IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Colchester (County) v. Spencer, 2004 NSSC 156

Date: 2004 08 09
Docket: S.T. 220896
Registry: Truro

Between:

Municipality of the County of Colchester

Plaintiff

and

Winnifred Spencer

Defendant

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Date Heard: 1 June 2004 and 22 June 2004

Counsel: Peter M. Rogers, Counsel for the Plaintiff
Alain Bégin, Counsel for the Defendant

Moir, J.:

[1] *Introduction* - There is a salvage yard in Londonderry which the County of Colchester wants shut down. The County does not rely on its various powers to regulate land use. No zoning by-law prevents salvage yards being operated in Londonderry. Rather, the County seeks to enforce an order under the unsightly and dangerous premises provisions of the *Municipal Government Act*, S.N.S. 1998, c. 16.

[2] The order required demolition of dilapidated buildings, and that has been done. It also ordered disposal of scrap metal, appliances, oil tanks, metal barrels and tires. To a large extent, that has been done. However, the salvage yard continues in operation. So, new scrap metal, broken or abandoned appliances, metal barrels cleaned for cutting and scrapping and, used tires for de-riming and collection by recyclers have replaced those at the yard when the order was made. This rollover of inventory is not a sufficient compliance, says the County, and it proposes to dispose of all scrap metal etc., new or old.

[3] The County seeks the assistance of this Court because the owner and the operators are unwilling to permit entry so the County can clear out the materials in the salvage yard.

[4] *Proceedings* - The County brought this application by Originating Notice (Application Inter Parties) supported by the affidavit of Mr. Mannie Withrow, Building Inspector for the Municipality of the County of Colchester. The respondent filed affidavits of the salvage yard operators, her husband and her son, Mr. Dennis Spencer and Mr. Trevor Spencer. She also filed an affidavit of Rodderick Cox, who witnessed a conversation between the Spencers and the Deputy Inspector, Mr. David McElhinney, in January 2004, and an affidavit of Mr. Steven Skipper, an inspector with the Department of Environment. In response, the County filed an affidavit of Mr. McElhinney and a supplemental affidavit of Mr. Withrow exhibiting recent photographs of the salvage yard. These six witnesses were cross-examined on two days in June.

[5] The application is for an "order pursuant to s. 352(3) of the *Municipal Government Act*, S.N.S. 1998, c. 18 to allow the Municipality to enter the Defendants property...and order the Defendant to refrain from interfering with such

entry." Subsection 352(3) may come into play where an owner of premises has been ordered by the municipality [s.346] or by the Court [s. 347] to repair dangerous or unsightly premises and where the owner has failed to make the repairs. In those circumstances, the municipality may make the repairs [s. 348(3)] at the owner's expense [s. 507]. Subsection 352(3) gives the Court a discretion to lend assistance where the owner refuses entry.

[6] The briefs delineate the differences between the parties on the question of whether the Court should exercise its discretion in this case. For the respondent, Mr. Bégin wrote: "The Respondent's position is that [she] complied with the Municipality's request as confirmed by the words of David McElhinney." For the Municipality, Mr. Rogers wrote:

> While the Municipality does acknowledge that there has been some remediation to the property since the issuing of the Order, the remediation undertaken, to date, has not sufficiently satisfied the terms of the Order, as is readily apparent from the photos attached to Mannie Withrow's Supplemental Affidavit.

In addition, Mr. Bégin submits that any order should delineate the work, and thus the lien under s. 507, as referable to a back lot adjacent to the lot on which the Spencers reside.

[7] *Facts* - Ms. Winnifred Spencer owns two large parcels of land in Londonderry, which the County identifies by parcel identification numbers assigned under the *Land Registration Act*, S.N.S. 2001, c. 6. Parcel 20128351 has frontage on Station Road and the Spencer family home is located there. The rear of that parcel and the entirety of 20128286 form a large back lot behind the Spencer home and behind their neighbours on Station Road. Vehicles enter the back lot by a driveway owned by Ms. Spencer and situate some distance south of the Spencer home, between the properties of two of their neighbours along Station Road. About twenty-five years ago, Ms. Spencer's husband established a salvage yard on the back lot. In this enterprise, Mr. Dennis Spencer is now assisted by his son, Mr. Trevor Spencer.

