SUPREME COURT OF NOVA SCOTIA
Citation: *White v. Amherst (Town)*, 2019 NSSC 225

Date: 20190208
Docket: Amh. No. 482384
Registry: Amherst

Between:

Allison Shawn White

Applicant

v.

Municipality of the Town of Amherst

Respondent

DECISION

Judge:	The Honourable Justice Darlene Jamieson
Heard:	February 8, 2019 in Amherst, Nova Scotia
Oral Decision:	February 8, 2019
Written Decision:	July 17, 2019
Counsel:	Allison Shawn White, Applicant (Self Represented) Douglas B. Shatford, for the Respondent

By the Court:

Introduction

[1] This is an Application for Judicial review filed by the Applicant, Mr. White. He is seeking to quash a Demolition Order ("Order") issued by the Municipality of the Town of Amherst ("the Town") respecting his property at 16 Prince Arthur Street in the Town of Amherst, Nova Scotia. No stay was requested; however, the Town did not proceed to demolish the building pending the hearing of this matter.

[2] Mr. White is self-represented. His prior legal counsel filed a Notice for Judicial Review on October 30, 2018. Mr. White's listed grounds for review of the decision to grant the Order are :

1. In issuing the Order for demolition, the Respondent violated the provisions of the *Municipal Government Act*, SNS 1998, c.18, s. 346(1) whereby jurisdiction to issue a Demolition Order is restricted by the requirement that the Order need also indicate the remedial action required.

2. The Respondent acted unreasonably and thereby acted without jurisdiction or lawful authority in that it:

- ignored the report of its own experts that the structure of the property was neither unsafe nor unsound.
- ordered the demolition of the property when repairs were possible.
- ordered the demolition of the property when it was not unsightly at relevant times nor unsafe.

[3] The Town filed a Notice of Participation on November 13, 2018

[4] Consistent with the process for judicial review, I have considered the briefs, authorities, oral argument and the Record.

Background

[5] The Record filed by the Town sets out the background to its determination that the premises at 16 Prince Arthur Street were dangerous and unsightly. The Record, comprising 217 pages, is supplemented by Tabs 1, 2 and 12 of the Exhibit

Book filed by the Town. Tab 1 is the Dangerous and Unsightly Policy. Tab 2 is the Planning Advisory Committee Policy and Tab 12 consists of the Minutes of the Planning Advisory Committee of September 11, 2018.

[6] The Record establishes that the Town's concern with the condition of Mr. White's property had been longstanding and dated back to 2011. Various prior complaints concerning the property were received by the Town from neighbouring properties. Prior letters and Orders were issued in relation to the condition of the property including, but not limited to the following:

- A letter was sent on March 10, 2011 to Mr. White regarding unsightly premises with resulting compliance (Tab I of the record).
- A letter was sent on April 12, 2013 regarding unsightly premises. The Town hired a contractor to complete the work when it was not completed by Mr. White. The cost was charged to the property's tax account (Tab H of the record).
- A letter regarding minimum standards for residential occupancy was sent to Mr. White on June 12, 2013. This matter did not proceed, as the complaining tenant vacated the premises (Tab G of the Record).
- A letter was sent on May 6, 2014 regarding unsightly premises. The Town hired a contractor to complete the work when it was not completed by Mr. White. The May 6 letter also required removal of a shed stating: " There is no development permit issued for the shed and, given the state of the building, it appears the structure is not safe or sound." The deadline of May 30 for the removal of the shed was delayed at Mr. White's request to allow for time to move the shed. When the shed was not removed by Mr. White, the Town hired a contractor to do the removal work with the cost charged to the property's tax account (Tab F of the Record).
- A letter was sent on August 5, 2014 regarding unsightly premises with resulting compliance (Tab E of the Record).
- A letter was sent on October 20, 2014 regarding unsightly premises with resulting compliance (Tab D of the Record).
- An Order was issued on May 19, 2015 regarding dangerous or unsightly premises requiring repairs to windows where glass was broken, to re-secure the attached shed door and for removal of a derelict vehicle with resulting compliance (Tab C of the Record).

