

DEALING WITH BLIGHTED PROPERTIES

By

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Problems Associated With Blighted and Deteriorated Properties

In 1994 House Joint Resolution 489 and the accompanying report prepared by the Office of Policy Analysis and Research, Department of Housing and Community Development, recognized that the existence of blighted and deteriorated buildings erodes the quality of life in many of Virginia's neighborhoods. House Joint Resolution 489 identified a number of problems that are associated with blighted and deteriorated properties

- Blighted and deteriorated properties create potential nuisances and can become a convenient haven for criminal activities.
- The presence of blighted and neglected properties impair or arrest growth and development of a neighborhood and often lead to an exodus of current businesses and residents, threatening the spread of blight to other properties and neighborhoods.
- Vandalism of a single property or structure can have significant negative economic and environmental impact on an entire neighborhood.
- Empowering localities to deal with blighted and deteriorated properties benefits the public by providing a more attractive community environment for citizens of the locality and increasing potential economic development prospects.

In 2004 the problems associated with blighted and deteriorated properties are still as true as they were in 1994.

Prompt Efforts to Deal with Blighted and Deteriorated Properties are Essential

Localities are well aware of the connection between blighted and deteriorated properties and overall neighborhood decline. The March 1982 issue of the *Atlantic Monthly* magazine contained an article titled "Broken Windows" which discussed the concept of "community policing." A basic principle of community policing is that the failure of law enforcement officials to deal with minor offenses such as vandalism, graffiti, public drunkenness, etc., creates an atmosphere in which more serious crimes such as robbery, assault, drug offenses, etc. will flourish. This same basis tenet also applies to blighted and deteriorated properties. The article noted that social psychologists tend to agree that if any window in a building is broken and left unrepaired, all of the rest of the windows will soon be broken. One unrepaired broken window is a signal that no one cares. In such an atmosphere the breaking of windows escalates and the overall condition of the neighborhood declines.

A stable neighborhood of families who care for their houses can change in a few years or even a few months into an inhabitable jungle. A building that is poorly maintained is abandoned, weeds grow up, litter accumulates, vacant lots become sites for rowdy behavior, families move out, unattended adults move in, and the overall quality of life in the neighborhood deteriorates. It is essential that blighted and deteriorated properties be dealt with before this downward spiral begins.

Current Authority to Deal with Blighted and Deteriorated Properties

I. Uniform Statewide Building Code/Property Maintenance Code

One of the most valuable tools available to local governments in their efforts to deal with blighted and deteriorated properties is the property maintenance provisions of the Uniform Statewide Building Code (USBC). Building maintenance officials have the authority to order the owner of a structure that is not being maintained in accordance with the property maintenance requirements of the USBC to repair the structure in a timely manner. If the owner refuses or fails to make the necessary repairs a building maintenance official has the authority to secure, repair, vacate, condemn and even demolish properties that are unsafe or unfit for human occupancy.

A. Definitions.

1. Unsafe Structures. An “existing structure that is judged to be dangerous to the health, safety and welfare of the occupants of the structure or the public, or an existing structure that contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation, that partial or complete collapse is likely. A vacant existing structure, unsecured or open shall be deemed a fire hazard and unsafe.” See, USBC, Part III, Section 131.0, IPMC Amendments, 3.

2. Structures that are Unfit for Human Habitation. An “existing structure that is judged to be dangerous to the health, safety and welfare of the occupants of the structure or the public because of the degree to which the structure is in disrepair or lacks maintenance, or lacks ventilation, illumination, sanitary or heating facilities or other essential equipment, or if the required plumbing and sanitary facilities are inoperable.” See, USBC, Part III, Section 131.0, IPMC Amendments, 3.

B. Emergency Measures

Vacating a Structure. A building maintenance official can order a structure to be vacated if the structure is vacant, open and unfit for human habitation and not in danger of structural collapse. See, USBC, Part III, Section 130.4.

Temporary Safeguards and Emergency Repairs. A building maintenance official can take all actions necessary to render an immediate danger temporarily safe. This includes the authority to employ all necessary labor, materials and equipment needed to abate the immediate danger. See, USBC, Part III, Sections 130.6 and 130.6.2. The costs of the emergency repairs can be billed to the owner of the premises. See, USBC, Part III, Section 130.6.3

C. Demolition

Whenever an owner fails to comply with a notice that a structure is unsafe and the building maintenance official determines that the structure presents an imminent and immediate threat to life or property the locality may abate, raze or remove the structure and bring an action against the responsible party to recover the costs. See, USBC, Part III, Section 130.6.4. Also, a locality, may after official action, maintain an action to compel a responsible party to abate, raze or remove a public nuisance. See, Va. Code Sections 15.2-900, 15.2-906(4) and 15.2-1115.