[8] In October 2003 the Municipal Building Inspector for Colchester, Mr. Mannie Withrow, received a complaint concerning the salvage yard. The Deputy Building Inspector, Mr. David McElhinney, went to the site, after which he wrote to Ms. Spencer advising her "the property is deemed to be dangerous and unsightly under Section XV of the Municipal Government". The letter required Ms. Spencer to:

1. Remove all derelict vehicles, auto parts, tires, motors, etc. from the property and dispose of them in a lawful manner.

2. Remove all scrap metal, appliances, oil tanks, barrels and miscellaneous junk, garbage and debris from the property, and dispose of it in a lawful manner.

3. Demolish the dilapidated buildings that are located on the property and dispose of the debris in a lawful manner.

Ms. Spencer was given until 1 December 2003 to comply. However, at her request, Mr. Withrow came to the property. He reached a similar conclusion as had his colleague, Mr. McElhinney. Mr. Withrow wrote to Ms. Spencer, reiterating the three sets of requirements and advising that a Committee of County Council would meet on 11 December 2003 “to decide the outcome of these properties and any action to be taken”.

[9] A Committee of the Whole County Council met on 11 December 2003. Mr. Withrow recommended that the Committee issue an order along the lines of the letter sent to Ms. Spencer in October. He provided information, including photographs. Mr. Spencer and his son were present. According to the minutes, Mr. Dennis Spencer advised that he could only get a crusher to the salvage yard

once a year and it was coming the next day. He explained that oil barrels are cleaned before they are shipped to his yard and he is required to cut them in two. He also said that he needed 240 more tires before his supply could be removed for recycling. It seems clear from what the minutes record of Mr. Spencer's remarks that he did not contemplate a clean-up order that would put an end to his business.

[10] The Committee of the Whole decided unanimously to make an order for remediation adopting the same requirements as are found in Mr. McElhinney's October 2003 letter. On 17 December 2003, the Committee ordered:

> The condition of the property be remedied by:
>
> > (a) Removing all derelict vehicles, auto parts, tires, motors, etc. from the properties and disposing of them in a lawful manner.
> >
> > (b) Removing all scrap metal, appliances, oil tanks, barrels and miscellaneous junk, garbage and debris from the properties, and disposing of it in a lawful manner.
> >
> > (c) Demolishing the dilapidated buildings that are located on the properties and disposing of the debris in a lawful manner.

The order went on to provide:

> Unless the Owner(s) of the property complies with the requirements of this Order within 60 days of the posting of this Order upon the property, the Municipality's Administrator of Dangerous or Unsightly Premises is hereby directed to enter upon the property and carry out or direct the carrying out of the work specified above in paragraph 1, and to recover such expenses from the Owner or as a lien against the property in the manner provided for by law.

[11] The Spencers tore down an old garage identified as falling within the third set of requirements. Mr. McElhinney visited the site again last January. In his affidavit, Mr. Dennis Spencer swore that Mr. McElhinney stated that the Spencers had complied with the clean-up order and he specifically stated that no further buildings needed to be torn down. Mr. McElhinney denies stating that the Spencers had complied with the order. He does allow that the Spencers showed him where they had removed a dilapidated building and he acknowledged that it looked good. In cross-examination, Mr. Spencer said that he was more focussed on the buildings and was anxious to know which had to be torn down and, by March 2004, it was clear to the Spencers that the County was not satisfied with junk on the premises, although it was satisfied that the dilapidated buildings had been removed. In cross-examination, Mr. McElhinney said he came to the site to tell the Spencers what buildings had to be torn down. The garage had been removed and he commented positively on that. Also, he did not say any other