- A letter was sent on February 17, 2016 regarding unsightly premises with resulting compliance (Tab B of the Record).
- A letter of July 21, 2017 was sent, after inspection by Mr. Marc Buske, Dangerous and Unsightly Premises Administrator, to effect various repairs including securing the building from unauthorized entry, fixing broken or missing doors, replacing broken windows by October 26, 2017 (Tab A of the Record).
- An Order was issued on August 29, 2017 to remove a derelict vehicle from the property (Tab A of the Record).
- An Order was issued on February 18, 2018 to secure the building from unauthorized entry, to replace or fix any broken or missing doors and replace any broken windows by March 12, 2018. The Town hired a contractor to secure the building which was completed on August 10, 2018.

[7] The chronology immediately prior to the Order of September 11, 2018 (dated September 12) includes, but is not limited to, the following events:

- On July 26, 2018 a notice was posted on the property advising of entrance and inspection on August 1, 2018 (Tab A, page 34 of the Record). The site visit occurred on August 1. Mr. Buske was accompanied by Mr. White and Mr. David Buell, Certified Building Inspector for Cumberland County. Mr. Buell prepared an inspection report dated August 20, 2018 (Tab A, page 36 of the Record).
- On August 30, 2018, a notice was posted on the property advising of a PAC meeting concerning the recommendation for demolition of the building would be held on September 11, 2018. The notice indicated, "your attendance and/or your representative are required to attend this above meeting, if you oppose the recommendation to demolish." (Tab A, page 17 of the Record).
- In a September 5, 2018 report to the Planning Advisory Committee ("PAC"), the Administrator , Mr. Buske, provided a detailed overview of the history of the property and Mr. Buell's inspection report. Mr. Buske provided his recommendation the property be demolished at page 5 of his report (Tab A, page 25 of the Record).

– On September 11, 2018 the PAC met. Mr. White was present and addressed the Committee. (Exhibit Book, Tab 12). The Minutes at clause 4.3 state the following regarding Mr. White's appearance:

> The property owner, Allison White, addressed the Committee stating that he was in the process of selling the property to his son for $1. Mr. White continued to say that he is done with the property and that his son will be purchasing the property. He added, 'you can tear it down if you want, I'm done with it.' Mr. White said that he was told he would not be allowed to apply plexiglass to the damaged windows, but then the Town had had it installed, otherwise he said he would have been able to do that himself, rather than having a large bill for the work that the Town had completed. Mr. MacDonald offered to stay and discuss the matter after the Committee meeting with Mr. White but he refused and said he was unable to stay.

[8] The Minutes, at clause 4.4, indicate the PAC approved the following Motion:

> That the Planning Advisory Committee order the property at 16 Prince Arthur Street be demolished and the foundation be backfilled within 45 days from the date of this Committee meeting, with all work to be done by the property owner. Failure by the property owner to do the work will result in the town completing the work, with all costs charged to the property owner's tax account.

[9] On September 12, 2018 an Order was issued to Mr. White pursuant to the PAC decision made on September 11 stating that "the property owner be ordered to demolish the building on the property and backfill the site no later than October 26, 2018." The Order was sent by registered mail to Mr. White on September 12, 2018 (Tab A, page 21 of the Record).

[10] I note two dates appear on the Order. The first is September 11, 2018 being the date it was signed at the end of the document and the second is September 12, 2018 appearing at the beginning of the document where it is addressed to Mr. White. I will use the September 12, 2018 date for ease of reference.