While the Uniform Statewide Building Code is a very a valuable tool to assist local governments in their efforts to deal with blighted or deteriorated properties the Building Code cannot be used to address every problem property. It is often necessary to use other sections of the State Code when dealing with blighted or deteriorated properties. Other sections of the State Code that are of use to local governments are summarized as follows:

II. Abatement of Nuisance Properties

1. Section 15.2-900 of the State Code allows a locality to maintain an action to compel a responsible party to abate a public nuisance. A public nuisance includes but is not limited to, any dangerous or unhealthy substances that have been released, spilled or accumulated and unsafe, dangerous or unsanitary buildings, walls or structures. A locality can take immediate action to abate a nuisance if it poses an immediate and imminent threat and can recover the cost of the abatement from the owner
2. Section 15.2-901 of the State Code authorizes a locality to adopt an ordinance requiring a property owner to remove trash, garbage, refuse, litter and other substances which might endanger the safety of residents and to require property owners to cut grass, weeds or other foreign growth on vacant developed or undeveloped property. The locality can perform the removal or cutting if the owner fails to do so after having been given reasonable notice and to bill the owner for the costs. A lien can be placed on the property for unpaid costs and such lien has the same priority as a lien for unpaid taxes. The locality can waive the lien in order to effectuate the sale of the property.

3. Section 15.2-906 of the State Code allows a locality to adopt an ordinance requiring a property owner to remove, repair, or secure any building, wall or other structure which might endanger public health or safety. The locality can abate such nuisance after giving the owner written notice to do so and after publishing such notice in a newspaper of general circulation in the community. This section allows a locality to make repairs to a building in order to prevent deterioration, which can be helpful in preserving historic properties. The owner can be billed for the cost of the abatement and a lien can be placed on the property to recover the unpaid costs. Such lien has the same priority as liens for unpaid local taxes. The locality can waive the lien in order to effectuate the sale of the property to a third party.

4. Section 15.2-1115 allows a municipal corporation to adopt an ordinance to compel the abatement of all nuisances, including but not limited to weeds, snow removal, filling, drainage, unsafe or dangerous buildings, and unhealthy substances. The locality can abate the nuisance if the owner fails to do so after having been given reasonable notice, bill the owner for the costs and collect the costs in the same manner as unpaid state and local taxes are collected.

III. Drug Blighted Properties

Section 15.2-907 of the Code of Virginia allows a locality to adopt an ordinance to remove, repair or secure buildings or other structures where (i) “drug blight,” exists on the property, (ii) the locality has used diligence to abate the drug blight, and (iii) the drug blight constitutes a present threat to the public’s health, safety or welfare. The owner of the property must be given notice and an opportunity for an administrative hearing before the locality takes corrective action. The locality’s expense in taking corrective action is chargeable to the owner of the property and a lien can be placed against the property to recover such expenses.

IV. Bawdy Places, Prostitution

1. Section 15.2-908.1 of the State Code allows a locality to adopt an ordinance to require a property owner to correct a bawdy place. A bawdy place is defined as any place or building which is used for lewdness or prostitution. The locality must prepare an affidavit citing the existence of the bawdy house and the owner of the property must be given written notice to abate and a copy of the affidavit. If the owner fails to abate the bawdy house the locality can do so and the cost of abatement is chargeable to the owner of the property. A lien can be placed against the property to recover such costs and such lien has the same priority as unpaid local taxes.

2. Section 48-7 of the State Code provides that “whoever shall knowingly erect, establish, continue, maintain, use, own, occupy or lease any building, erection or place used for the purpose of lewdness, assignation or prostitution in the Commonwealth is guilty of a nuisance, and the building, erection, or place, the

ground itself, in or upon which such lewdness, assignation or prostitution is conducted, permitted or carried on, continued, or exists and the furniture, fixtures, musical instruments and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provide.” The Commonwealth Attorney, the Attorney General or any responsible citizen of the Commonwealth may maintain an action to perpetually enjoin such nuisance. Such action can be brought against the person or persons conducting or maintaining the nuisance and against the owner or agent of the building or ground upon which the nuisance exists. See, Section 48-8 of the Code of Virginia.

V. Drug Activity Properties as a Common Nuisance

Section 18.2-258 of the State Code provides that any structure, vehicle, aircraft or vessel that is frequented with the knowledge of the owner, operator, lessor, tenant, or manager by persons under the influence of drugs, or for possessing, manufacturing, or distributing drugs is a “common nuisance.” A person who knowingly permits, keeps or maintains a common nuisance is guilty of a Class 1 misdemeanor. A second or subsequent offense is a Class 6 felony. After holding a hearing the court is authorized to close the premises. Also, this section allows the owner to seek the immediate termination of a rental agreement for a tenant violator. The section further provides for the forfeiture of the property in certain instances.

