Manitoba Ombudsman

REPORT UNDER

THE OMBUDSMAN ACT

CASE FILE NUMBER 2012-0196

RURAL MUNICIPALITY OF SIFTON

REPORT ISSUED JULY 22, 2016

CASE SUMMARY

In February 2012 the Town of Oak Lake (the town), which is now part of the Rural Municipality of Sifton, removed a trailer from the property of the complainant and had it demolished. The complainant disputes the right of the Town of Oak Lake to seize and destroy the trailer and the process it used to carry out these actions. In accordance with the municipal by-law, the town added the cost of the removal and destruction of this property to the complainant's property tax bill. The complainant believes that the costs associated with this action are unfair and onerous.

Although it was within the jurisdiction of the town to take steps to remove derelict or unsafe property from private land, the town committed several procedural errors in carrying out these actions. The agent of the town leading this process acted without proper authority when issuing a compliance order and the town did not properly record complaints related to the trailer pursuant to its own bylaw. Finally, the town in our view unfairly assigned costs to the complainant that were solely the result of the actions of the agent.

As a result, Manitoba Ombudsman supports the complaint in part and makes the following recommendations:

Recommendation 1: The RM of Sifton must ensure staff is aware of the policies and procedures to be followed when undertaking a similar process in the future. We would suggest providing training to staff so they are aware of their responsibilities with respect to by-law enforcement.

Recommendation 2: The RM of Sifton should consider an amendment to By-law No. 669 (or its current equivalent) to clarify its complaint process so it is clear that complaints alleging by-law infractions may be made verbally or in writing and that such complaints will be appropriately recorded for current and future reference.

Recommendation 3: The RM of Sifton should reimburse the complainant for the $1,400 he was charged for the failed attempt to remove the trailer on November 30, 2011. Further, the RM should return the trailer licence plate in its possession to the complainant.

The RM considered these three recommendations and provided us with their response. They have accepted the first and third recommendation. With regard to the second recommendation, they have stated their commitment to using written complaints to initiate the process as outlined in the current by-law. We are satisfied that the RM is taking the proper action to conclude this matter.

OMBUDSMAN – ROLE AND RESPONSIBILITIES

Manitoba Ombudsman is an independent office of the Legislative Assembly of Manitoba, reporting to the assembly through the Office of the Speaker. The responsibilities and authority of the ombudsman are set out in the Ombudsman Act, the Freedom of Information and Protection of Privacy Act, the Personal Health Information Act, and the Public Interest Disclosure (Whistleblower Protection) Act.

Under the Ombudsman Act, Manitoba Ombudsman investigates administrative actions and decisions made by government departments and agencies, and municipalities, and their officers and employees. Investigations may be undertaken on the basis of a written complaint from a member of the public, or upon the ombudsman's own initiative.

The actions and decision complained about are matters of administration arising from a decision reached by a municipal council pursuant to the provisions of a provincial statute, the Municipal Act, and municipal by-laws.

Ombudsman investigations typically assess actions taken or decisions made against a benchmark established by government. Sometimes that benchmark is provincial legislation or a municipal by-law. On other occasions, it is written policy or established procedures implemented to give effect to legislative purpose. In cases concerning an impact on individual rights or benefits, we also examine the fairness of the action or decision. A complaint can raise questions of procedural fairness, substantive fairness or relational fairness. Procedural fairness relates to how decisions are reached; the steps followed before, during and after decisions are made. Substantive fairness relates to the fairness of the decision itself and relational fairness relates to how people are treated during the decision making process.

While our office has a mandate to investigate complaints, the investigative process we follow is non-adversarial. We carefully and independently consider the information provided by the complainant, the decision maker, and any witnesses we determine to be relevant to the case. Administrative Investigations can involve an analysis of statute or by-law provisions, document reviews, interviews and site visits.

The goal of administrative investigations is to determine the validity of complaints and to identify areas requiring improvement. If a complaint is supported by a finding of maladministration, the ombudsman may make recommendations pursuant to section 36 of the Ombudsman Act.

Administrative investigations can also identify areas where improvements may be suggested to a government body without a finding of maladministration. Such suggestions are made to support

and help government bodies achieve better administration, often through the adoption of best practices. Improved administrative practices can improve the relationship between government and the public, and reduce administrative complaints.

KEY ISSUES/QUESTIONS

The following issues were identified in the review of this complaint.

1. Did the town have the legal authority to seize and demolish the trailer and did it follow proper procedure in exercising its authority?

2. Does the fact that the complainant legally registered the trailer with MPIC invalidate the town's actions?

3. Was the complainant given the opportunity to object to the process undertaken by the town?

4. Was the cost to remove the trailer unreasonable?

5. Was it unfair for the town to charge the complainant "stand by" costs when they first attempted to remove the trailer?