building should be torn down. Further, the Spencers made it clear to him that they intended to continue their business. He made no comment on that because he was not concerned with their collecting scrap, tires and junk. He testified, he was concerned about how these were stored, but that subject does not seem to have been discussed either and the order only provides for demolishing buildings, not putting up new ones for storage. Rodderick Cox and Trevor Spencer were present that day. Mr. Cox swore an affidavit stating "David McElhinney advised Trevor and Dennis Spencer that they had complied with the clean up requirement..." and Mr. McElhinney stated "...that no [further] buildings had to be torn down". In cross-examination he said that a garage referred to by Mr. McElhinney as an old mill had been torn down. This seemed to be Mr. McElhinney's main concern and it was the topic of discussion when he said "everything looks good". Mr. Trevor Spencer said in cross that Mr. McElhinney had required the old mill or garage to be satisfactorily torn down. When Mr. McElhinney left, the younger Mr. Spencer understood there was still some cleaning-up to be done although everything was alright with the buildings. There had been some discussion about tires and the Spencers' explanation for the time it would take to ready these for recycling. There was no discussion of barrels, creosote timbers or other materials held for scrap or salvage.

[12] I find that, by January 2004, the third set of requirements about demolishing buildings had been fulfilled. I find that, at some point in the meeting of January 2004, Mr. McElhinney said everything looks alright, but he was referring only to the buildings and the satisfactory removal of the garage in accordance with the Committee's third set of requirements. He was not referring to the inventory and the other sets of requirements because satisfactory demolition and removal of buildings was the main topic of concern at that time. To the extent that Mr. Dennis Spencer took this to be an endorsement of the sightliness and safety of all aspects of the salvage yard, Mr. Spencer let his interpretation be influenced by his hopes and desires. I find he soon realized that more work was required, the same realization his son had come to on the very day of the visit. I also find that the Spencers made it clear that they intended to continue with their salvage yard operation after the junk referred to in the order had been cleaned up and removed. I find that no County official informed them that the County would regard continuing the operation to be a continuing violation of the order.

[13] I do not believe that the Spencers ever took the letter from the Deputy Inspector or the letter from the Inspector or the order of the Committee to purport

to shut down their salvage yard operation. The brief minutes of their presentation to the 11 December 2003 meeting suggest to me that they were describing how their operation works. I found Trevor Spencer's presentation on cross to be even-handed and honest. I accept his evidence of the January 2004 discussions. He related how his father explained in detail the steps to be followed to get the stockpile of old tires to the recyclers. It does not appear there was much discussion of the other junk mentioned in the order: vehicles, auto parts, motors, scrap metal, appliances, oil tanks, barrels and "miscellaneous junk, garbage and debris". In any case, the Spencers treated compliance with the order as an ongoing exercise of removing or tidying up the existing inventory of junk while remaining a collection point for used automobile tires, a receiver of clean scrap metal and junked appliances, a place where creosote timbers are piled and cured, and so on. If they were to remain in business then junk would be stored out-of-doors, in the salvage yard.

[14] The Spencers have attempted to demonstrate the legitimacy of their operation. Mr. Dennis Spencer included in his affidavit that the salvage yard is a collection point for used automobile tires, that the Department of Highways regularly delivers abandoned appliances to the yard, that various furniture stores

deliver used appliances, that the yard was once used as a collection point for the County of Colchester's annual clean-up, and that the operation has maintained a good working relationship with the Department of the Environment. Mr. Trevor Spencer swore "my father and myself only receive clean scrap metal and we have never had any...concerns expressed by the Department of the Environment." Mr. Steven Skipper, an inspector with the Department of the Environment, provided an affidavit in support of the Spencers. The Spencers are "compliant and co-operative with the Department." Mr. Skipper has inspected the salvage yard "on repeated occasions" and has never found any evidence of contamination, or dangerous conditions or significant environmental concerns. Mr. Skipper also testified that creosote ties may be used in and around water courses if they have been dried for at least six months. He said it is most unlikely that the ties stockpiled at the Spencer yard could leak toxins into the environment.