VI. Alcohol Violations

Section 4.1-317 of the State Code provides that “all houses, boathouses, buildings, club or fraternity or lodge rooms, boats cars and places of every description where alcoholic beverages are manufactured, stored, sold, dispensed, given away or used contrary to law, by any scheme or device whatever, shall be deemed common nuisances.” The maintenance of an alcohol-related nuisance constitutes a Class 1 misdemeanor. The Commonwealth’s Attorney can initiate forfeiture proceedings against the property and any owner, lessor, or lienholder. See, Section 4.1-317(B) of the Code of Virginia. In addition, any citizen of the locality where the nuisance is located may bring a suit in equity to enjoin the nuisance. See, Section 4.1-335 of the Code of Virginia.

VII. Registration of Vacant Properties

Section 15.2-1127 of the State Code allows a city to adopt an ordinance requiring the registration of any building that is vacant for more than 12 months. The city can assess a registration fee of up to \$25.00. A penalty of \$50.00 can be imposed for the failure to register and the penalty can be up to \$250.00 for the failure to register a building located in a conservation or blighted area.

VIII. Spot Blight

1. Section 36-49.1 of the State Code allows any redevelopment and housing authority or any locality to acquire or repair blighted properties anywhere within the locality. “Blight” is defined as dilapidation, obsolescence, overcrowding, faulty arrangement of design, lack of ventilation, light and sanitary facilities, excessive land coverage, deleterious land use, obsolete layout or other factors detrimental to the health, safety, morals or welfare. The owner of a blighted property must be given notice and an opportunity to prepare a plan to correct the blight. If the owner fails to prepare an adequate plan the planning commission holds a public hearing on the condition of the property and the planning commission’s findings and recommendations are reviewed by the local governing body. The locality can then proceed to repair or acquire the blighted property. The owner of the property can be billed for the costs of any repair or disposal of the property. A locality cannot use this section to acquire occupied property unless the property has been declared unfit for human habitation.

2. Section 36-19.5 of the State Code authorizes a redevelopment and housing authority to acquire a blighted single-family or multi-family dwelling through purchase or eminent domain. The authority must give the owner of a blighted property written notice and 60 days to correct the blight or to prepare a satisfactory plan to do so. If the owner fails to correct the blight or prepare an adequate plan the authority asks the local governing body to adopt a resolution authorizing the authority to acquire the property on behalf of the locality. The procedure authorized by Section 36-19.5 is less cumbersome than the spot blight procedure authorized by Section 36- 49.1:1 and does not contain the prohibition against acquiring occupied properties. However, this procedure is limited to a housing authority’s area of operation.

IX. Use of Special Grand Juries to Investigate Public Nuisances

Sections 48-1 through 48-6 of the Code of Virginia establish a procedure by which five or more citizens can petition the local circuit court to impanel a special grand jury to investigate whether or not an activity constitutes a nuisance. If the grand jury finds that the activity complained of is a nuisance, the person creating or permitting the nuisance to continue is subject to a fine of up to \$10,000 and can be ordered to remove the nuisance and pay the removal costs.

X. Delinquent Real Estate Taxes

1. Section 58.1-3965 of the State Code allows a locality to file a petition to have property sold for delinquent real estate taxes. The statute creates a presumption of abandonment for any property assessed at \$50,000 or less if (i) the taxes are delinquent for 3 years, the land or structure has been declared a nuisance and the owner has failed to abate the nuisance and the or (ii) the taxes are delinquent for 7 years.

2. Section 58.1-3970.1 of the State Code authorizes the circuit court to transfer

the title of a tax delinquent property to a locality when the property is assessed at \$50,000 or less, the parcel has delinquent taxes or a nuisance abatement lien, and the taxes, liens and penalties exceed fifty percent of the assessed value of the property.

3. Section 58.1-3975 of the State Code allows the local official that is responsible for collecting delinquent taxes to sell at public auction any unimproved real property that is assessed at less than \$10,000 with taxes that have been delinquent for at least five years and is either less than 4,000 square feet in area or has been determined by the local zoning administrator to be unsuitable for building.

