Court Affirms Town's Order to Demolish Unsafe Building

The Vermont Supreme Court's decision in the case of *Donald Bishop v. Town of Springfield* may involve literal ground breaking, but it is not particularly ground-breaking in the figurative sense.[1] Towns have long had the authority, using various mechanisms, to order a dangerous or unsafe structure be demolished. In this case, the Court reinforces one way to order demolition

successfully, which should reassure towns that are following the proper process to do so.

The facts of the Bishop case are straightforward. A Town of Springfield ordinance defines what constitutes a public nuisance and provides procedures for taking action for its abatement or removal. The ordinance is specifically authorized by Vermont law and was adopted and incorporated into the town code in accordance with its governance charter.[2] A complaint, submitted to the selectboard by the town's fire chief, claimed that Bishop's fire-damaged building was unsafe in violation of the town's building code.

In accordance with the code's required process, the selectboard appointed a committee to inspect the building and issue a report. Based on the report's findings, the selectboard found that the building was dangerous or structurally unsafe and constituted a public nuisance in violation of the town code. The selectboard's order contained various directives to the owner for repairs and demolition; if the owner did not complete the prescribed work within the time stated in the order, the town was authorized to demolish the building. Bishop appealed the order to the selectboard, which held a hearing and received testimony from Bishop, his attorney, his local contractor, and the town's licensed structural engineer. Following the hearing, the selectboard issued a written decision affirming the committee's findings and reiterating its order and directives.

After receiving the unfavorable decision in superior court, the plaintiff appealed to the Vermont Supreme Court. The Court reaffirmed the order and stated that the trial court's "role was to determine whether there was adequate evidence to support the selectboard's decision." The Court also found that the trial court properly deferred to the selectboard's decision. Citing a prior case, *Eno v. City of Burlington*, 125 Vt. 8, 14 (1965), it said that a "municipal determination of nuisance, while not conclusive, 'is presumed correct and valid and the court will indulge every presumption in support of its quasi-judicial determination of the facts, in the absence of evidence to the contrary.'"

The takeaway from this case is that, when done properly, towns can successfully order a dangerous or unsafe building be demolished. To do so, the town must adopt a valid ordinance or code that defines what constitutes a violation, how the ordinance will be enforced, and how the complaint process will work. The town must also be sure to afford the property owner an opportunity to appeal the town's order and/or finding that a nuisance exists, which includes a fair quasi-judicial proceeding during which evidence can be presented and challenged by all parties.

The *Donald Bishop v. Town of Springfield* case is archived here.

Susan E. Senning, Staff Attorney I

VLCT Municipal Assistance Center

1. Unpublished decision on Westlaw at 2020 WL 1695072. This is a decision issued by a three-justice panel and not the full Court. This means that, while it does not set binding precedent or carry the full legal weight of a full Court decision, it is still persuasive authority and useful to municipalities.
2. See 24 V.S.A. § 2291(14) and 24 App. V.S.A. ch. 149, § 5, respectively.