

Appeal No.: 3383 004-2012
Decision No.: 3383 004-2012
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 4831 55 Street (the property) required the Owner to:
 - (1) ensure that the property is at all times maintained in a vacant condition and to take effective measures to prevent and enjoin people from either re-occupying the property or creating means of access to the dwelling unit; and
 - (2) remove all garbage and discarded material from the property; and
 - (3) mow the grass in the front and rear yards; and

- (4) provide The City with proof that they 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* 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. The property is located downtown. The dwelling on the property is two stories with exterior stairs accessing both levels.

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). The Board also received 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 *The City of Red Deer Community Standards Bylaw #3383/2007* ('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 Appellant suggested that the use of the term '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 that the definition of what is a 'nuisance' under the Bylaw 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. 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.

Compliance & Reasonableness

21. The Appellant argued that the lawn is in reasonable condition compared to other properties in the downtown. In support of this argument, the Appellant provided the Board with photographs of other properties in the downtown. The Appellant also stated that the cost of yard maintenance to date for 2012 is \$750.00.

22. The Board finds the argument advanced by the Appellant that the lawn is in comparable condition to other downtown 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 this argument.
23. The Appellant stated that the property is vacant and that access to the property is prohibited by unbreakable chains and locks that were installed to the fence in 2010. Additionally, the ground floor windows and doors are boarded.
24. The Appellant argued that The City is overlooking the bigger issue of crime in the downtown (including drug use, theft and vandalism). The Appellant argued that societal conditions are leading to problems with properties and she does not believe that revitalization in the downtown area is the best deterrent for crime.
25. The Appellant asserted that The City is wrongly making individual property owners responsible for a societal problem. The Appellant believes that The City should be assisting property owners with property issues related to crime.
26. The City argued that the property has an extensive history of unsightliness. The City stated that the Appellant has been contacted on 15 separate occasions directing clean up of the property. The City also stated that they have entered the property, cleaned, secured the entrances using plywood and applied the cost to the tax roll of the property on several occasions.
27. The City argued that the property has been attracting squatters since 2008 and that typically, after the RCMP respond to calls regarding break-ins at the property, they contact The City to for reboarding because it is then considered a threat to public safety. The City also believes that the exterior stairs leading to the second floor are unsafe.
28. The City also stated that the Appellant is not proactive in the approach to maintain the property, but rather, the Appellant waits for The City to direct maintenance.
29. In support of their position, The City provided a chronological enforcement history and photographs of the property dated April 2012 (prior to the Order) and September 2012 (after the Order).
30. The City referred to the bylaw which specifically requires the 'owner' of a property to be responsible for it. The City also advised that it works in conjunction with numerous agencies in relation to unwanted activities in the downtown area.
31. Section 12 of the Bylaw is specific – it states that '...no person being the owner, agent of the owner ...of any property within the City of Red Deer shall permit such property to be or remain a nuisance.....'. The Board finds this section clearly intends to make property owners accountable for their property.
32. There is nothing to indicate to the Board that The City is not taking reasonable steps to address the broader question of crime in the downtown area. Further, in review of the Order, the Board did

not find any language that would indicate that the Order is asking the Appellant to be responsible for anything other than the property.

Ongoing Maintenance

33. 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.
34. The Appellant stated she has retained a maintenance person for snow and weeds on an 'on call' basis and that she also has a designated person who does 'drive-bys' to check on the property.
35. 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. Further, The City stated that the Appellant has a history of non compliance and waits until being advised of problems before taking action. 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.
36. 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.
37. 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 B. Farr; seconded by P. McGregor:

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 4831 55 Street, Red Deer, Alberta, the Board hereby VARIES the Order.

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

- (1) Ensure that the property is at all times maintained in a vacant condition and to take effective measures to prevent and enjoin people from either re-occupying the property or creating means of access to the dwelling unit; and
- (2) Remove all garbage and discarded material from the property; and
- (3) 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 3 above changes, you must advise The City of same within 30 days;
- (6) In the event that the property becomes inhabited you must advise The City of same within 30 days. Number 3 above shall not apply while the building is inhabited.
- (7) In the event that the property is sold you must advise The City of same within 30 days of the sale closing.

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