[15] The County takes the position that rolling over the inventory of junk at the scrap yard was irrelevant. Mr. Rogers submitted that the Spencers "cannot defeat the order by replacing a junk pile with new junk". This is the most fundamental difference between the position of the County and that of the Spencers. As I said, the Spencers have tried to keep their operation going. Much of the junk that was

the object of the Committee's order has been disposed of. However, the inventory has merely rolled over. I accept Mr. Trevor Spencer's comparisons of the state of the yard in October 2003, December 2003 and May 2004. For example, his attention was drawn to a photograph taken in October 2003 showing angle iron. That has been disposed of. Other photographs show oil tanks that were disposed of after October 2003. New ones were acquired in December 2003 and Mr. Dennis Spencer explained the process for disposing of these to Mr. McElhinney in January 2004. Some of the various scrap metals were disposed of, some remain. Also, much of what the County considers junk is equipment used by the Spencers not fitting within the words of the clean-up order. For example, there is a functioning Chev vehicle, a vehicle Mr. Trevor Spencer uses for parts, a bus used for storage, a porter, a stack of large tires for the porter, a box for a Chev vehicle, and siding for the pig sty.

[16] *The Extent and Standard of Review* - Mr. Rogers referred me to *Nanaimo* v. *Rascal Trucking Ltd.*, [2000] S.C.J. 14 and, particularly, the discussion at para. 35, 36 and 37 concerning the standard of review of adjudicative decisions made by municipalities within jurisdiction. The standard for review of *intra vires* municipal actions is patent unreasonableness. The *Rascal Trucking* case came up as both a

proceeding for review, Rascal having applied for an order quashing municipal resolutions requiring Rascal to remove a pile of dirt, and as a proceeding for aid, the City having applied for a declaration that it was entitled to enter the property and remove the pile of dirt. Although one aspect of the proceedings did not directly concern judicial review, the Supreme Court of Canada decided the case entirely on the basis of principles of review. I think this is instructive for how a judge should approach a request for the exercise of the discretion to aid a municipal order for cleaning up dangerous and unsightly premises. However, as it involves more than a review, as it involves the exercise of a discretion, I do not think that aid should follow automatically upon the positive outcome of judicial review, and I do not take the Supreme Court as having so held.

[17] The first issue in *Rascal Trucking* was whether Nanaimo had acted within jurisdiction, a question that turned on the meaning of the phrase "or other matter or thing" in s. 936(1) of the *Municipal Act*, R.S.B.C. 1979, c. 290, which dealt with declaring some things to be nuisances and ordering their removal. On the jurisdictional issue, the standard is correctness (para. 33). If the order of the municipality directing removal is authorized by the governing statute, if the

Municipality acted within its powers, then the threshold for interference is patent unreasonableness (para. 37).

[18] No doubt, on an application for aid under s. 352(3) of the *Municipal Act*, the judge should be satisfied that the municipal order for removal of materials was correct in that it was made within statutory jurisdiction and that the exercise of that jurisdiction would withstand review at the standard of patent unreasonableness. Those appear to have been the only issues in *Rascal Trucking*. However, as I said, the judicial exercise of the discretion under s. 352(3) demands a broaden inquiry than on judicial review.

[19] One inquiry arising on the facts of this case is what the Committee of the Whole actually ordered. Did it merely order the removal of the junk at the salvage yard when the order was made or were the Spencers out of compliance when they brought in new inventory?

