the photographs clearly show an excessive accumulation of material on the land, derelict vehicles, auto parts, bicycle parts and many other materials that in its entirety create an eyesore for the neighbors. What was

on the land at the time the order was issued clearly meets the definition of nuisance under Community Standards Bylaw 14600.

The argument of the Appellant that by making this order the City is somehow interfering with his financial freedom is not compelling. The order is dealing with materials in the yard. If the Appellant believes that these materials are valuable, he can store them inside his property or move them to a more suitable location.

Similarly the arguments that all of these items are behind a fence or are only being stored on a temporary basis are not compelling. Property owners are not allowed to create a nuisance and then put a fence around that nuisance to hide it from the broader community. Similarly, constantly moving items into or out of your property does not mean your property is not a nuisance.

Overall, at the time that the order was issued, this property qualified as a nuisance under the bylaw, and the order is therefore valid.



Councillor M. Banga

2018 MARCH 15

Date



COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE

MINUTES

March 1, 2018 – Hearing Room 3

PRESENT

M. Banga, S. McKeen, J. Dziadyk

ALSO IN ATTENDANCE

C. Hammett, Office of the City Clerk

C. Ashmore, Law Branch

M. Malayko, Office of the City Clerk

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DECISION SUMMARY

ITEM	DECISION
1.	CALL TO ORDER AND RELATED BUSINESS
1.1	Call to Order

Councillor M. Banga called the meeting to order at 1:34 p.m.

1.2 Adoption of Agenda

Moved J. Dziadyk:

That the March 1, 2018, Community Standards and Licence Appeal Committee meeting agenda be adopted.

In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

1.3 Adoption of Minutes

Moved S. McKeen:

That the February 1, 2018, Community Standards and Licence Appeal Committee meeting minutes be adopted with a correction to Section 3.1 to reflect that Councillor M. Banga did not support the motion.

In Favour:

Carried

M. Banga, S. McKeen, J. Dziadyk

2. EXPLANATION OF APPEAL HEARING PROCESS

Councillor M. Banga explained the appeal hearing process and asked if anyone objected to any member of the Community Standards Licence Appeal Committee hearing the appeals.
No one objected.

3. COMMUNITY STANDARDS AND LICENCE APPEAL COMMITTEE MATTERS

3.1 Appeal of Order - W. B., 11004 - 95 Street NW, Order Pursuant to Section 545(1) of the *Municipal Government Act*.

The individual named on the property title, Mr. W. B., was represented by Mr. M. B.

Mr. J. Lallemand, Citizen Services Department, and Ms. S. Watts, Development Officer, made a presentation and answered the Committee's questions that were raised at the initial hearing on February 1, 2018, as to whether the structure under appeal could be classified as a valid carport.

Mr. C. Ashmore, Law Branch, provided information and

answered the Committee's questions.

Photographs taken on May 2, 2017, and February 28, 2018, were provided to the Appellant, Members of the Committee and the Office of the City Clerk.

Mr. M. B. made a presentation and answered the Committee's questions in response to the information provided by the Mr. J. Lallemant and Ms. S. Watts.

The Committee met in private at 2:40 p.m., pursuant to Section 20 of the Freedom of Information and Protection of Privacy Act.

The Committee met in public at 3:05 p.m.

Moved : S. McKeen

<p>The Committee upholds the Order.</p> <p>You are therefore ordered to:</p> <p>Repair all damage to the building and replace all rotten, deteriorated or missing doors, windows components. Prevent any inappropriate infiltration of air, moisture or water by covering any holes or openings in the building and repairing and refinishing exterior surfaces that are unpainted, untreated or peeling.</p> <p>The Appellant has 30 days to apply for a Development Permit for the Garage and the wire fence surrounding the building shall be removed immediately.</p>	<p>Citizen Services Dept.</p> <p>Due Date:</p> <p>April 1, 2018</p>
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In Favour:

M. Banga, S. McKeen, J. Dziadyk

Carried

Mr. G. G. made a presentation and answered the Committee's questions.

Mr. J. Lallemand, Citizen Services Department, made a presentation and answered the Committee's questions.

Mr. C. Ashmore, Law Branch, provided information and answered the Committee's questions.

Two sets of photographs taken on January 5, 2018 and February 28, 2018, were provided to the Appellant, Members of the Committee and the Office of the City Clerk.

The Committee met in private at 4:04 p.m., pursuant to Section 20 of The Freedom of Information and Protection of Privacy Act.

The Committee met in public at 4:21 p.m.

Moved : J. Dziadyk

The Committee upholds the order.	Citizen Services
You are therefore ordered to:	
Remove all damaged, dismantled or derelict vehicles, whether registered or insured or not, household items, bicycles/bicycle parts, concrete, construction materials, fencing materials, eavestrough, wood, toilets, autoparts, 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.	Due Date: January 30, 2018

In Favour:

M. Banga, S. McKeen, J. Dziadyk

Carried

4. ADJOURNMENT

The meeting adjourned at 4:30 p.m.

Chair

City Clerk