

Appeal No.: 3383 002-2012
Decision No.: 3383 002-2012
Hearing Held: 02 October 2012

RED DEER APPEAL & REVIEW BOARD DECISION

CHAIR: R. MOISEY
PANEL MEMBER B. FARR
PANEL MEMBER: G. LEASAK
PANEL MEMBER: P. MCGREGOR
PANEL MEMBER: C. STEPHAN

BETWEEN:

BARBARA BROWN
Represented by Felicity Brown

Appellant/Owner
(Appellant)

and

CITY OF RED DEER
INSPECTIONS & LICENSING
Represented by Michelle Baer (Solicitor) Joyce Boon (Inspections & Licensing Manager)
Paul Holmes (Inspections Enforcement & Building Supervisor) Les Kolibaba (Compliance Officer)

Respondent

BACKGROUND:

1. On August 14, 2012 The City of Red Deer Inspections & Licensing Department ('The City') issued three Orders to Remedy under section 545 of the *Municipal Government Act* R.S.A. 2000 Ch. M-26 as amm. ('the MGA') in respect to the following properties:

Civic Address	Legal Address	Owner
4313 Grandview Blvd	Lot 4; Block 6A; Plan 5877HW	Barbara Brown
4924 52 Street	Lot 35 - 38; Block 15; Plan K	T. Maxwell Brown Property Corporation
4831 55 Street	Lot 36-37; Block 32; Plan K	T. Maxwell Brown Property Corporation

2. The Order with respect to 4313 Grandview Blvd (the property) required the Owner to:
 - (1) remove all garbage and discarded material from the property including construction material, pallets, discarded furniture and garden accessories, scrap lumber, landscaping materials and brush; and
 - (2) remove all dilapidated or derelict vehicles from the property; and

- (3) mow the lawn and bring the landscaped area to a reasonable condition based on other residential properties in the area;
 - (4) provide The City with proof that they have retained the services of a property management company who will be responsible to maintain the exterior of the property, to prevent further recurrence of the contravention.
3. On September 10, 2012 Felicity Brown (on behalf of the Owners) filed requests for each of the Orders to be reviewed.
 4. Section 29(8) of The City of Red Deer Committees Bylaw #3431/2009 ('the Bylaw') gives the Red Deer Appeal & Review Board ('the Board') the power of Council in respect of applications for review arising under s. 547 of the MGA.
 5. Section 547(2) of the MGA states that after reviewing the Order the Council may confirm, vary, substitute or cancel the Order.
 6. This decision pertains to the Order issued for 4313 Grandview Blvd. The property contains a vacant single family dwelling that is enclosed by a fence.

PRELIMINARY MATTERS

Authorization to Act

7. At the outset of the hearing, the Board requested confirmation that F. Brown was authorized to represent the Owners of the properties. The Board received correspondence dated October 3, 2012 from Barbara Brown giving Felicity Brown "*full + complete authority over all matters pertaining to my properties in Red Deer*" (Exhibit B); and a copy of corporate search results indicating that Barbara Brown is the sole director and voting shareholder of T. Maxwell Brown Property Corporation (Exhibit C).

Consolidation of Hearings

8. The parties acknowledged that the Orders are similar in nature and agreed to the Board hearing them simultaneously. The Board stated that a decision would be issued for each Order.

ISSUES / ARGUMENTS

Definition of Nuisance

9. Section 11 of the Bylaw defines 'nuisance' as:

'...any use of or activity upon any property which is offensive to any person, or has or may have a detrimental impact upon any person or other property in the neighbourhood...'

The Bylaw goes on to provide 15 examples of what may constitute a 'nuisance'.

10. The Appellant argued that the Bylaw is flawed in that it is all encompassing, unreasonable, and unfair and lacks an acceptable, quantifiable standard. The use of the words 'any person' is subjective and the position of the Appellant is that because of this, the Bylaw cannot be properly and effectively applied to the Orders.