6. Did the town have an obligation to provide the complainant an opportunity to remove his property from the trailer before it was taken? Did the town have the right to put this property into storage and have fees assessed for its retrieval?

7. Did the town have an obligation to salvage any material from the trailer and have it sold to defray the cost of its removal and destruction?

BACKGROUND INFORMATION

The complainant advised our office that in August 2011 he purchased an old trailer from a resident of the Town of Oak Lake, which is located in the Dennis County Planning District (DCPD). He paid $100 for the trailer which at the time was located on lot rented from the town. As it had an old license plate on it, the complainant went to the local Manitoba Public Insurance Corporation (MPIC) agent to see if it could be insured prior to moving the trailer to his property.

The agent determined that the last time the plate had been registered was in 1987 so he called MPIC in Winnipeg to verify if the trailer was insurable. The complainant indicated that the agent received approval so he proceeded to register the trailer on September 6, 2011. The registration document describes the trailer as follows:

> *Registration Class: A8 Trailer*
> *Vehicle Description: 1970 OTHER DETROITER house or Cabin UNKNO*

Sometime during the next month, the building inspector[1] for the DCPD talked to the complainant and verbally advised him that the mobile home could not be moved as the original owner had applied for and been issued a permit on July 5, 2011 for the demolition of the mobile home. The complainant disagreed that the structure in question was a mobile home and advised the building inspector that it was a trailer and was licensable. The complainant told the building inspector that if it was a mobile home it would be subject to municipal taxes. The complainant claimed that municipal taxes were never paid on the trailer, only a monthly lot fee to the town.

On or about October 9, 2011, the complainant had a local tow truck haul the trailer to his property. The complainant indicated that the trailer was placed on a concrete pad with proper jacks and that its hitch sat firmly on the pad. He also advised that he made sure the trailer was well secured on a proper base. According to the complainant, the trailer was to be a temporary structure to provide storage for construction materials needed for repairs to his house. The complainant states that there never was any intention to use the trailer as a residence.

On October 17, 2011, the complainant received a letter via registered mail from the building inspector for the DCPD. The letter stated the following:

> *This letter is in reference to a trailer recently moved onto your property at the above noted location, and to advise you that the property had an exterior inspection on October 14, 2011, when the following conditions were observed:*
>
> - *The blocking supporting the hitch of the trailer appeared to be unstable and possibly prone to falling, also the trailer is on an inadequate footing and foundation.*
>
> - *The roof appears to have several areas that has sunk and may indicate a structural issue.*
>
> - *There is no skirting thus possibly allowing access to the trailer for animals.*
>
> - *The trailer has no water, sewer or hydro connections.*
>
> - *The trailer has had modifications to the walls such as large areas removed, this can cause a structural weakness and would likely void any ULC or CSA standard that the trailer was constructed under.*
>
> - *The trailer does not appear to meet certification as an RV and would require a seal of certification as such issued by Manitoba Labour.*
>
> - *The placement of the building does not appear to meet required set backs as stated in the Town of Oak Lake Zoning By-Law.*

[1] The building inspector is also the development officer for the planning district.

- *This trailer was moved onto the property without a development permit. It was also moved from another lot in town, a permit was issued for the demolition of the mobile home on that lot.*

The condition of this building presents a severe risk to public safety in several ways. Any one entering the building would be a risk of injury due to the unsound nature of many of the structural supports. This building also poses a threat to people in the immediate area of the building, as the apparent instability of the structural components puts the building at risk of collapse. The noted modifications to the building means that it no longer meets any codes or standards and renders the building unfit for human occupation.

*Due to the above conditions, you are hereby **ORDERED**, pursuant to the Municipal Act of Manitoba section 243(1) to **demolish and remove** the building and foundation from the above address, fill any excavations, clean, and level the site. A demolition permit from the Town of Oak Lake will be required.*

You are required to comply by no later than November 15th, 2011. If you have not complied with the conditions of this "Order" by November 25th, 2011 please be advised that the Town of Oak Lake will proceed to take the necessary action to have the building demolished at your expense, pursuant to the Municipal Act of Manitoba section 243(2).

Pursuant to section 244(1) of the Municipal Act, you have 14 days to appeal this order, in writing, to the Council of the Town of Oak Lake. Failure to bring such an appeal and not complying with the order, entitles the Town of Oak Lake to take any action that is required to remedy the problem including demolition of the building at your cost.

There will be no further noticed provided of the Town's activities in this regard.

On November 1, 2011, the complainant received a second letter via registered mail. This letter was identical to the first one however it was sent from the Town of Oak Lake and signed by its CAO. The date to comply with the demolition order in this second letter had not changed and remained November 15, 2011.