[20] *The Meaning of the Order* - It can have either meaning but the interpretation advanced by Mr. Rogers, that the order cannot be undermined by bringing in new junk, is supported by what the text of the order shows for its purpose, "The

condition of the property be remedied by...". The condition of the property cannot be remedied by removing "derelict vehicles, auto parts, tires, motors,...scrap metal, appliances, oil tanks, barrels" only to bring in more "derelict vehicles, auto parts, tires, etc.". The intent of the order was to have the property free of stockpiles of junk, in effect, to have it cease to be used as a junk yard or salvage yard.

[21] This, however, raised other lines of inquiry, which would explore factors relevant to the exercise of a discretion but irrelevant to review. To what extent did the Municipality notify the Spencers that the very operation of their salvage yard was at risk and to what extent did Municipal officials allow the Spencers to act to their detriment in the belief the Municipality was not seeking to close the business?

[22] *The Orders as Understood by the Spencers* - The letter of 21 October 2003 contained no hint of the prospective meaning in the order of December 2003. The Spencers were simply required to demolish buildings and remove things presently on the property. Even the December 2003 order does not clearly have the effect now asserted by the Municipality. By January 2004 the Spencers believed that they had substantially complied but there was more to be done and they explicitly told Municipal officials they would remove materials present but would continue

the business. No one told them they misconceived the order. In my assessment, this is a factor going against exercise of the discretion.

[23] *Jurisdiction* - When courts in this province determined whether a property was unsightly under the former *Municipal Act*, R.S.N.S. 1989, c. 295, s. 124(1) they followed an objective test that took into account the nature of the use of the property. Mr. Rogers referred me to *Chester* v. *Aloni*, [1996] N.S.J. 107 (CA). Chief Judge Kennedy, as he was then, convicted Mr. Aloni of permitting his property to become unsightly contrary to s. 124(1), which has the same subject as the briefer and passively voiced, present s. 344. At para. 7 of the appeal decision upholding the conviction, Chief Justice Clarke recorded the trial judge's reasoning as to the objective test:

> In arriving at his conclusion, Judge Kennedy observed that an objective test can be used to determine whether premises are unsightly within the meaning of s. 124. In his opinion, the objective test is what a reasonable person viewing the property would conclude, having regard for the nature of its use and occupancy and the standard of grooming that might reasonably be anticipated.

At least as regards determining whether a property is unsightly, the Court had to accept the actual use of the property and ask whether the property met the standard of grooming for that use. As I see it, this approach would preclude condemnation of a property just because its use as a salvage yard is inherently unsightly. The test would be: does this property meet the standard of sightliness that a reasonable person would reasonably anticipate in a rural salvage yard. As I see it, this approach precludes a dangerous or unsightly premises order forbidding the owner of land lawfully used as a salvage yard from bringing junk to the yard.

[24] Mr. Aloni appealed from the Provincial Court to this Court where "Justice MacAdam agreed with Judge Kennedy's application of an objective test in deciding whether the premises were unsightly..." (Appeal Decision, para. 10). For the Court of Appeal, Chief Justice Clarke said,

> Judge Kennedy made a finding of fact upon which there was evidence in support. He applied reasonable tests. His findings should not be disturbed.

So, Chief Judge Kennedy's approach to determining whether premises are unsightly was adopted by this Court and found to be reasonable by the Court of Appeal.

[25] Mr. Rogers emphasized parts of this passage from para. 35 of the *Rascal Trucking* decision:

> In light of the conclusion that Nanaimo acted within its jurisdiction in passing the resolutions at issue, it is necessary to consider the standard upon which the courts may review those intra vires municipal decisions. *Municipal councillors are elected by the constituents they represent and as such are more conversant with the exigencies of their community than are the courts. The fact that municipal councils are elected representatives of their community, and accountable to their constituents, is relevant in scrutinizing intra vires decisions.* The reality that municipalities often balance complex and divergent interests in arriving at decisions in the public interest is of similar importance. In short, *these considerations warrant that the intra vires decisions of municipalities be reviewed upon a deferential standard.* [emphasis by Mr. Rogers]

This passage indicates why the deferential standard applies on the secondary issue. On the primary issue, Major, J. concluded for the Court:

