

Part V

Section 5.9

Dangerous and Unsightly Premises

Municipal Government Act

The Municipal Government Act became effective on April 1st, 1999 and implemented a number of important changes to the way in which dangerous and unsightly premises are handled in the Province of Nova Scotia.

The MGA has defined the term “dangerous or unsightly” in a more comprehensive and detailed way than previous legislation. The term includes partially demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy. Included in the definition is a broad list of conditions that could cause a property to be determined as dangerous and unsightly or unhealthy, such as property containing:

- ashes, junk, other rubbish or refuse;
- derelict vehicle, vessel, or item of equipment or machinery, or bodies or parts of such items; and
- an accumulation of wood shavings, paper, sawdust, dry and inflammable grass or weeds or other combustible materials.

The definition includes property, a building or structure:

- that is in a ruinous or dilapidated condition;
- the condition of which seriously depreciates the value of land or buildings in the vicinity;
- that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes;
- that is an allurements to children who may play there to their danger;
- that is unsightly in relation to neighbouring properties because

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the exterior finish of the building or structure is not maintained;
or

- that is a fire hazard to itself or to surrounding lands or buildings; or
- that has been excavated or had fill placed on it in a manner that results in a hazard. [Section 3 (r)]

Derelict vehicles

According to the Municipal Government Act, a derelict vehicle, vessel, item of equipment or machinery that is left on a property, with or without lawful authority, and appears to the administrator or building officer to be disused or abandoned by reason of its age, appearance, mechanical condition, or, where required by law to be licensed or registered, by its lack of a licence plate or current registration.

Delegation of authority to an administrator or committee

Under the MGA, a municipal council has the option of delegating its authority under the dangerous and unsightly premises provisions, to an administrator, committee or community council. The administrator is a municipal employee or other person designated as such by the chief administrative officer, to be responsible for the dangerous and unsightly premises provisions of the MGA, and includes anyone acting under that person's supervision. [Section 3(a)]

If authority is delegated, an appeal lies to the council; council also may delegate its appeal powers to a committee. The one exception to this power to delegate to the administrator, is the authority to order demolition. [Section 345]

When a property is deemed to be dangerous or unsightly, the municipal council may order the owner to remedy the condition by removal, demolition or repair. The order must allow at least 30 days for compliance, unless the order declares the property to be dangerous, in which case it may specify a shorter period. [Section 348(3A)]

In cases where public safety may be an issue, the MGA allows the administrator to take immediate necessary action to prevent danger or to remove a dangerous structure or condition. [Section 350]

The order of the administrator or committee may be appealed to council within 7 days after it is made. [Section 346(2)]

Who is the owner?

In the MGA, the definition of the word owner includes: a part owner, joint owner, a tenant in common or a joint tenant of land or a building. [Section 3(ay)]

In the case of the absence or incapacity of the title holder, the definition includes: an executor, trustee or guardian, an agent, mortgagee having control or care of the land or building, and in the absence of proof of ownership, the person assessed for the property is considered as the owner. The MGA also includes in the definition of “owner” a person who occupies shores, beaches or shoals. In the past coastal properties or shores, although owned by the Province, have often been used by neighbors, therefore the definition of owner includes any person who occupies a shore. [Section 3(ay)(ii)(C)]

Demolition orders

In order for a municipality to order demolition of a building deemed to be unsightly, dangerous or unhealthy, certain conditions must be met.

- The owner must be given not less than seven days notice of the time, date and place of a meeting at which a demolition order shall be considered.
- The owner must be given an opportunity to appear and be heard before any demolition order can be made. (Notice of such a meeting may be served by being posted in a conspicuous place upon the property or it may be served personally upon the owner.) [Section 346]

Court procedures

A municipality may make application to a court for a declaration that a property is dangerous and unsightly, and for an order specifying that the condition be remedied by removal, repair or demolition. A court can make findings on these items and in addition, can order any property found to be dangerous and unsightly to be vacated until the condition is remedied. [Section 347]

This kind of court procedure has the advantage of permitting the municipality to determine in advance, what it can or cannot do, and can also deal with issues such as disposal of items removed from the property. The owner has the opportunity of attending the court session and having his or her side of the story heard. This option settles the legal issues before any work has been done, which would be an advantage particularly if significant expense is expected.

The administrator has the power to enter land

In a situation where an owner who has received an order from the administrator, committee, council or court, and has failed to comply with such an order, the administrator has the right to enter upon the property without warrant or other legal process, and carry out the work specified in the order. In addition, the administrator can order the occupants to be removed, using force if required, in order to effect the demolition or removal. However, except in an emergency, the administrator cannot enter any room or place being used as a dwelling house without the consent of the occupier unless the entry is made in daylight hours and upon written notice given to the occupier at least twenty-four hours beforehand. [Sections 348, 352]

In addition, the municipality may prosecute for failure to obey the order. This usually would be commenced by issuing a summary offence ticket. Each day during which the condition is not remedied is a separate offence. [Sections 348(4)(5)]

Collecting the money

The MGA provides for the recovery of any money expended by the municipality under a dangerous or unsightly premises order. Where a municipality lawfully causes work to be done under the Act, the cost of the work, along with interest owing, is considered a first lien on the property. Under the MGA, a lien is defined as a tax and therefore is recoverable by the municipality as taxes. [Sections 507; 133.3, 3(bz)]