On November 25, 2011, the complainant received a letter from the DCPD and signed by the building inspector advising him of the following:

This letter is in reference to the trailer at the above noted location, and to advise you that this building located on the property will be demolished by the Town of Oak Lake on November 30, 2011 at your expense, as per the order issued to you November 1, 2011. If there are any items you wish to obtain from the property please do so prior to November 30, 2011.

There will be no further noticed provided of the Town's activities in this regard.

On November 30, 2011, the building inspector, accompanied by two RCMP officers and the contractor hired to remove the trailer, attended the complainant's property. The complainant and his

spouse came out of their house to observe the process. When the building inspector advised them that they were there to remove the trailer, the complainant asked to see the court order allowing the town to take this action. Since they had no court order, and were unsure of the process they were to follow, the building inspector, the contractor and the RCMP officers left without removing the trailer.

The town sought legal advice on this matter December 15, 2011. Their lawyer responded January 12, 2012 and advised as follows:

> *I have reviewed the procedural steps taken to date under the Municipal Act, which included the following:*
>
> *Issuance of an Order pursuant to section 243 of the Municipal Act by CAO, [NAME REDACTED], on November 1, 2011 requiring the demolition and removal of the mobile home located on Lot 6, Block 15, Plan 1969 in the Town of Oak Lake which Order included the following information, as required by the Municipal Act:*
>
> - *notice of the deadline for compliance*
> - *notice that non-compliance would result in demolition being undertaken by the municipality at the expense of the person receiving the Order*
> - *notice of the appeal period*
>
> *Confirmation that no written appeal has been received by the municipality prior to the deadline.*
>
> *I have also confirmed through a Land Titles search that the sole registered owner of the land on which the trailer sits is [The complainant], the party named in the Order. As you probably know and for future practice, it is important to ensure that all parties named in the title to the offending land are also the parties named in the Order. If [The complainant]'s wife's name had been on the title, she would have needed to be included in the Order and separately served with a copy of it. That is not an issue in this case.*
>
> *The only information that I have missing from the documents provided is confirmation of the delivery of the Order issued by [NAME REDACTED], CAO to [The complainant].*
>
> *Provided that service of that Order can be proven either by verbal and (if necessary) affidavit evidence of the person hat delivered the Order to [The complainant] or by production of a registered letter Acknowledgement of Service signature from [The complainant], it is our legal opinion that a Court of Queen's Bench Order enforcing the section 243 Order issued November 1, 2011 is not required in order for the municipality to now take steps to demolish the trailer and restore the land on which it sits into a safe condition.*
>
> *A Court of Queen's Bench Order providing for the enforcement of the Order is available and can be obtained under the Act, if the municipality should choose to pursue that additional precautionary measure, but the cost involved in obtaining same and the time frame that it will*

take to obtain the Court Order are issues to be carefully considered. We estimate that an uncontested Order will cost approximately $1500 - $2000 plus taxes to obtain.

Again based on the information you have provided, if service of the Order on The complainant can be properly verified, the municipality now has authority under section 246 of the Municipal Act to take immediate action to demolish and clean up the site.
If the municipality decides to proceed pursuant to its authority under the Municipal Act, please provided me with confirmation of the date and method of service of the original Order for [The complainant] and I will then provide you with a form of written Notice to [The complainant] that can be served on him at the time that the municipality attends to undertake the demolition. The Notice will simply cite that a Court Order is not required and that enforcement is proceeding pursuant to section 246 Of the Act.

On January 16, 2012 the CAO faxed the town's lawyer as follows:

Council reviewed your correspondence dated January 12, 2012 regarding the above Order at their recent meeting. Council discussed this situation at length and has decided that as we are able to provide confirmation that [The complainant] received the Order they agree with your legal recommendation that a Court of Queen's Bench Order enforcing Section 243 is not required in order for the Town to now take steps to demolish the trailer and restore the land on which it sits into a safe condition.

I have enclosed a copy of the fax sent to our office by Canada Post which shows The complainant's signature and the November 2, 2011 delivery date of the Order. Councils asks that you prepare a form of written Notice to The complainant that can be served on him at the time the Town attends to undertake the demolition with a copy for the RCMP. We will be contacting the Virden Detachment when we have a date to proceed with the demolition.

On February 9, 2012, the building inspector, the contractor and RCMP attended the complainant's property and gave him the following notice which was prepared and signed by the town's lawyer.

Service of an Order requiring the demolition and removal of the derelict mobile home situated on Lot 6, Block 15, Plan 1969 issued pursuant to section 243 of the Municipal Act of Manitoba was served on you on November 2, 2011.

The deadline for appealing that Order has expired and the remedial work ordered has not been completed.

