Wood Buffalo TRIBUNALS
Community Standards Appeal Committee

NOTICE OF DECISION

FILE NO.	**CSAC 2024-003**
APPEAL	**An appeal against the issuance of a Remedial order to repair or remove a fence**
LEGAL DESCRIPTION:	**Lot 20, Block 4, Plan 2625TR**
CIVIC ADDRESS:	**148 Silica Place, Fort McMurray, Alberta**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Community Standards Appeal Committee ("the Committee") pursuant to section 547 of the *Municipal Government Act* ("the MGA") and the Community Standards Appeal Committee Bylaw No. 19/001, the Appeal Hearing was held on Wednesday, October 23, 2024, in the Jubilee Centre, 7th Floor Boardroom, 9909 Franklin Avenue, Fort McMurray, Alberta.

BETWEEN:

Blake Linnen ("the Applicant")

-and-

The Regional Municipality of Wood Buffalo ("The Municipality"), represented by Legal Services

BEFORE:

Sean Schaffer
Dean Cleaver
Trevor Salisbury

Administration:

Heather Fredeen, Clerk for the Community Standards Appeal Committee

PROCEDURAL MATTERS

[1] The parties confirmed that they had no objections to the composition of the Committee or the Committee's processes.

[2] The Committee confirmed it had no bias in relation to the matters.

PRELIMINARY MATTERS

[1] No preliminary matters were brought forward.

SUMMARY OF HEARING

[2] This Appeal is related to an appeal filed against the issuance of a Community Standards Remedial Order, File No. PD2024-000288, for violation of section 29(k) of the Community Standards Bylaw No. 21/010.

Nuisance on Property

29. For the purpose of greater certainty, a nuisance means a property that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area, examples of which include but are not limited to....

....k) any damage or deterioration to a fence, including, but not limited to peeling unpainted or untreated surfaces and missing or rotting fences boards or posts.

Submission of the Applicant

[3] The Committee heard from the Applicant who indicated he has an autistic son who is high support needs, non-verbal, and prone to eloping and the fence helps contain him and keep him and the family dog safe.

[4] The Applicant indicated that remediating the fence will be difficult due to the encroachment of the adjacent neighbors decking which is currently under investigation as per correspondence with the Planning and Development Department (Exhibit 2, page 18).

[5] The Applicant indicated that illustrations submitted by the Municipality (Exhibit 3, pages 51 – 63) are taken from the adjacent neighbors' side of the fence and only illustrate the repairs required from that perspective.

[6] The Applicant referred to a survey (Exhibit 2, page 6) and an illustration (Exhibit 2, page 7) which shows that the fence is a shared fence between 144 and 148 Silica Place. The Applicant submitted that a remedial order was also issued to 144 Silica Place.

[7] The Applicant drew the Committee's attention to photographs found in Exhibit 2, page 8 – 15 which illustrate the encroachment of the deck located at 144 Silica Place.

[8] The Applicant indicated that the fence is free-standing and that there was no opportunity to fix the fence before the Remedial Order was issued.

Submission of the Municipality

[9] Legal Counsel for the Municipality provided an overview of the authority of a Peace Officer indicating that a Peace Officer has the express authority to enforce the Municipality's bylaws which includes the issuance of notices, orders and tickets. Furthermore, in accordance with section 52 of the Community Standards Bylaw No. 21/010 ("the Community Standards Bylaw"), in addition to any other relief measures, the Peace Officer, may by written order, in accordance with section 545 of the MGA, require that any person responsible for a contravention, remedy the contravention.

[10] The Remedial Order required that the Applicant repair or replace the fence on his property line.

[11] Section 55 of the Community Standards Bylaw permits those receiving an order to appeal the order to the Community Standards Appeal Committee. The Committee may then confirm, vary, substitute or cancel the order.

[12] Legal Counsel for the Municipality indicated there are three elements of the offense for which the Committee must be satisfied:

i. That the offense in question is a nuisance for the purpose of the Bylaw

ii. That the Applicant has caused or permitted the nuisance

iii. That the property is owned or occupied by the Applicant

[13] Legal Counsel for the Municipality indicated that the definition of "nuisance" can be found in section 29 of the CSAC Bylaw:

29. .....a nuisance means a Property that shows signs of a serious disregard for general maintenance and upkeep, whether or not it is detrimental to the surrounding area.

k) any damage or deterioration to a fence, including, but not limited to peeling, unpainted or untreated surfaces and missing or rotting fences boards or posts.

[14] Legal Counsel for the Municipality submitted that the fence, in the opinion of the Municipality, meets the definition of a nuisance for the purpose of the Bylaw. Furthermore, the Applicant has permitted and continues to allow the nuisance to exist on the property which has been acknowledged in the Applicant's submission that the fence is freestanding and that he will replace it next spring when he can afford to.

[15] Legal Counsel for the Municipality drew the Committee's attention to the certificate of title for the Subject Property (Exhibit 3, page 23) which lists the Applicant as the home owner and satisfies the final element of the offense.

[16] Officer Nippard drew the Committee's attention to photographs taken from 144 Silica Place, displaying rotted fence boards, trees growing in between fence boards, leaning and in total disrepair. Officer Nippard indicated that the fence is a safety concern. (Exhibit 3, pages 50 -56)

[17] Officer Nippard submitted that having a fence is not a requirement. If one party wants a fence, and the other party does not, the party that wants the fence must take ownership of it.

