



STAFF REPORT

SUBMITTED BY: Chris Frotten

DATE: July 6, 2020

SUBJECT: Derelict Boat

ORIGIN

On December 24th, 2018, a derelict boat that was on municipal property on McGray Avenue was moved to our C&D Landfill where it still currently sits in a secured area. The owner was notified and asked to get the boat, but we have not received any response.

BACKGROUND

On February 20th, 2018, we sent a letter to the owner regarding the placement of the boat on our municipal property at McGray Avenue, North East Point and the concerns that had been raised about future access to the boat ramp. In that letter, we also noted that if the boat remained where it was after May 1st, 2018, that the boat would be removed and placed in impound.

As the boat was not removed before May 1st, 2018 and we were not contacted by the owner before that date, we advised the owner on January 7th, 2019 by letter that we had removed his boat and placed it at our C&D Landfill.

We took the utmost care in moving the boat to our landfill and have placed it there in the same condition as it was found. We indicated to the owner that we were willing to keep the boat in our landfill for a short time but urged him to contact us as soon as possible to make arrangements for a new location for the boat.

Unfortunately, we have not heard from the owner directly since moving the boat and sending the letters. His daughter and a friend reached out to us a few months after the boat was moved to better understand the situation, but we have not had any further communications with them.

COMMENTS/OBSERVATIONS

Since it has been 18 months since we moved the boat and we have not heard back from the owner, we have worked with our municipal solicitor to provide you with options on how to move forward.

Option 1 - Deem it Dangerous or Unsightly

The Municipality could act under its dangerous or unsightly authority and order the owner to remove the boat by a date certain failing which council can order it to be demolished. The process would be as follows:

1. Council determines that the boat is dangerous or unsightly. The definition of “dangerous or unsightly” specifically includes derelict vessels. See s. 3(r).
2. Council issues an order to the owner under s. 346(1) of the MGA confirming that the boat is dangerous or unsightly and ordering him to remove it by a date certain.
3. The order is served on the owner by regular mail at his last known address pursuant to 348(2) and 509(1).
4. If the owner does not remove the boat by the date specified council determines whether demolition should be ordered. Notice of the meeting at which council will determine whether to order demolition must be served on the owner at least 7 days in advance and the owner must be given the opportunity to appear and be heard. Service can be by mail as above. Service by mail is considered affected 3 days after sending in the mail so in order to give 7 days’ notice the notice must be mailed no later than 10 days before the meeting.
5. If council decides to order demolition it issues an order for same and serves it on the owner (by mail as above), following which it can hire a contractor to remove and demolish the boat. If the boat has value the contractor may not charge, or may even pay the Municipality, to take the boat. The agreement with the contractor must require the contractor to demolish the boat. The Municipality has no authority to give it to the contractor for any other purpose such as to be repaired and sold.

There are other options, including selling the boat under the Personal Property Security Act or selling the boat for arrears of taxes but these are complicated, will take longer and incur more legal fees. These options may be worth considering if the boat has substantial value.

Option 2 - Sell the Boat Under the Personal Property Security Act

To sell the boat under the Personal Property Security Act, the following steps would be required:

1. The Municipality starts charging the owner for storage.
2. The owner does not pay the storage fees.
3. The Municipality sues the owner in Small Claims Court to recover the storage fees.
4. The Municipality obtains a judgment for the amount owing.
5. The Municipality registers the judgment in the Personal Property Registry.
6. The Municipality sells the boat under the Personal Property Security Act. This basically involves giving notice to the owner and other creditors and then selling the boat, through auction or otherwise.
7. Any surplus must be returned to the owner.

Option 3 - Sell the Boat for Arrears of Taxes

To sell the boat for arrears of taxes, the following steps would be required:

1. Declare the boat dangerous or unsightly and require the owner to move it by a date certain, failing which the Municipality will start charging storage fees.
2. The owner does not move it and the Municipality starts charging storage fees, which are recoverable as “taxes” under the MGA.
3. The Municipality includes the storage fees on the owner’s tax bill.
4. The owner does not pay his taxes.
5. The treasurer issues a warrant and the boat is sold pursuant to s. 120-124 of the MGA.
6. Any surplus must be returned to the owner.

BUDGET IMPLICATIONS

Deem it Dangerous or Unsightly

At this point, the only cost we have incurred is a \$700 transportation charge. Deeming the boat dangerous or unsightly will not require the Municipality to incur any other costs and may even result in revenue if the boat has enough value to a contractor.