Tax sale

As in other instances, the municipality has a number of options at their disposal to collect outstanding taxes:

- the treasurer may sue for and recover all taxes and other sums due to the municipality; or
- seize and detain goods for sale, or put the property up for tax sale if the amounts are not paid. [Sections 119; 120-124; 134]

Immunity from legal proceedings

The municipality is afforded a significant amount of protection from legal action under the MGA. The Act provides that no action shall be maintained against a municipality or against the administrator or other employee of a municipality, for anything done under this part of the Municipal Government Act. [Section 353]

Extraordinary powers

Part XV of the MGA vests a number of extraordinary powers in the administrator, the council, or in a standing committee or community council to whom council has delegated its authority. These extraordinary powers include:

- the right to make an order;
- the right to direct someone to take action with respect to their property that they may not wish to take;
- the right to enter on private property to carry out the terms of any Order;
- the right, *without warrant or other legal process* to carry out the work specified in the order;
- the right to *remove occupants*, whether they want to be removed or not;
- the right to order the immediate vacation of a property that is unsafe;
- the right to take immediate action when necessary to prevent danger even to the extent of the demolition of a structure; and
- the right to sell the land if the money owing on it for the work done is not paid.

Such extraordinary powers demand an extraordinary attention be paid to the exercise of such powers. The spirit of the statute must be observed and the statute must be followed to the letter. Careful record keeping must be maintained and each action must be judiciously documented. No activity should be undertaken unless and until it has been carefully documented.

The Process

There are distinct advantages for a municipality to set up a written process for dealing with dangerous and unsightly premises. The municipality as well as the public will have a clear idea of who is responsible for dealing with these situations and how these situations may be resolved.

In the event that the situation cannot be resolved, and the case must go to court, a clear and complete documentation process can demonstrate that a dangerous and unsightly situation existed and the municipality took reasonable steps to have the situation resolved. This can be an important factor in a successful legal action or prosecution. Each municipality should have standard operating procedures (SOP) in place

Dangerous and Unsightly Premises Policy

that officials must follow in investigating every complaint. A list of items that should be included in the SOP is outlined below.

The Municipal Government Act (MGA) provides municipalities latitude on who should deal with dangerous and unsightly premises, whether it be council, an appointed administrator or a selected standing committee. The Association of Municipal Administrator's Model Policy Manual provides a suggested policy for dealing with this matter.

Confidentiality?

The policy can also deal with whether the municipality wishes to maintain the confidentiality of the person lodging a complaint, or whether this information would be open to the public. The MGA (Part XX, Freedom of Information and Protection of Privacy, Section 475 and 480) does permit the municipality to maintain the confidentiality of the person lodging a complaint. In Nova Scotia, there are municipalities which provide confidentiality and others which maintain open files. There are pros and cons to both approaches, for example:

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| Confidential:- | pro | - people are willing to lodge a complaint without fear of reprisals |
| | con | - there may be an abuse of the system with frivolous complaints |
| Open: | pro | - people will not be wrongly accused of lodging the original complaint |
| | con | - once the complainant is known, this may create animosity between the two -people may be less likely to lodge a complaint. |

Councillor participation

The policy section will determine the main lines of authority in the municipality, as provided by the MGA. One issue worth considering is where and how the councillor becomes involved in the process. Should the councillor's involvement be limited to notification of a dangerous and unsightly premises complaint and then kept updated on the progress? Or, should the councillor become involved in the process, from filing complaints on behalf of their residents to the highest level of negotiations between the municipality and the company or citizen with whom a complaint has been lodged?

The advantages of councillor participation in this process is that the councillor should have a greater awareness of the norms and concerns

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of the neighbourhood. As a third party, the councillor may be able to mediate to find an acceptable resolution to the problem.

On the other hand, there is a variation amongst councillors with respect to their mediating skills, and willingness to become involved. The net result is a dangerous and unsightly premises process which may vary from area to area in the municipality. Finally, careful consideration should be given before involving a councillor in the process, as they may ultimately serve as the “jury” in a dangerous and unsightly premises dispute, especially in the case of demolition. Such a situation could cause potential problems for the municipality. This is one aspect the municipality and council will have to resolve.

Immediately upon receipt of a complaint, a file concerning the property in question should be opened. The information collected will vary from municipality to municipality, depending on the process they decide upon, however, these are some of the items which should be included:

- name, address and phone number of the complainant;
- name of owner, address and PID of the property;
- nature and particulars of the complaint;
- dates of: receipt of complaint; inspections; meetings with owners; council meetings; actions and if necessary court case;
- map of property;
- photographic evidence, either photos, video or electronic photographs;
- links to GIS system;
- links to Permit system;
- correspondence with owner or other relevant parties;
- copies of Notices posted on the property, and photographs of the actual posted notice.

It is essential that the municipality is able to point to appropriate compliance with the legislation, and indicate the reasonableness of all steps taken throughout the process. To this end, the municipal solicitor should be sought out to develop a set of forms to be used. These forms can then be used without the necessity of resorting to legal advice every time a property comes under scrutiny as a possible dangerous or unsightly premise. The appropriate staff should be familiar enough with the forms and comfortable in filling them out, that the process becomes a routine administrative procedure.

Dealing with dangerous and unsightly premises is never an easy matter. However, with established written procedures in place, clearly defined roles and well understood responsibilities, the process can be a fairly routine procedure.