11. The Appellant argued that she finds it difficult to believe that the intent of s. 545 of the MGA is to enforce a bylaw that is lacking standards or guidelines.
12. The Appellant also argued that the broad definition leads to personal vendettas, pitting neighbours against neighbours and putting increased pressure on the Owner to sell the property.
13. The City concurred the definition of what is a 'nuisance' is subjective. The City stated that the property was found to be a nuisance under the Bylaw. To support this, The City provided the Board with a chronological enforcement history and photographs dated April 2012 (prior to the Order) and September 2012 (after the Order was issued).
14. During the hearing, the Board questioned The City as to how they determine when a property is a nuisance. The City advised that enforcement is initiated by complaints. Once a complaint is received, an inspection takes place and a determination is made.
15. The Board finds that the definition of nuisance is quantifiable. Compliance Officers are not unlike many professionals who are called on to exercise their discretion. They exercise their discretion and professional judgment in accordance with their experience on the job and what is typical of other properties.

Content of Orders

16. The Appellant advanced two concerns relative to the content of the Orders that she believes placed her at a disadvantage. First, the Appellant stated that the Orders did not provide information on how specifically to request a review and second, the Orders did not provide any supporting documentation for the basis of the Orders.
17. The Appellant stated that the process to receive supporting documentation was not easy or transparent. She stated that she received copies of the supporting documentation only after making several requests.
18. The City stated that the Orders set out necessary and reasonable measures for the Appellant to comply with the bylaw.
19. The Board understands the Appellant's concerns and reviewed ss. 545-547 of the MGA to determine if The City was compelled to provide the information referred to in the Appellant's two concerns at the time of issuing the Order. They were not.
20. The Appellant did file the requests for review in a timely fashion and did receive the supporting documentation and so the Board does not believe that in this case the Appellant was unduly affected by the absence of this information. Notwithstanding that, the Board believes that it is information that would have been useful for the Appellant to have.

Reasonableness

21. The Appellant refuted the Order relative to the Grandview property stating that the amount of garbage or discarded material that is on the property is no worse than any other property in Red Deer. She stated that there are landscaping projects that have been delayed due to illness in the

family and that the material referred to in the Order is not 'discarded'. To support this, the Appellant provided several photos of the property and properties in the area.

22. The Appellant acknowledged that there are two unregistered vehicles on the property which are permissible under the Bylaw. She stated that for a brief period of time, a third vehicle involved in an accident was stored on the property while awaiting an insurance adjustor and that it has since been removed.
23. The Appellant argued that the lawn and landscaping is in reasonable condition compared to other properties along the ridge; there is no lawn in the front of the property, the trees have been recently pruned and lawn maintenance for the year to date has cost \$1,000.00.
24. The Appellant made reference to several of the photographs provided by The City and stated that the photos are deceptive – the brush depicted is not located on the property but is rather on the right of way which is owned by The City.
25. The Appellant believes that any complaints received against the property are due to a disagreement between the neighbours and the Owner. She stated that the Order is bullying and undue harassment.
26. The City stated that the Order was the result of a property inspection which found brush piles; accumulation of discarded household goods and derelict vehicles on the property. The City stated that the amount of material, garbage and equipment found at the property is more than what is typical for other properties.
27. The City also stated that the vehicles remaining on the property appear to have not been maintained or be in working condition (the tires are flat).
28. The Board was not presented with photographs delineating the Appellant's property line from the right of way owned by The City; however, The City did not refute the assertion that the right of way was depicted in the photographs. The Board accepts that the photographs may depict some of the right of way and accounted for that when viewing the photographs.
29. The Board clarifies that the Order is specific to the property only. The Appellant can only be compelled to maintain and address issues that arise on her property. The right of way must be maintained by its Owner, presumably The City.
30. The Board finds the argument advanced by the Appellant that the property is in comparable condition to many other properties in Red Deer flawed. The Board understands the Appellant to be arguing that contravention of the Bylaw is justified, so long as another property owner does it as well. Following this line of thinking, a property would only be a nuisance if it was the only one contravening the Bylaw. The Board believes this is not the intent of the Bylaw and is not persuaded by this argument.
31. Further, the Appellant acknowledged that she is not aware whether or not similar action has been taken with similar properties. Regardless, each case before the Board is unique in facts and circumstance and is considered on its own merit.