> The fact that councillors are accountable at the ballot box, is a consideration in determining the standard of review for *intra vires* decisions but does not give municipal councillors any particular advantage in deciding jurisdictional questions in the adjudicative context. As a result, the courts may review those jurisdictional decisions on a standard of correctness [para. 33]

The reasoning for this conclusion included that "Municipalities essentially represent delegated government." (para. 31) and:

> Second, municipalities are political bodies. Whereas tribunal members should be and are, generally, appointed because they possess an expertise within the scope of the agency's authority, municipal councillors are elected to further a political platform. Neither experience nor proficiency in municipal law and municipal planning, while desirable, is required to be elected a councillor. Given the relatively broad range of issues that a municipality must address, it is unlikely that most councillors will develop such special expertise even over an extended time. Finally, as opposed to administrative tribunals, council decisions are more often by-products of the local political milieu than a considered attempt to follow legal or institutional precedent. To a large extent council decisions are necessarily motivated by political considerations and not by an entirely impartial application of expertise. [para. 32]

So, while the courts must afford a high level of deference when reviewing municipal decisions authorized by statute, courts must interfere if a municipality incorrectly interprets the statute as authorizing the decision. Here, the jurisdictional question is whether the *Municipal Government Act* authorizes a prospective dangerous and unsightly premises order against bringing junk to a junk yard.

[26] We probably have a broaden view today of what constitutes the full context of a statute than did Professor Driedger when he formulated the central principle of statutory interpretation:

> To-day there is only one principle or approach, namely, the words of an Act are to be read in their entire context in their grammatical and ordinary sense

> harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament. E. A. Driedger, *The Construction of Statutes*, 2nd ed. (Butterworths, Toronto, 1974)

The Supreme Court of Canada has adopted this passage on several occasions. Indeed, the decision in *Rascal Trucking* refers indirectly to its adoption at para. 20.

[27] First, let us look at the immediate words. Section 344 is expressed with admirable brevity, though in the passive voice: "Every property in a municipality shall be maintained so as not to be dangerous or unsightly." These simple words express the principle of Part XV, "Dangerous or Unsightly Premises". Taken literally they would shut down everything dangerous and everything unsightly. Pulp mills, oil refineries, saw mills and yards, heating plants, electrical generation plants. From this broad principle, the statute turns next to two methods of enforcement, by order of council (s. 346) or its delegate (s. 345) or by court order (s. 347). In either case, the premise for action is as broad as s. 344. Subsection 346(1) empowers council "[w]here a property is dangerous or unsightly" and subsection 347(1) empowers a court where it declares a property to be "dangerous or unsightly". Sections 348 to 353 are consequential. In this case, the jurisdiction

of the Committee of the Whole derives from council under s. 345 and the clean-up order is authorized, if at all, by s. 346(1):

> Where a property is dangerous or unsightly, the council may order the owner to remedy the condition by removal, demolition or repair, specifying in the order what is required to be done.

The tone for "removal, demolition or repair" is set by "remedy the condition". The unsightly and dangerous condition of a residence with rusting car bodies on the front lawn would not be remedied by replacing the car bodies with other car bodies. Taken literally, the statute authorizes what Colchester has attempted to do in this case, order a junk yard to have no junk. Theoretically, because they are certainly dangerous and probably unsightly, Council could equally order stockpiles to be removed from pulp mill yards, open mills from saw yards, vehicles from auto impounds, rusty silos from flour terminals. This even if the pulp mill, saw mill, auto impound and flour terminal met reasonable standards of sightliness and safety for pulp mills, saw mills, auto impounds or flour terminals.