The Statutory Scheme

[11] In this judicial review the relevant legislation is the *Municipal Government Act*, SNS 1998, c.18 ("*MGA*"). The definition of "dangerous or unsightly" is set out at s. 3(r). It states, in part:

> (r) ‘dangerous or unsightly’ means partly demolished, decayed, deteriorated or in a state of disrepair so as to be dangerous, unsightly or unhealthy, and includes property containing
>
> (i) ashes, junk, cleanings of yards or other rubbish or refuse or a derelict vehicle, vessel, item of equipment or machinery, or bodies of these or parts thereof,
>
> …
>
> (iii) any other thing that is dangerous, unsightly, unhealthy or offensive to a person,
>
> and includes property or a building or structure with or without structural deficiencies
>
> (iv) that is in a ruinous or dilapidated condition,
>
> …
>
> (vi) that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes,
>
> …
>
> (viii) constituting a hazard to the health or safety of the public,
>
> (ix) that is unsightly in relation to neighbouring properties because the exterior finish of the building or structure or the landscaping is not maintained,
>
> …

[12] Part XV of the *MGA* sets out and limits the powers of a municipality to address the condition of property within the municipality (ss. 344 to 353).

[13] As indicated in the brief of the Town (and which is not at issue in this review), the Town of Amherst delegated its authority respecting Dangerous or Unsightly Premises to an Administrator pursuant to the *MGA*, s. 345(1). This delegation is found in the Dangerous and Unsightly Premises Policy (Exhibit Book, Tab 1). The Town’s authority under s. 345(2), that could not be delegated to the Administrator, was delegated to the Planning Advisory Committee (PAC) reserving the authority in Council to conduct appeal hearings “when an appeal is launched against an order to demolish a building.” (Exhibit Book, Tab 2)

[14] The Demolition Order of September 12 specified an appeal of an Order of PAC could be taken within seven days after the making of the Order. No appeal was taken by Mr. White.

Analysis

[15] Mr. White's written submission of December 17, 2018 and his oral submissions focused on his present plans to bring the property to a state where (to use his words) he could "regain a liveable apartment for myself." While I understand Mr. White's position and his current wish to make repairs to the property to bring it to a liveable state, the matter to be determined is a judicial review of the decision to demolish the premises.

[16] I will now address the grounds of review set out in the Notice for Judicial Review filed on behalf of Mr. White.

[17] Ground of Review #1 states:

> In issuing the order of demolition, the Respondent violated the provisions of the *Municipal Government Act*, SNS 1998, c.18, s.346(1) whereby jurisdiction to issue a demolition order is restricted by the requirement that the order also indicate the remedial action required.

[18] Section 346(1) states:

> 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.

[19] First of all, I confirm that legislation like the Dangerous or Unsightly Premises sections of the *MGA* confer broad-ranging powers to affect individuals' property and there must be strict compliance with the statutory requirements.

[20] The exact issue advanced by Mr. White's Notice For Judicial Review concerning the wording of s. 346(1) was addressed by Justice Van den Eynden (then of the Supreme Court) in ***Wells v. Town of Amherst***, 2014 NSSC 378. Firstly, she indicated the standard of review was correctness, stating at para. 26:

> 26 … On such issues, the higher standard of correctness is the appropriate standard of review. Either the PAC and/or council had the requisite authority to make the decisions under review, or they did not. Accordingly on matters pertaining to jurisdiction and the interpretation and application of statutory provisions advanced by the applicant, the higher standard of correctness applies . . .

[21] Then at paras. 33 and 34 Justice Van den Eynden stated, with regard to the wording of s. 346(1):

> 33 Section 346(1) also cannot support the interpretation advanced by the applicant. The desired interpretation of the words 'specifying in the order what is