32. The Board acknowledges that the Appellant has made some attempts to comply with the Order. While the Board agrees that the appearance of the property from the front is not offensive nor can be considered a nuisance, this is not true for the remainder of the property.
33. The enforcement history indicates that an Order, similar in nature to the August Order, was issued for the property in November of 2011. Photographs taken by The City in April, approximately 5 months after the November Order, shows the property to be unkempt with significant amounts of material. Therefore, the Board believes that the Order issued August 14 was warranted and reasonable. Further, the Board finds that the amount of discarded material including construction material, discarded furniture, garden accessories, and landscaping materials are offensive and a nuisance under the Bylaw.
34. There is one other matter related to reasonableness that should be addressed by the Board. When questioned during the hearing, The City acknowledged that the property has a shorter enforcement history (compared to the other 2 properties being heard), and stated that part of the reason the Order was issued on this property was because of the extensive history at the other 2 properties. The Board believes that The City was reasonable and had good cause to exercise caution and issue the Order in question.

Ongoing Maintenance

35. The Appellant argued that the requirement to secure the services of property management company is unreasonable and excessive as there is a paid, designated person in place to oversee the property.
36. The Appellant stated she has retained lawn service in the summer and a neighbour shovels the front walk in the winter. The Appellant also stated that it is her intent to reside in the property.
37. The City stated that the reason the Orders require the Appellant to secure the services of a property management company is because, prior to the Orders, they were not aware that anyone had been designated to maintain the property on a regular basis. The City also stated that they would have no objection to an individual (opposed to a property management company) being designated to maintain the property.
38. The language used in s. 12 of the Bylaw (*'.....such property to be or remain a nuisance'*) is indicative that the Bylaw is intended to apply to existing and future conditions of a property.
39. Based on the enforcement history and the minimal precautions in place to ensure the maintenance and security of the property the Board believes it is in the best interest of the Appellant and The City to have a designated person or company responsible for the ongoing maintenance of the property.

DECISION

MOVED by G. Leasak; seconded by C. Stephan:

RESOLVED that the Red Deer Appeal & Review Board having heard the parties who wished to speak both in favour and against the Order to Remedy in respect of property located at 4313 Grandview Blvd, Red Deer, Alberta, the Board hereby VARIES the Order.

Within 45 days of the Appellant being notified of this decision, the Appellant must:

- (1) Remove all garbage and discarded material from the property including construction material, pallets, discarded furniture and garden accessories, scrap lumber, landscaping materials and brush; and
- (2) Remove all dilapidated or derelict vehicles from the property; and
- (3) Bring the landscaped area to reasonable condition based on other residential properties in the area;
- (4) Provide The City with:
 - A. proof that an individual or company has been retained to be responsible for the maintenance of the exterior of the property, to prevent further recurrence of the contraventions; and
 - B. contact information for the individual or company.
- (5) In the event the individual or company that has been retained in accordance with number (4) above changes, you must advise The City accordingly within 30 days;
- (6) In the event that the property becomes inhabited you must advise The City, during which time number (4) above shall not apply.

CARRIED

CLOSING

This decision can be appealed to the Court of Queen's Bench if the procedure required to be followed by the Municipal Government Act is not followed OR if this decision is patently unreasonable. If you wish to appeal this decision you must file and serve an application for leave to appeal **within 30 days** of this decision.

If this decision is not complied with, The City of Red Deer may enter on the land and do the work itself. The expense and costs incurred by The City in doing so may then be added to the tax roll of the Property.

Dated at the City of Red Deer, in the Province of Alberta this 11 day of October, 2012 and signed by the Chair on behalf of all five panel members who agree that the content of this decision fairly reflects the hearing, deliberations and decision of the Board.



R. Moisey, Chair
Red Deer Appeal & Review Board

LIST OF EXHIBITS

- A: Agenda (177 pages)
- B: Correspondence dated October 3, 2012 from Barbara Brown (handwritten)
- C: Corporate Title Search for T. Maxwell Brown Property Corporation