

The Investigation and Abatement of Nuisance Properties

BY ADAM B. STEPHENS, ASSISTANT CITY ATTORNEY, MILWAUKEE, WISCONSIN

DANGEROUS PLACES such as out-of-control taverns and drug houses threaten public safety and drain police resources. Effective crime prevention requires cooperation between property owners, businesses, and police because crime can only occur at suitable places. This article is intended to provide police and attorneys with methods to develop meaningful dialogue with place managers to prevent suitable places for crime and to offer an overview of strategies used to abate nuisance activity.

For purposes of this article, a public nuisance is a reoccurring misuse of property that adversely affects the use of neighboring properties. Historically, public nuisance cases typically involved a property owner suing a neighbor for creating offensive conditions, e.g., dirty factories or odorous farms. These equitable lawsuits usually ask a court to order the offending party to abate (or stop) the activity that is causing the nuisance and to prevent its reoccurrence. The public nuisance doctrine is not meant to punish the offending party for causing the discomfort in the first place (that being the proper roles of the tort or criminal justice processes).

Many states have enacted statutes that specifically

define certain kinds of nuisance actions and the relief that may be sought. For example, any building or structure used to facilitate the delivery, distribution, or manufacture of controlled substances, or used to facilitate the activities of a criminal gang, is a public nuisance per se. Any building used or occupied for the purpose of prostitution is likewise a nuisance. These statutes usually permit a court to order the closure or sale of a nuisance property.

Locally, many municipalities have ordinances that permit the police department to request property or business owners to abate nuisances at their property or charge the property or business owners for police services after there are a particular number of police responses within a certain time frame.

BACKGROUND INVESTIGATION OF PROPERTY

Investigating an alleged nuisance property requires an inquiry into the history of a property as documented by government records. Reports and data compilations kept by a public agency in the ordinary course of busi-

Adam B. Stephens is an assistant city attorney practicing civil litigation, municipal licensing and elections law on behalf of the City of Milwaukee, Wisconsin. He formerly coordinated the community prosecution program of the City Attorney's Office.

ness are reliable sources of information and are not hearsay. Typically, police reports documenting facts and observations of police during an investigation are evidence in and of themselves in the civil context.

A police computer-assisted dispatch system database will assist in determining the number, frequency, and type of calls for police services from or regarding a suspected nuisance property. Reviewing this record may also assist in the identification of parties associated with the property before making contact. However, please note that allegations reported via the 911 system are typically hearsay and may be of questionable evidentiary value without some sort of corroboration. A good example would be a complaint of a loud party that is quiet upon squad arrival but corroborated by the presence of beer bottles, litter, and trampled grass.

Police incident report databases will document criminal activity rising to the level of probable cause at the property. Incident reports will also identify previous stakeholders, occupants, and associates of the property. Prior complaints of drug dealing or gang activity may be contained in intelligence-gathering databases kept by multi-jurisdictional investigative agencies. The department of corrections and sheriffs' offices may also have records relative to supervised individuals that claim a particular property as a residence. Lastly, building inspection and code enforcement records may reveal previous property condition, noise nuisance, or vector control problems.

After a brief review of these databases, an allegation that a property may be facilitating a public nuisance may be substantiated. Subsequently, a plan can then be developed to address the chronic problem that appears to be stemming from that particular property.

FIELD INVESTIGATION

Suppression of subsequent criminal or nuisance activity is the primary goal of nuisance abatement. Traditional criminal investigation and prosecution, intended to punish offenders after the commission of crime, should be viewed only as a part of an overall strategy to promote public safety. Thus, direct contact, rather than long-term operations, will often be the

quickest method to resolve the problem at that property. Making police presence known, by informing occupants that there is an investigation as well as following up with basic quality of life law enforcement, may frustrate or stem subsequent nuisance activity. Police presence focused on locations where criminals regularly conduct their activity may eliminate the "suitable place."

Surveillance and contact with an alleged nuisance property is extremely important. Even if one does not observe the commission of criminal or nuisance activities, the physical environment itself can substantiate the allegations. Observation and documentation of otherwise "legal" things can corroborate the problem. In the drug dealing context, drug paraphernalia litter (blunt wrapper packaging, corner cuts of plastic baggies), surveillance equipment, shell casings, property damage, and structure fortifications can substantiate a drug market allegation. The overall unkempt appearance of a property may also suggest a lack of concern on the part of residents and the owner about possible nuisance behavior occurring at the property. In addition, any apparent Crime Prevention Through Environmental Design (CPTED) concerns with the premises should be documented.

Neighbors are an important source of information and should be contacted early in the investigation as the use of their property may be adversely affected by the nuisance activity. Neighbor observations may "fill in the blanks" between what the police suspect is happening at the property and what they can prove with police records. Neighbors should be encouraged to regularly keep a written log as to date, time and activity observed at the nuisance property. Oftentimes, if the block watch or a group of neighbors come forward together, they may permit their information and observations to be publicly used. Multiple complainants and witnesses add to the overall likelihood of successfully abating the nuisance activity and preventing its reoccurrence.