[18] Legal Counsel for the Municipality submitted that although the fence is a shared fence, this aspect is not before the Committee. It was suggested that the Applicant should seek legal advice to address whether fence maintenance should be shared with 144 Silica Place.

[19] Furthermore, the encroachment of the deck onto the Applicant's property is not before the Committee and should not be considered by the Committee when making its decision. The Applicant was encouraged to call the PULSE line for encroachment issues or seek independent legal advice.

[20] Legal Counsel for the Municipality drew the Committee's attention to illustrations contained in the Applicant's submission (Exhibit 2) and submitted that the illustrations show the same state of the fence that Officer Nippard's photographs do from the other side of the fence.

Questions of the Municipality

[21] When asked by the Committee how the state of the fence came to the attention of the Municipality, Officer Nippard submitted that a complaint was filed by the Applicant regarding a structure at 144 Silica Place.

[22] When asked by the Committee whether the fence was an immediate safety concern, Officer Nippard submitted that in her opinion it was. She further submitted that in her 18 years of working for the Municipality, she had never seen a fence in such a state of disrepair in a residential area.

[23] Officer Nippard submitted that to remedy the fence, most of it would need to be replaced.

Final Questions of the Parties

[24] The Applicant submitted that should the Remedial Order be deferred, Spring 2025 would be his preference for a compliance date, due to affordability, and the difficulties of bringing a contractor in to build a fence due to the time of year and the encroachment of the deck on the adjacent property.

[25] Both the Municipality and the Applicant submitted no objection to a suggested deferred remedial compliance date of June 30, 2025.

Closing Comments from the Municipality

[26] Legal Counsel for the Municipality reiterated that the issue before the Committee is determining if the state of the fence amounts to a nuisance and whether or not the remedial order issued by Peace Officer Nippard is valid.

[27] Legal Counsel for the Municipality submitted that the elements of the offense have been established and the order has been validly issued and should be confirmed by the Committee; however, should the Committee decide to vary the Order, conditions should be applied to extend the compliance date or add parameters on how the fence should be repaired.

Closing Comments from the Applicant

[28] The Applicant submitted that his son is ninety-two pounds and climbs the fence frequently and there haven't been any issues.

[29] The Applicant requested that if the Committee were to vary the Order, that it be deferred until Spring 2025 due to affordability concerns and so that any civil matters can be settled.

Conclusion

[30] Upon conclusion, the Chair asked the parties present, if they felt that the hearing was conducted in a fair manner. No issues were brought to the Committee's attention.

FINDINGS OF FACT

[31] The Committee makes the following findings of fact:

i. The Applicant is the Subject of the Remedial Order and is the owner of the Subject Property in which the fence is located.

ii. The Application for appeal was filed correctly and within the prescribed timelines.

iii. The fence is a shared fence located on the Subject Property line.

DECISION

[32] **It is the decision of the Community Standards Appeal Committee to VARY the Remedial Order as follows:**

i. The Applicant must comply with this Order by Monday, June 30, 2025.

Note: If there is failure to comply with this Order, then the Regional Municipality of Wood Buffalo will be empowered to take whatever actions are necessary to remedy the violation. The cost of these actions can be made into an amount owing by the Subject Property Owner to the RMWB. Further, these costs can be applied to the tax roll of the property.

REASONS FOR THE DECISION

[33] The Committee was swayed by the illustrations contained in the Applicant's submission (Exhibit 2) and the Municipality's submission (Exhibit 3), that the fence located on the Subject Property meets the definition of a nuisance as defined in the CSAC Bylaw.

[34] Furthermore, by the Applicant's own admission, the fence, in its state of disrepair, has been permitted to remain in the state by the Applicant due to financial hardships and civil matters outside of the Committee's jurisdiction.

[35] The Committee agrees that given the time of year and season, it would be difficult to remediate the fence due to uncertain weather and ground conditions.

[36] Although the Committee is mindful that the fence could be a safety concern if not repaired or replaced, the Committee was not convinced that it poses an immediate safety concern which warrants immediate attention, and therefore the Committee varied the order to allow the Applicant sufficient time to comply with the order.

[37] It is so ordered.

[38] The decision of the Community Standards Appeal Committee is final and binding on all parties, subject only to appeal to the Court of Kings's Bench under section 548 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 4th day of November 2024.

FOIP section 17(1)

CHAIR

Sean Schaffer

APPENDIX "A"
DOCUMENTS RECEIVED AND CONSIDERED BY THE CSAC:

Exhibit No.	Description	Filing Date
	Subject Area Map (1 page)	August 9, 2024
1.	Notice of Appeal (3 pages)	August 6, 2024
2.	Evidence Disclosure – Applicant (14 pages)	October 15, 2024
3.	Evidence Disclosure – Municipality (47 pages)	October 16, 2024

APPENDIX "B"
REPRESENTATIONS

PERSON APPEARING		CAPACITY
1.	Erin Wells	Legal Counsel Regional Municipality of Wood Buffalo
2.	Cynthia Nippard	Bylaw Enforcement Officer, Bylaw Services Regional Municipality of Wood Buffalo
3.	Blake Linnen	Applicant - Subject Property Owner