Pursuant to section 246 of the Municipal Act of Manitoba (copy attached), the Town of Oak Lake has the authority to take whatever steps it deems necessary to enforce and remedy your breach of Order.

The trailer was removed February 9, 2012 and demolished off site. Any items not attached to trailer were impounded. The following day, on February 10, 2012, the complainant received a letter from the town advising him as follows:

This letter is to advise you that a number of items from the trailer which was removed from your property on February 9, 2012 have been impounded in a secure location in the Town of Oak Lake. A list of the items and photos are enclosed for your records.

If you wish to reclaim these items, you may do so by contacting the Municipal Office and making arrangements to pay the storage fee of $10 (ten dollars) per day effective from February 9, 2012.

If you fail to pay the storage fee and pick up the items within 15 (fifteen) days from the day of this letter, you will forfeit ownership of the items and they will be disposed of.

There will be no further notice provided of the Town's activities in this regard.

The RM assigned the cost of the removal and demolition of the trailer to the complainant. The town also charged the complainant for "stand by" costs for the contractor from the failed attempt to seize the trailer on November 30, 2011 for a total amount of $3,963.63.

The complainant refused to pay these costs. Following the municipal policy on outstanding debts, the RM added these outstanding amounts to the taxes on the complainant's property.

The company holding the mortgage on the complainant's property paid the total amount of the property taxes[2], which created an additional mortgage debt for the complainant. Since the mortgage company wanted to recover the excess amount in property taxes in a relatively short period of time, they effectively doubled the complainant's monthly mortgage payment. Since the complainant lives on a modest fixed income, he was unable to keep up with his new monthly payments. This resulted in a foreclosure process and the loss of the family home.

POSITION OF COMPLAINANT

The complainant contends that the town had no authority to remove and demolish the trailer because it was not, in his opinion, a mobile home. He states that he legally licensed the trailer with MPIC and therefore the Municipal Act does not apply. The complainant also contends that if the trailer was a mobile home, the town should have proceeded pursuant to sections 247.1 - 248 of the Act relating to "derelict property".

He feels that the charge of $1,400 for "stand by" costs on November 30, 2011 is unfair. The complainant advised that when asked to produce a court order for the seizure of the property, the building inspector could not do so. He also states that the RCMP agreed with the need for a court order, which is why they all left that day without removing the trailer. The complainant believes that "just because the town did not have all its paper work in place" he should not be penalized by having to pay these "stand by" costs.

[2] The monthly mortgage payments included a portion for the annual property taxes.

The complainant advised that because the trailer had permanent axels and wheels, it only required a tow to move it to his property which cost him $50. He therefore feels that the charge of $2,563.63 to remove the trailer on February 9, 2012 and subsequently demolish it to be unreasonable.

The complainant also feels that the costs relating to the storage of items removed from the trailer is unfair. The complainant ultimately was not charged any storage fees because he did not retrieve the items as he advised that he had no means to pick them up. Nevertheless, he believes that these items could have simply been removed from the trailer before it was moved off his property and therefore it would not have been necessary to store the items and any storage fees could have been avoided.

The complainant also contends that, pursuant to subsection 246(4) of the Act, any property seized by the town, in this case the scrap metal and other items removed from the trailer, should have been sold and these monies applied to his bill. He advises that "the heavy beam structure of the trailer would fetch a hefty scrap metal price." The complainant also advised that he believes the town should return to him the trailer licence plate.

POSITION OF RESPONDENT

The town's position is that the structure in question was a mobile home and had been located on the town's lot for approximately 40 years. The town explained that the owner, as well as previous owner(s) of the mobile home, paid a monthly lot rental fee as well as annual municipal taxes. When the owner moved out of the trailer in July 2011, the building inspector advised him that the trailer could not be moved, it had to be demolished. The owner applied for and was granted a permit to demolish the 12 x 50 mobile home.

The CAO provided copies or sections of the following documents with comments:

- Town of Oak Lake By-Law No.617 (building by-law) and commented that their building inspector indicated the complainant had contravened sections: 4.1, 4.4 and 7.1(1) and (3).
- Town of Oak Lake Zoning By-Law No.640 and commented that the building inspector indicated that the complainant had contravened sections: 1.4, 2.3 and 7.3.
- The Planning Act and commented that the building inspector indicated that the complainant contravened section: 147(1) (a) and (b).
- The Dennis County Planning District By-Law No.12 and commented that the building inspector indicated that this by-law designates policy areas, general objectives and makes zoning by-laws mandatory within the area covered by the planning district.
- The Municipal Act Section 239 (1) and commented that the building inspector indicated the letter sent to the complainant November 25, 2011 was notice of enforcement and that the inspection had been made from the street and that no notice of inspection was required.