> required to be done' does not simply apply to repairs. The interpretation advanced is taken out of context and runs against the plain and ordinary meaning of the words contained in the provision. Council may order the owner to remedy by removal, demolition and repair. Whatever method is chosen, it must be specified in the order. So, specifying in the order what is required to be done - does not just pertain to repairs. If it is going to be remedied by demolition, demolition would be specified in the order. If it was going to be remedied by repair, repair would be specified in the order. But the term 'specifying in the order what is required to be done' is not solely anchored to the issue of repairs.
>
> 34 The Town in this case specified demolition. That was the decision of the PAC. It was also the decision that was confirmed by Council in the June appeal hearing, and demolition was clearly specified in the order.
>
> 35 I also refer to ***Sydney Precision Machining Ltd. v. Cape Breton (Regional Municipality),*** 2003 NSSC 222. It is helpful. In that decision, the concept of distinct orders for repair and demolition under the *MGA* is confirmed. The latter requires an opportunity to be heard in compliance with s. 346(3), which occurred in this case. That is the provision of the landowner, Mr. Wells, to make representations and be present; to have appropriate notice of the hearing before any Demolition Order was made. The record is clear that occurred in this particular case.

[22] I adopt this reasoning. The wording in s. 346(1),"specifying in the Order what is required to be done" refers to the remedies of removal, demolition or repair. Here, the PAC decided the remedy of demolition was appropriate in the circumstances and the Order specifies demolition. It states, in part:

> YOU ARE HEREBY ORDERED to remedy the condition by complying with the following requirements as ordered by the Planning Advisory Committee on Sept. 11, 2018:
>
> That the property owner be ordered to demolish the building on the property and backfill the site no later than October 26, 2018

[23] The Order clearly specifies what is required to be done. I find the Order is in compliance with s. 346(1).

[24] In addition, with respect to the notice required, s. 346(3) states:

> 346 (3) Where it is proposed to order demolition, before the order is made not less than seven days notice shall be given to the owner specifying the date, time and place of the meeting at which the order will be considered and that the owner will be given the opportunity to appear and be heard before any order is made.

[25] On August 30, 2018 a notice was posted on the property advising that a PAC meeting, concerning the recommendation for demolition of the building, would be held on Sept 11, 2018 (Tab A, page 17 of the Record). On September 11, 2018, the PAC met. Mr. White was present and addressed the Committee (Exhibit Book, Tab 12). In keeping with s. 346(3), Mr. White was given appropriate notice of the meeting where the proposed demolition order was to be considered. He appeared and was given an opportunity to be heard. He was also given an opportunity to further discuss the matter with CAO, Mr. MacDonald, but chose not to do so.

[26] I have reviewed the particulars of the Order against the provisions of the *MGA* and find it to be within the authority provided under the Act.

[27] Ground of Review #2 of the Notice For Judicial Review states:

> The Respondent acted unreasonably and, thereby, acted without jurisdiction or lawful authority in that it:
>
> – Ignored the report of its own experts that the structure of the property was neither unsafe nor unsound.
>
> – Ordered the demolition of the property when repairs were possible
>
> – Ordered the demolition of the property when it was not unsightly at relevant times nor unsafe.

[28] The standard of review to be applied in assessing the decision to issue the Order for Demolition is reasonableness. The Court must give deference to the decision maker. The question for the Court is not whether it agrees with the decision of the PAC to issue an Order for Demolition. Rather, it is whether the decision falls within a range of possible outcomes which are defensible with regard to the facts and law. Counsel for the Respondent agreed the standard is reasonableness. Mr. White did not take a position.

[29] A majority of the Supreme Court of Canada defined "reasonableness" in ***Dunsmuir v. New Brunswick***, 2008 SCC 9:

> 47. Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In

> judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

The majority decision continued at para. 49:

> 49. Deference in the context of the reasonableness standard therefore implies that courts will give due consideration to the determinations of decision makers. As Mullan explains, a policy of deference "recognizes the reality that, in many instances, those working day to day in the implementation of frequently complex administrative schemes have or will develop a considerable degree of expertise or field sensitivity to the imperatives and nuances of the legislative regime": D. J. Mullan, "*Establishing the Standard of Review: The Struggle for Complexity*?" (2004), 17 C.J.A.L.P. 59, at p. 93. In short, deference requires respect for the legislative choices to leave some matters in the hands of administrative decision makers, for the processes and determinations that draw on particular expertise and experiences, and for the different roles of the courts and administrative bodies within the Canadian constitutional system.