[28] The *Municipal Government Act* deals with the incorporation, administration, corporate powers, finance and provincial oversight of municipalities. It also sets out, from about section 190 to about section 353 the political powers of

municipalities and their limits. Part VIII deals with Planning and Development. This part prescribes a somewhat complex procedure, with an emphasis on public participation, leading to a municipal development strategy or an amendment to an existing strategy. Once a strategy is adopted, council must adopt a land use by-law that implements the strategies of the municipal development plan (s. 219). This by-law must divide the planning area into zones [s. 220(1)] and "list permitted or prohibited uses for each zone": s. 220(2)(a). In recognition of the incursion upon property rights that new land use restrictions impose, the Legislature provided some protection for nonconforming uses and nonconforming structures. Subsection 238(1) provides:

> A nonconforming structure, nonconforming use of land or nonconforming use in a structure, may continue if it exists and is lawfully permitted at the date of the first publication of the notice of intention to adopt or amend a land-use by-law.

[29] If Part XV were to authorize the regulation of land uses found, within the limits of "patently unreasonable", to be dangerous or unsightly, then the control of land uses would be ad hoc, without public participation, without planning strategy and without the protections for past non-conforming uses. In short, Part XV would not be in harmony with Part VIII. The provisions respecting dangerous or

unsightly premises would be in conflict with the provisions for planning and development.

[30] Because the control of land use is dealt with in such detail in Part VIII, it is Part XV that must be read restrictively in order to give effect to the harmony of scheme referred to by Professor Driedger. Part XV does not control land use. To the extent that a municipality chooses to restrict unsightly or dangerous but lawful uses, it must follow the procedures and respect the protections for property rights in Part VIII. Mr. Rogers told me that Londonderry is "unzoned". That is to say, the Colchester Council has yet to embark on a planning process for the area. That does not mean that, in the meantime, Council can prohibit unsightly or dangerous kinds of uses.

[31] This interpretation takes us back to *Chester* v. *Aloni*. If the Committee of the Whole had followed the objective test, "what a reasonable person viewing the property would conclude, *having regard to the nature of its use* and occupancy and the standard of grooming that might reasonably be anticipated" (my emphasis), then the distinction between regulating land uses and regulating the sightliness and safety of land under lawful use would have been preserved. Objectively assessed,

is it reasonably sightly as rural salvage yards go? Is it reasonably safe, as salvage yards go? Instead, the Committee determined that the land should not be used as a salvage yard. Respectfully, that is beyond the powers given to Council by s. 346(1) and delegated by Council to the Committee under s. 345.

[32] *Conclusion* - Because the Spencers were not clearly notified that the Municipality was seeking to terminate their use of the property as a scrap yard, because the order does not clearly do so and because of the Municipality's silence in face of the Spencers' attempts at both compliance with the order and continuing their business, I would decline to exercise my discretion under s. 352(3) of the *Municipal Government Act*, S.N.S. 1998, c. 18. Further, I have concluded that the Municipal order is an attempt to control land use, which is governed by Part VII of the statute and is outside the powers of the Municipality under XV. As the Municipal order is without jurisdiction, I would not exercise my discretion to provide aid in the enforcement of the order.

[33] *Alternate Findings* - I accept the evidence of Dennis Spencer as to what is on site and personally owned, as opposed to junk inventory. The municipal order

does not purport to cover these things and I would have excluded them from enforcement if I had made an order in aid of the municipal order.

[34] Section 507 of the *Municipal Government Act* provides that the cost of work done on a property by a municipality pursuant that statute "is a first lien on the property upon which, or for the benefit of which, the work was done." There is some controversy as to where the boundary lies between the lot with the residence on it, 20128351, and the lot where the salvage yard is mostly located, 20128286. No plan or other surveyor's opinion has been provided. I found Mr. Trevor Spencer's evidence on this to be the clearest and he did affirm that he observed the survey pins. Consequently, if I had granted an order in aid of the Municipality it would have provided for the removal of the stockpile of creosote timbers from and for the benefit of 20128351 and the removal of everything else from and for the benefit of 20128286.

[35] *Order* - I will dismiss this proceeding with costs to the defendant of $1,500 plus disbursements.

J.