Sell the Boat Under the Personal Property Security Act

The estimated legal fees for the Small Claims hearing and for selling the boat under the process set out in the Act is approx. \$5,000. The Small Claims Court has no jurisdiction to order that the owner pay the Municipality anything towards its legal fees even if it is completely successful. There may be some ability to recover fees incurred through the selling process under the Act but our solicitor would need to look into that further.

Sell the Boat for Arrears of Taxes

Selling the boat through this process would likely incur approximately the same legal fees as set out above, which are not recoverable through the sale process.

LEGAL IMPLICATIONS

Dangerous or Unsightly

The benefit of this option is that the Municipality is protected under s. 353 of the MGA, which states:

No action shall be maintained against a municipality or against the administrator or any other employee of a municipality for anything done pursuant to this Part.

Sell the Boat Under the Personal Property Security Act

The claim for unpaid storage fees may not be allowed where the Municipality put the boat into storage without the owner’s express consent but where he was given notice and told what the Municipality would do there is an equally strong argument on the other side.

Sell the Boat for Arrears of Taxes

A judge of the provincial court, mayor, warden or councillor may, upon application by the treasurer, issue a warrant, with any variations that circumstances may require, to distrain the goods of a person indebted to the municipality for taxes who is about to leave the municipality, even if the taxes are not yet due.

The MGA lays out in detail the process of issuing and enforcing a warrant as well as the process of selling the goods and the procedure for any remaining balance. If this option were chosen, this process would be followed with the guidance of our solicitor.

PUBLIC CONSULTATION/COMMUNICATIONS

N/A

RECOMMENDATION

Based the boat's minimal value our recommendation is to proceed with option 1 as it has the lowest financial impact on the Municipality and removes any responsibility.

SUGGESTED MOTION

Move to deem the derelict boat in question as dangerous or unsightly and begin the process of issuing an order.

ALTERNATIVES

N/A

ATTACHMENTS

- February 20th, 2018 Letter
- January 7th, 2019 Letter

Municipality of the District of Barrington

OFFICE OF THE CHIEF ADMINISTRATIVE OFFICER

P.O. Box 100
Barrington, Nova Scotia
B0W 1E0

February 20, 2018

REGISTERED MAIL

COPY

Dwayne Stewart
P.O. Box 371, Barrington Passage
B0W 1G0

Mr. Stewart:

Re: Boat and Hull at the North East Point Boat Launch

This letter is to reach out to you to discuss the current placement of your fishing boat and the additional boat hull that are currently on the shore by the gazebo at the North East Point Park.

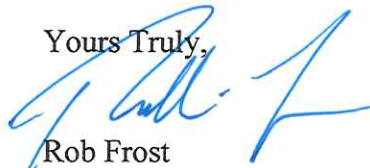
As the North East Point Boat Launch and Park is owned by the Municipality of the District of Barrington, it is important that all citizens have the same access to the launch, and it is treated as a public space. With the current placement of your fishing boat there has been concern expressed about future access to the boat ramp. With this in mind the Municipality needs to know your intent in regards to the two boats that you currently have on Municipal property.

We request that you let us know as soon as possible as to your plans with these two boats, and the timing at which they will be removed from our property. The Municipality would be willing to discuss moving your boats to another property where you could continue to work on their improvement. Should this be of interest to you, it is important that you contact us immediately.

Should the boats still remain where they are on May 1st, 2018, the boats will be removed from our property, and placed in impound. Should this occur you will not be able to obtain your boats until the cost to have the boats removed is paid.

Thank you for your attention to this matter in a prompt manner.

Yours Truly,



Rob Frost
Chief Administrative Officer

January 7, 2019

Mr. Dwayne Stewart
P.O. Box 371
Barrington Passage, Nova Scotia
B0W 1G0

Re: Boat at the North East Point Boat Launch

Dear Mr. Stewart,

On February 20th, 2018, we sent you a letter regarding the placement of your fishing boat on our municipal property at McGray Avenue, North East Point and the concerns that had been raised about future access to the boat ramp. In that letter, we also noted that if the boat remained where it was after May 1st, 2018, that the boat would be removed and placed in impound.

As the boat was not removed before May 1st, 2018 and we were not contacted by you before that date, we would like to advise you that we have removed your boat and have placed it at our Construction and Demolition Landfill.

We want to assure you that we took the utmost care in moving your boat to our landfill and have placed it there in the same condition as it was found. We are willing to keep the boat in our landfill for a short time, but we urge you to contact us as soon as possible to advise us of your plans for the boat or to make arrangements for a new location for the boat.

Thank you for your attention to this matter.

Sincerely,

Chris Frotten
Chief Administrative Officer

COPY
sent via
registered
mail Jan. 8/19.