The CAO explained the town's reason(s) for taking such quick action regarding the mobile home as follows:

> *From the time shortly after [The complainant] had the trailer moved onto his property (weekend of Oct 8-10, 2011) until it was removed on February 9, 2012 our office had*

numerous calls of concern from town residents questioning the placement and safety of the dwelling. My response to these calls was that the Town was working to resolve the issue as soon as possible.

The Principal [NAME REDACTED] of the Oak Lake Community School called on the following dates:

> *Oct 7, 2011 she spoke to [the Building Inspector] with safety concerns i.e. that the trailer was installed safely; this trailer was directly across the street from the school, kindergarten to grade 8.*
>
> *Oct 26, 2011 she called again and spoke to [the Building Inspector] with her concerns*
>
> *[The Building Inspector] called [the Principal] prior to November 30, 2011 to let her know that he was arranging to have the trailer removed on that day and that the RCMP would also be in attendance. [The Principal] made arrangements and kept the children in the school that day for recess.*
>
> *[The Principal] received a call from [the Building Inspector] on November 30, 2011 to let her know that the Town was unsuccessful in removing the trailer and additional steps were required to have it moved.*
>
> *When I called [the Principal] in reference to a committee meeting being held on January 13, 2011, the issue of the trailer was raised and I told her that the Town was hoping to have it removed shortly, [the Building Inspector] was making the final arrangements.*
>
> *[The Principal] received a call from [the Building Inspector] in early Feb 2012 to let her know that the Town was hoping to have the trailer removed on Feb.9, 2012 with the RCMP in attendance. [The Principal] made arrangements and kept the children in the school that day for their recess times.*

The CAO also explained that the second order, under her signature, had been sent to the complainant because the town became aware that the building inspector was not a designated officer under the Act. She also clarified that the Act does not specify a timeframe that a person must comply with an order, only that a timeframe must be stated. The CAO indicated that the complainant had an opportunity to appeal the order and the timeframe to comply but did not do so.

SCOPE OF THE INVESTIGATION

In order to complete the investigation of this case, the following steps were undertaken:

- A review of the files and information gathered by Manitoba Ombudsman intake unit.
- A review of documents and notes made by investigators with Manitoba Ombudsman.

- A review of documents submitted by the complainant and by the RM.
- A review of the relevant sections of the Municipal Act, the Planning Act, and the Highway Vehicles Act.
- A review of relevant municipal policies, including By-law 640 (Zoning) and By-law # (Unsightly and Derelict Properties).
- An in-person interview and a site visit with the complainant and his spouse.
- An in-person interview and information request with the CAO.
- A telephone interview with an official with the Municipal Assessment Branch of Manitoba Municipal Government.
- A telephone interview with the building inspector.
- A telephone interview with the individual who towed the trailer to the complainant's property.
- A telephone interview with the contractor who removed and demolished the trailer.

ANALYSIS OF ISSUES AND EVIDENCE

1. Did the town have the legal authority to seize and demolish the trailer and did it follow proper procedure in exercising its authority?

Whenever a government body seizes the property of an individual it needs to follow a careful process. Aside from the provision found in common law, protection against the unreasonable seizure of property is found in section 8 of the Charter of Rights and Freedoms.

The Municipal Act authorizes municipalities to issue and enforce orders regarding dangerous structures. Section 243 of the Act states that if a designated officer of a municipality is of the opinion that a structure is dangerous to public safety or property, the officer may issue a written order requiring the property owner to eliminate the danger to public safety in the specified manner or remove or demolish the structure and level the site. Section 246 of the Act authorizes a municipality to take whatever action it considers necessary to deal with the danger to public safety caused by a structure if the following conditions are met:

- The order warns that if the property owner does not comply by the specified time, the municipality will take the required action at the expense of the person;
- The person to whom the order is directed has not complied with the order within the time specified in the order; and
- The period to appeal the order has passed or, if an appeal has been made, the appeal has been decided and the decision allows the municipality to take the required action.

The town's by-law regarding unsightly and derelict property (by-law no. 669) states that property owners in the municipality must keep their property free of unsafe structures and that if an inspection reveals a violation of any provision of the by-law, the town's designated officer may, in his or her discretion, give written notice of the contravention to the owner and occupier of the property. Section 6(b) of the by-law states that if the contravention continues following the

warning notice, or if in the officer's discretion no such warning notice is provided, the designated officer shall issue a written order which shall:

(i) specify the time within which compliance shall be required;
(ii) advise that should compliance not be effected within the specified time, the Municipality may undertake the remediation at the expense of the owner of the property and that such expense may be collected in the same manner that a tax may be collected or enforced under The Municipal Act;
(iii) advise of the process of appeal;
(iv) be substantially in the form attached as Schedule B;

The by-law also sets out the process for appealing the order to the town council. In this case, the order dated October 17, 2011 stated that the trailer presented a "severe risk to public safety" and the order contained the following information:

- The order specified that the complainant was ordered to "demolish and remove the building and foundation" and "fill any excavations, clean, and level the site. A demolition permit from the Town of Oak Lake will be required."