Problems that Localities Often Encounter When Trying to Force Property Owners to Maintain Blighted and Deteriorated Properties

- The owners of blighted and deteriorated properties are often absentee landlords. Such landlords frequently fail to maintain buildings or to even provide an address where notice may be served for Building Code Violations. Post Office boxes are often used to avoid providing a contact address. In many instances absentee landlords live outside of the locality and are not subject to the jurisdiction of the local courts.
- Buildings often become blighted and deteriorated when a property owner dies without a will and the property passes to multiple heirs. The heirs are often unknown or live outside of the locality. If the property is of modest value and the ownership interest of each property is relatively small, no one is willing to assume responsibility for the property and it begins to deteriorate.
- It is not uncommon for a blighted or deteriorated property to be owned by an individual or company that does not have the financial resources to correct the blighted/deteriorated conditions. Even though current laws give a locality the right to maintain an action to compel an owner to abate blighted conditions, such actions are meaningless if the owner lacks the financial resources to take corrective action.
- The maximum penalty for a violation of the Uniform Statewide Building Code is a \$2,500 fine. Some property owners are willing to risk the possibility of a fine rather than pay for repairs that will exceed the amount of the fine.
- It has been difficult for localities to acquire title to blighted or deteriorated properties in a timely and cost-effective manner. Even though a locality has the authority to repair or demolish an unsafe structure, to cut overgrown weeds and to remove accumulations of trash and rubbish these actions do not get a blighted or deteriorated property into the hand of a responsible owner who will maintain the property and preserve the original character of a neighborhood.

Additional Powers that Would Help Localities Deal With Blighted and Deteriorated Properties

On behalf of Virginia's local governments I would like to recognize and express my appreciation for the steps the General Assembly has taken in recent years to help localities deal with blighted and deteriorated properties. However, more can be done to deal with this pressing problem. I would also like to respectfully request that the General Assembly continue to support legislation that will make it more efficient and cost effective for local governments and citizens to effectively deal with blighted and deteriorated properties.

Recovery of costs. When a locality has to demolish or repair a blighted or deteriorated property under the Uniform Statewide Building Code it incurs significant costs. Localities often have a great deal of trouble recovering these costs. The language in the USBC dealing with the recovery of costs by a locality isn't as strong as it could be. The USBC simply provides that whenever a locality has to repair or demolish an unsafe structure it may institute an appropriate action against the owner to recover such costs. Other sections of the State Code provide that when a locality has to remove a nuisance, cut overgrown weeds, remedy a drainage problem, etc. the locality can place a lien against the subject property to recover the unpaid costs and that such lien shall rank on parity with liens for unpaid local taxes. It would help localities recover their costs if similar language was added to the Uniform Statewide Building Code.

Authority to deal with "eyesore" properties. Various sections of the State Code enable localities to deal with properties that are unsafe, dangerous or unsanitary. However, local governments have very little authority to deal with properties that are rundown in appearance even though such properties adversely impact the quality of life in the neighborhoods in which they are located and result in the reduction of the value of adjoining properties. The Virginia Supreme Court and the Attorney General have held that under current laws a locality may not exercise its police powers against a building simply because it is an eyesore. See, Roanoke v. Bolling, 101 Va. 182(1903), Bd. of Sup. James City County v. Rowe, 216 Va. 128, 145 (1975) and 1993 Opinions of the Attorney General at page 79. Localities need to have the authority to deal with properties that are rundown in appearance before they reach the point where they become unsafe, dangerous or unsanitary and cannot be salvaged.

Revisit the 2004 amendments to the State Code dealing with inoperable vehicles. During the 2004 Session the General Assembly amended Sections 15.2-904 and 15.2-905 of the State Code which allow localities to regulate the keeping of inoperable motor vehicles on residential or commercial property. The amendments weakened localities authority to deal with such vehicles. A few years ago the Lynchburg City Council held a series of neighborhood meeting to hear citizen concerns. One of the issues raised by citizens during the meeting was the outside storage of inoperable motor vehicles in residential neighborhoods. Citizens believe that the presence of such vehicles has a negative impact on their neighborhoods, constitutes visual blight and contributes to neighborhood decline. In response to these citizen concerns Lynchburg implemented an

aggressive program to remove inoperable vehicles from residential neighborhoods. However, the 2004 amendments weaken Lynchburg's and other localities' ability to deal with inoperable motor vehicles. Also, there is a great deal of inconsistency in the language used in Sections 15.2-904 and 15.2-905. Virginia's localities believe the General Assembly should reconsider the 2004 amendments concerning the regulation of the outside storage of inoperable motor vehicles.

Acquisition of title. Even with "spot-blight" powers and the authority to hold tax delinquent sales it is difficult for localities to acquire properties until they become blighted. Once blighted, it is often impractical or impossible to restore structures and they can only be demolished. The General Assembly and localities should continue to work together to develop additional authority that will enable localities to acquire title to neglected properties in a timely and cost-effective manner before they deteriorate to the point where they cannot be restored.

Availability of funding. One of the main impediments to dealing with blighted and deteriorated properties is a lack of resources. When a locality has to acquire, repair, demolish or otherwise deal with a blighted or deteriorated property it incurs significant costs. Frequently these costs cannot be recovered from the owner of the property. The availability of additional funding will greatly enhance the ability of local governments to deal with these problem properties.