[30] Contrary to the Applicant's position in the Notice for Judicial Review, there is no requirement a building be unsound for a Demolition Order to be issued. The mere fact the building inspector indicated the structure was intact with no apparent sign of structural failure, other than the exterior garage, does not equate to the decision to demolish being unreasonable.

[31] The definition of dangerous or unsightly specifically includes "a building or structure with or <u>without</u> structural deficiencies" (s. 3(r)).

[32] There is no prohibition on demolition if there is a possibility of repair. For example, the definition of dangerous or unsightly includes a building "that is unsightly in relation to neighbouring properties because the exterior finish of the building or structure or the landscaping is not maintained" (s.3(r)(ix)). The definition also includes a building "that is in such a state of non-repair as to be no longer suitable for human habitation or business purposes" (s. 3(r)(vi)). Clearly these definitions contemplate buildings that are capable of repair being designated as dangerous or unsightly and being subject to remedy by removal, demolition or repair under s.346(1). The choice of remedy resides with the decision maker under the *MGA*.

[33] In assessing reasonableness, one must consider both the process of reasoning and the outcome in the context of the entire Record. As noted above, the Record sets out a lengthy history of letters and Orders dealing with the condition of this

property dating to 2011. The Record notes the building had been vacant for a number of years.

[34] The Record indicates at least five complaints were received about this property. For example, at Tab C, page 122 of the Record, is a letter of complaint from Nova Scotia Legal Aid located at 55 Church Street (a neighbouring property), complaining about solid waste dumping at the property, broken windows and door. The letter states these neighbours have made complaints dating back to 2007. The letter raises occupational health and safety issues for staff concerning the nature of the garbage being dumped in the lane that is used by staff. Another complaint, dated April 26, 2018, references broken glass and the building being full of pigeons and frequent garbage being left in the right-of-way (Tab A, page 82 of the Record).

[35] The Record includes the inspection report of Mr. Buell dated August 20, 2018, where he noted the following (Tab A, page 36 of the Record):

- Assorted debris and garbage scattered throughout the structure and signs of transient occupancy.
- Collapse of some drywall and evidence of moisture and mould, wall punctures and signs of superficial damage throughout the premises.
- Evidence of scat and feces in portions of structure as well as animal infiltration to the interior.
- General disrepair and unkept premises throughout, to the point of being uninhabitable in its current state.
- Structure intact and no apparent sign of structural failure other than exterior garage.
- Exposed floor members not showing evidence of failure.
- Extent of debris, abandoned appliances, furniture, and garbage to the point of raising health concerns.
- Exterior garage shows breach of entry and collapsed interior floor.
- Structure of garage shows signs of weather exposure and wear as well as structural deterioration. Collapse imminent.

[36] The Record also includes the report to the PAC of September 5, 2018 (Tab A, page 25 of the Record). This report, authored by Mr. Buske, the Dangerous and

Unsightly Premises Administrator, set out the history of complaints, letters and Orders concerning the property and references the results of the Inspection Report of Mr. Buell. It also provided additional information concerning the state of the building and ultimately recommended demolition.

[37] The Notice for Judicial Review also claims the decision was unreasonable because it ordered demolition when the property was not unsightly or unsafe at relevant times. I disagree. I find that the record provides a rational basis to determine the premises at 16 Prince Arthur Street were dangerous and unsightly. There was ample evidence in the Record to support this decision.

[38] The PAC, pursuant to s. 346(1), could choose to remedy the conditions by either removal, demolition or repair. It chose demolition. It was reasonable for the PAC to determine for these dangerous and unsightly premises that an Order for Demolition was the appropriate course of action. The Order was supported by the information provided in the report of the Administrator, Mr. Buske, and by the full Record. In my view the decision falls within a range of reasonable outcomes.

Conclusion

[39] In the result, I hereby dismiss the Application with costs.

Jamieson, J.