By reviewing government records and contacting neighbors, the investigator should be able to determine who owns and who occupies the property. Real estate ownership interests are usually kept by a register of

deeds or other similar office. Many municipalities also require non-owner occupied rental properties to register their properties with the municipality. During the residential rental property inspection, occupants should be asked who they think owns the property, who they pay their rent to, who the listed tenant is, and who else lives or “stays” there.

PROPERTY AND BUSINESS OWNER NOTIFICATION

There should be an initial presumption that place managers are willing to be a part of the solution once the criminal or nuisance activity facilitated by their property is brought to their attention. However, notifying the place manager of the nuisance property investigation should occur only after reviewing background records and contact is made with neighbors, the property and its occupants. Otherwise, the investigator is at a disadvantage because there may not be any confirmation of the property’s circumstances other than an arguably self-serving report of the “problem” by the place manager.

The primary purpose in contacting the place manager is to notify them of the nuisance activity facilitated by their property and inquire as to whether they are willing and able to abate the nuisance. It is important to approach place managers with tact and respect since the goal is to have them agree to change their management techniques and/or make physical improvements to the property. Private property and business owners are in the best position to determine what occurs at their property because they have the authority to set rules and standards for invitees to follow. If the owner’s standards are not met by invitees, only the owner has the authority to request the invitee to leave, complain to police of trespass, or file for eviction.

Residential Landlords

Landlords can respond to nuisance activity at their rental properties by removing the cause of the nuisance, making physical CPTED improvements, promptly addressing disrepair and graffiti, and increasing the level of active management.

In some jurisdictions, landlords may evict tenants if the landlord receives notice from a law enforcement agency or district attorney’s office that a tenant’s rental unit has facilitated drug dealing. In addition, most standardized leases forbid tenants and their guests from using the property for unlawful purposes; breach of that lease provision may also result in eviction.

In order to determine whether the property is actively or passively managed, the landlord’s rental property management experience should be documented. How many rental properties are owned? Are the properties single-family homes, duplexes, multi-families or large rental complexes? What is the form of ownership (sole proprietorship, limited liability company, corporation, etc.)? Has the owner retained a property management company distinct from the ownership organization? What sort of training, licenses, and/or certifications does the owner or manager possess? Does the owner belong to a professional landlord association, neighborhood association or block watch?

With respect to rental practices, are prospective tenants screened using standardized forms, asked for photo identification and are their court records and credit histories verified? Must all adult applicants be signatories to the written lease? Are there written regulations prohibiting extended guest residency? Is tenant responsibility for guest conduct made clear?

Questions determining how the owner manages the property should include the frequency of visits to the property, the number of interior inspections and the amount of contact the owner has with neighboring owners (especially homeowners) who may act as the eyes and ears of the owner in their absence.

Licensed Premises Owners & Managers

Government licensure of commercial activity generally requires licensees to make sure that their business pursuits are not harmful to the public by facilitating nuisance activity. The level of licensee cooperation with a nuisance property investigation must be routinely documented and should be forwarded to the licensing authority for consideration. In addition, other investigative regulatory agencies should be informed of the nuisance property investigation to

avoid duplication of efforts and to gain from their specialized expertise.

Typical licenses involved in nuisance property investigations are retail and service-oriented establishments including taverns, nightclubs, liquor stores, convenience stores, gas stations, day care centers, and barber-shops. On-site investigations are typically easier because commercial establishments are open to the public. In addition, regulations regarding alcohol and tobacco may permit the inspection of the licensed premises by law enforcement during reasonable hours. Most municipalities regulate the commercial use of buildings through zoning and occupancy permits. Because these regulations are meant to protect public health and safety, they should be consulted when responding to a nuisance property.

In the tavern and nightclub context, place managers can promote a safe environment for patrons, staff, and neighbors through physical improvements and active management. Physical improvements may include increasing visibility into and out of the establishment, installing visible surveillance cameras with recordable memory, using identification scanners with recordable memory, a supervised coat check, and increased lighting at entrance/exit points, adjacent sidewalks, and parking areas.

Effective tavern management may be verified by determining the level of training and experience of the bar managers, bartenders and security. Staff should be able to articulate how they monitor and limit patrons' alcohol intake and how they identify and promptly address aggressive behavior. Written policies and procedures should be reviewed. Failure to prepare written policies or offer training regarding typical bar problems may reveal passive, reactive and thus ineffective management.

Caution should be exercised when focusing an investigation on certain intangibles that are generally beyond the scope of government regulation. These "intangibles" include marketing to a certain clientele (country-western, motorcyclists, college students), ambiance of the interior (quiet & romantic vs. a sports bar vs. a dance club), dress codes, age restrictions, and music styles played.