- The order stated that compliance was required no later than November 15, 2011;

- The order warned that if the complainant did not comply by November 25, 2011, the municipality will take the required action at the complainant's expense;

  The order indicated that the complainant had 14 days to appeal the order to the town council, and that failure to bring such an appeal and not comply with the order would entitle the town to take any action required to remedy the problem, including demolishing the trailer at the complainant's expense.

In our view, the town had the legal authority to seize and demolish the trailer in these circumstances. However there is still an expectation that municipal government will exercise such authority, particularly with respect to by-law enforcement, in a reasonable manner.

In this instance, the first business day (October 11, 2011) after the trailer was moved to the complainant's site, the building inspector issued a letter to the complainant outlining the various faults that he had determined from an external inspection of the building.

The complainant is of the view that he should have been given time to repair or otherwise address the deficiencies stated in the compliance order. Instead, the letter from the building inspector was explicit that the only option with regard to this trailer was its demolition and removal.

It is unclear as to whether repairs could have, or would have, been undertaken to rectify the deficiencies outlined in the compliance order. An argument may be made that the building inspector at the time should have explored this area further. However, in this matter, we do note the following;

- In September 2011, the building inspector had informed the complainant that a permit had been issued for the demolition of the trailer (which had been used as a mobile home for many years) and it could not be moved.

- The town advised that shortly after the complainant had the trailer moved to his property on or about October 9, 2012, until the trailer was removed on February 9, 2012, the town received numerous calls of concern from town residents regarding the placement and safety of the structure. The town states that the principal of the kindergarten to grade 8 school situated directly across the street from the complainant's property also contacted the building inspector regarding safety concerns with the trailer.

- The town conducted an exterior inspection of the complainant's property on October 14, 2011 and recorded the condition of the trailer.

- The town issued the complainant a written order dated October 17, 2011 to demolish and remove the trailer from his property by November 15, 2011. The order identified specific safety concerns with the trailer (such as structural issues) and concerns associated with use of the trailer as a mobile home. The order advised the complainant of his right of appeal.

While it may be that the town was closed to alternative options for the trailer (such as storage shed) or the possibility that the trailer may have been repaired to make it safe, there is insufficient evidence for our office to conclude that it exercised its discretion with respect to the enforcement of the by-law in a manner that could be considered unreasonable.

We do note, however, that there were a number of procedural mistakes on the part of the town in carrying out the demolition and seizure and the trailer.

Verbal Complaints

In a letter to our office from the RM dated July 20, 2012, the CAO stated the following:

> *From the time shortly after [the complainant] had the trailer moved to his property (weekend of October 8-10, 2011) until it was removed on February 9, 2012 our office had numerous calls of concern from town residents questionning the placement and safety of the dwelling. My response to these calls was that the Town was working to resolve the issue as soon as possible.*

Section 4 of by-law no. 669 indicates that citizens can make written complaint concerning alleged by-law infractions. The town does have a record of some complaints concering the trailer that were received by telephone and the CAO recalls that a discussion of resident complaints was raised at a council meeting. The town, however, should have advised individuals wishing to make a complaint to submit it in writing, as referenced in by By-law No. 669.

If the town is going to accept verbal complaints, we would suggest that the town ensure its current by-law regarding derelict and unsightly property clearly state that any person may file a complaint of by-law non-compliance either verbally or in writing and that such a complaint should be appropriately recorded for current and future reference.

It is important to note that although the by-law required a citizen to put their complaint in writing, it does not preclude the town from investigating an alleged by-law infraction. In our view that the town would have the legal authority to investigate any potential by-law infraction, regardless of whether it received a written complaint.

Issuing of compliance order

The town failed to follow proper procedure when it issued the initial compliance order on October 17, 2011. The letter provided to the complainant was signed by the building inspector who did not have the legal authority to issue the letter as he was not a designated officer of the town.

The town addressed this error by issuing an identical order dated November 1, 2011 that was signed by the CAO, who is a designated officer.

Like the previous letter, this letter ordered the demolition of the trailer rather than having the owner address the specific concerns raised in the inspection. Further, the second letter did not set out a new time frame for compliance or an appeal. Instead, it retained the same time frame set out in the original letter.

Finally, the town did indicate in the order that the complainant would be responsible for costs associated with the seizure and demolition of the trailer, the order did not advise that those costs may be collected by the town in the same manner as a tax may be collected. This information should have been included in the order so the complainant would have known that such costs may be added to his property tax bill.

Court order

On November 30, 2011, the building inspector, along with a contractor and members of the local RCMP detachment, appeared at the complainant's house with the intention of removing the trailer. Before the trailer could be removed, the complainant asked the building inspector to show an order from the court allowing him to remove the trailer.

Although a court order is not required to effect the legitimate removal of derelict property, the building inspector was unsure of himself and did not know what action he should take. He did not understand the town's authority in this instance and the RCMP officers could not advise him on this matter. He decided to abandon the removal of the trailer at that time. As the agent of the town, the building inspector should have been fully prepared on this matter prior to booking the contractor to remove the trailer.

In summary, a review of the applicable legislation and regulations show that that the town did have the authority to seize the property that it believed to be a danger to the public in accordance with its own by-laws and provincial legislation. However such authority must be excercised with a due care for process. The issuance of an initial compliance order without the proper authority, the failure to require written complaints and the confusion over the court order undermines confidence that the town was taking care to follow proper process.

2. Does the fact that the complainant legally registered the trailer with MPIC invalidate the town's actions?

The registration of the trailer with MPIC does not invalidate the town's actions. Although the trailer was a temporary structure and not a permanent residence, and regardless of the complainant's intention to use the trailer for storage (licensed by MPI) and not as a mobile home, the town had the legal authority to issue a written order requiring a property owner to demolish a structure that it believed was dangerous to public safety.

While the fact that the trailer was licenced by MPIC did change its status as a building, the by-laws and regulations with regard to derelict or unsafe properties apply equally to buildings and vehicles that are on an individual's property.

3. Was the complainant given the opportunity to object to the process undertaken by the town?

In both compliance orders that were sent, the town informed the complainant that there was an opportunity to appeal, to council, the decision and the time frame given to remove and demolish the trailer. While the complainant may have thought that this overall process was illegal, or that he would not have received a fair hearing by council, he should have taken the opportunity to state his position to the council.

The Municipal Act states that the municipal council is the body that may review orders issued under section 243 of the Act and that council may confirm, vary, substitute or cancel an order. The town by-law regarding derelict and unsightly property (by-law no. 669) also sets out the appeal process, which includes a mandatory appeal hearing and the requirement that council issue its decision within five days of a hearing. We found no evidence that the municipal council would not have provided the complainant a fair appeal hearing in this case.

Even though the complainant may have felt an appeal would be futile, the appeal hearing would have provided a public opportunity for the complainant to state his own views on this matter, especially with regard to his perceptions of unfair or unequal treatment. The appeal would have also required council to state whether the removal and demolition order should be confirmed, changed or cancelled.

4. Was the cost to remove the trailer unreasonable?

The complainant was charged a total of $2,563.63 by the town for the removal of the trailer on February 9, 2012 and subsequent demolition. This is the amount charged to the town by the contractor who was tasked with the removal and demolition of the trailer.

The complainant notes that he spent of $50 to have the trailer moved to his property. The disparity in the two costs poses a significant question.

According to the individual who made the initial tow, the trailer was only to be moved "a few blocks" and was done largely as a favour to the complainant.

The second tow involved a significantly higher level of effort and equipment. While the condition of the trailer tires and axles may have been sufficient for a brief tow, it was determined that they were unsuitable for a longer tow, especially if highway travel was required. The trailer needed to be hauled onto a flatbed truck, which required the use of a backhoe and forklift. Further, since the size of the trailer meant that the load was larger than usual, a pilot truck was required for the transfer of the trailer from the complainant's property to the compound where it was to be held and demolished.

The detailed invoice provided by the towing service shows all the hourly costs for equipment as well as the dumping fees. These individual items were reviewed and appear to be consistent with the regular fee schedule charged to the town.

With these facts in mind, the cost assessed for the removal of the trailer on February 9, 2012 appears to be fair and would be the same as that charged for similar work.

5. Was it unfair for the town to charge the complainant "stand by" costs when they first attempted to remove the trailer?

The complainant was charged $1,400 for "stand-by costs" when the town made a failed attempt to remove the trailer on November 30, 2011. As discussed earlier, the only reason why the trailer was not removed on that date was that the agent of the town was unsure of the legality of the process he was trying to execute when challenged by the complainant.

The building inspector, and not the complainant, told the contractor that his services would not be required on that date. Therefore, the RM should be entirely responsible for the $1,400 in "stand by costs" assessed by the contractor. It would be unfair to assess these costs to the complainant when the error was completely on the side of the town.

6. Did the town have an obligation to provide the complainant an opportunity to remove his property from the trailer before it was taken? Did the town have the right to put this property into storage and have fees assessed for its retrieval?