In the interest of proactively addressing potential patron confrontations, consideration should be given to determining how music is broadcast (DJ, live bands, juke box operated by patrons or preprogrammed stereo operated by staff), whether there is a "VIP" admission which skips security checks, and whether dancing and games (billiards, darts, dice) are permitted. Building occupancy restrictions and voluntary limits under the maximum should also be identified and addressed.

CIVIL NUISANCE ABATEMENT LITIGATION

In the event that the property owner is unable or unwilling to abate nuisance activity facilitated by their property, civil litigation should be considered. Documentation of the nuisance activity must be assembled prior to the drafting of the pleadings by a municipal attorney. These records typically include copies of arrest reports, evidence inventories, field investigation notes, and database summaries for dispatch, drug complaints, and arrests. If litigation is warranted, a municipal attorney may request a court to "close" a property for a period of time in order to permit the property to "cool off" and permit the stigma the nuisance property developed over time to fade. Building code inspections should be conducted and the property must be monitored by police for any activity, nuisance or otherwise.

The court may also require, under threat of contempt or loss of the property, that the defendant property owner comply with nuisance abatement measures. These measures should be considered and proposed by the municipality. Typical nuisance abatement measures require the owner to:

- remove the known cause of the nuisance through eviction or a standing trespassing complaint;
- engage in active property management by seeking additional training, conducting frequent property visits, screening all occupants, timely enforcing lease obligations, and participating in related professional organizations, neighborhood groups and block watches; and

The Investigation and Abatement of Nuisance Properties

(Continued from page 43)

- make physical improvements to repair the property to meet code requirements and utilize Crime Prevention Through Environmental Design (CPTED) standards to improve visibility through lighting, landscaping, and windows, installing and monitoring surveillance cameras, securing entrances and fencing, and placing ownership and trespass signage. The owner should also monitor and address the property for litter, damage, and indicia of drug or gang activity.

Ultimately, the sale of the property to a competent owner may be the best solution. The sale should be a commercial, arm's-length transaction to an unrelated, third party buyer. Prior to the sale, the prospective owner should be apprised of the previous nuisance activity and should agree to actively manage the property and employ suggested nuisance abatement measures.

SUMMARY

Preventing the "suitable place" is a necessary component of a holistic response to chronic criminal and nuisance activity. Place-based crime prevention

requires neighbors, property owners, businesses, and police to work together to address public safety threats and learn to avoid their reoccurrence. As indicated throughout this article, property and business owners have a vested stake to address chronic criminal and nuisance activity that their property facilitates. This responsibility includes being an integral part of the solution.

¹ Charles The "Crime Triangle" theory suggests that crime occurs when a motivated offender finds a vulnerable victim or target at a suitable place. See, The Center for Problem-Oriented Policing, <http://www.popcenter.org/about/?p=triangle> (last visited 03/04/2010).

² Restatement 2d Torts, s. 821B

³ McQuillin Mun. Corp. Sec. 24:121; Wis. Stat. § 823.113

⁴ McQuillin Mun. Corp. Sec. 24:121; Wis. Stat. § 823.09

⁵ Section 80-10 Milwaukee Code of Ordinances (Chronic Nuisance Premises). This ordinance permits the police department to request property owners to abate nuisances or charge the property owners for police services after there are three calls for service regarding specific types of nuisance activities on three occasions within 30 days.

⁶ Fed. Rule 803(8)

⁷ George L. Kelling & James Q. Wilson, *Broken Windows*, The Atlantic (March 1982), <http://www.theatlantic.com/doc/198203/broken-windows> (last visited 03/04/2010).

⁸ For more information, see The Center for Problem-Oriented Policing, <http://www.popcenter.org/tools/cpted> (last visited 03/04/2010)

⁹ Obviously, laws regulating landlord/tenant and other business endeavors complicate this over-simplification.

¹⁰ New York's Narcotics Eviction Program, http://www.manhattanda.org/communityaffairs/commaffunit/crime/narc_eviction.shtml (last visited 03/04/2010); Wis. Stat. §§ 704.17 (1)(c) & (2)(c)

Stan Speaks Out

(Continued from page 25)

that instruction."

"And while I'm on the subject, you shouldn't have kept referring to the alibi as 'phony alibi,' as if it were one word, phonyalibi. Every time you referred to the alibi, you prefaced it with 'phony.'"

"What should I have said?"

"Simply say, 'alibi.' Until the trial's over..."

"Let me guess. The presumption of innocence thing, again?"

"Right. For all we know, his alibi might be true."

"Are you kidding? In all my years..."

"And another thing. Your word choice. When you said, that was a good argument—for a defense attorney, it left me

with a bad taste."

"Did I do anything right?"

"Let me think a minute."

"C'mon. I must have done something right."

"Ok. I really liked the way you learned all your students' names so quickly."

"Is that it?"

"That and you started and ended on time."

"That's not much consolation. This is terrible. If the dean finds out, I'll be fired."

"Not to worry. My lips are sealed. They'll never be able to prove any of this. And the way I see it, you're" She paused dramatically and motioned with her hands as if to drag the words out of me.

"Innocent until proven guilty," I sighed.