The town did have an obligation to offer the complainant an opportunity to remove any property from within the trailer before it was towed. According to all accounts, the complainant was given this opportunity but declined due to his objection over the legality of the entire process.

The town provided the complainant with an itemized list of the removable contents of the trailer and stated that he would be charged ten dollars for each day that these items were held in storage. These items were never claimed by the complainant and, eventually, they were taken to the local landfill for disposal.

Aside from the overall dispute over the removal of the trailer, the town was acting responsibly when it set aside these items for storage. While the assessment of ten dollars a day might seem high for long-term storage, the intention of the town was for the complainant to retreive his items promptly. We therefore are of the view that the fees in this respect are not unreasonable.

7. Did the town have an obligation to salvage any material from the trailer and have it sold to defray the cost of its removal and destruction?

Although there is no specific requirement to salvage any seized property, subsection 246(4) of the Municipal Act does state that any proceeds from the sale of salvage must be used to pay or offset the costs of a removal and demolition.

With regard to this matter, the trailer was inspected to see if there was anything worth salvaging. Both the building inspector and the contractor had experience with salvage operations. Keeping in mind the cost of marketing any items salvaged, they advised that there would be no net value to this process and, therefore, nothing was salvaged from the trailer.

Since there was no sale of salvage from the trailer, there is no possibility of using these proceeds to defray the cost of the removal and demolition.

CONCLUSION

In any case where a local government body wishes to seize the property of a resident, the burden of proof rests entirely with that body. It is important for the government body to demonstrate that they are acting in good faith and with due regard for the process.

While the seizure and demolition of unsafe or derelict property was within the jurisdiction of the town, we have a number of concerns with regard to the way the town exercised its authority. These include:

- The process to seize the property appeared to be initiated in part on oral complaints rather than a written complaint as required by the town's own by-law.
- The initial compliance order was issued by the building inspector on October 17, 2011 and set out a 30 day timeline for the appeal and compliance. The building inspector did not have the authority to sign off on the compliance order.
- When the CAO reissued the work order on November 1, 2011, the timelines for appeal and compliance were left unchanged from the initial unauthorized letter.
- The building inspector attempted the removal of the trailer on November 30, 2011 but was unsure of the legality of the process he intended to execute. It is the obligation of any agent of a government body to be sure of their legal standing when attempting to seize the property of another.
- The RM decided to assign the costs they incurred in their failed November 30, 2011 attempt to seize the trailer to the complainant even though the RM was at fault for not fully understanding the process to carry out this action.

RECOMMENDATIONS

Given the findings of this investigation, the Manitoba Ombudsman makes the following recommendations under section 36 of the Ombudsman Act.

Recommendation 1: The RM of Sifton must ensure staff is aware of the policies and procedures to be followed when undertaking a similar process in the future. We would suggest providing training to staff so they are aware of their responsibilities with respect to by-law enforcement.

Recommendation 2: The RM of Sifton should consider an amendment to By-law No. 669 (or its current equivalent) to clarify its complaint process so it is clear that complaints alleging by-law infractions may be made verbally or in writing and that such complaints will be appropriately recorded for current and future reference.

Recommendation 3: The RM of Sifton should reimburse the complainant for the $1,400 he was charged for the failed attempt to remove the trailer on November 30, 2011. Further, the RM should return the trailer licence plate in its possession to the complainant.

In accordance with the Ombudsman Act, the RM council met in closed session during the council meeting of July 14, 2016 to consider the report findings and recommendations. The following response from the RM was received on July 20, 2016.

> *Your report pertaining to the above noted file was presented to council at their recent meeting held on July 14, 2016. The report and your three recommendations were reviewed and discussed by council in a closed meeting as noted in your letter of July 12, 2016.*
>
> *Council has the following comments in reference to these recommendations:*
>
> ***Recommendation 1:*** *Municipal staff has been made aware of the proper procedures and policies to follow when undertaking a similar process in the future and new staff members would have training.*
>
> ***Recommendation 2:*** *The Municipality has reviewed By-Law No. 669 and they do not feel that an amendment is required. When our office receives verbal complaints the CAO advises those individuals to put their complaint in writing so that it can be properly dealt with. A written copy of the complaint is needed before any action can be taken.*
>
> ***Recommendation 3:*** *The Municipality will reimburse the complainant for the $1,400 he was charged and will forward his trailer licence plate.*

We are pleased that the RM has considered our recommendations and will be taking positive action to address them. Although the RM did not accept the direction in Recommendation 2, we are satisfied that, by maintaining written complaints as necessary to initiate the process regarding

derelict, dangerous or unsightly property in the By-law, they are accepting a higher standard than what we have recommended.

The release of our report now concludes our involvement regarding this matter.

MANITOBA OMBUDSMAN
JULY 2016