

FORM 4
NOTICE TO COMPLY – DANGEROUS OR
UNSIGHLTY PREMISES
(Local Governance Act, S.N.B., 2017, c.18, s 132(2))

FORMULE 4
AVIS DE CONFORMITÉ – LIEUX
DANGEREUX
OU INESTHÉTIQUES
(Loi sur la gouvernance locale,
L.N.-B. 2017, ch. 18, par. 132(2))

Parcel identifier:

PID #00367904

Address: 361-363 Lancaster Street, Saint John,
New Brunswick

Owner(s) or Occupier(s):

Name: McMahon, James Joseph

Address: 361 Lancaster Street, Saint John, New
Brunswick, E2M 1K1

Local government giving notice: The City of Saint
John

By-law contravened: *Saint John Unsightly Premises
and Dangerous Buildings and Structures By-Law*, By-
law Number M-30 and amendments thereto (the “By-
law”).

Provision(s) contravened: Subsections 6(1), 6(2) and
6(3) of the By-law.

Conditions(s) that exist: The premise is unsightly by
permitting junk, rubbish, refuse and a dilapidated
building to remain on the premise. The building has
become a hazard to the safety of the public by reason of
being vacant or unoccupied and has become a hazard to
the safety of the public by reason of dilapidation and by
reason of unsoundness of structural strength. The
conditions of the building and premise are described in
Schedule “A”, a true copy of the inspection report dated
June 10, 2019 prepared by Catherine Lowe, EIT and
Rachel Van Wart, EIT, By-law Enforcement Officers,
reviewed and concurred in by Amy Poffenroth, P. Eng.,
By-law Enforcement Officer.

What must be done to correct the condition: The
owner is to remedy the conditions by complying with
the required remedial actions of the aforementioned
inspection report and bring the building and premises
into compliance with the aforesaid By-law.

In the event that the owner does not remedy the
condition of the building and premises in the time
prescribed by this Notice to Comply, the building may
be demolished as the corrective action to address the
hazard to the safety of the public and the premises may
be cleaned up.

In the event of demolition, all debris and items on the
premises will be disposed of as the corrective action to
address the hazard to the safety of the public.

The aforementioned remedial actions relating to the

Numéro d’identification de la parcelle :

NID : 00367904

Adresse : 361-363, rue Lancaster, Saint John,
Nouveau-Brunswick

Propriétaire(s) ou occupant(s) :

Nom : McMahon, James Joseph

Adresse : 361, rue Lancaster, Saint John,
Nouveau-Brunswick, E2M 1K1

Gouvernement local signifiant l’avis : The City of
Saint John

Arrêté enfreint : *Arrêté relatif aux lieux inesthétiques
et aux bâtiments et constructions dangereux de Saint
John*, Arrêté numéro M-30, ainsi que ses
modifications ci-afférentes (l’ « Arrêté »).

Disposition(s) enfreinte(s) : Les paragraphes 6(1),
6(2) et paragraphe 6(3) de l’Arrêté.

Description de la (des) situation(s) : Les lieux sont
inesthétiques en permettant la présence de ferraille,
de détritux et le bâtiment délabré. Le bâtiment
est devenu dangereuse pour la sécurité du public du
fait de son inhabitation ou de son inoccupation et est
devenu dangereuse pour la sécurité du public du fait
de son délabrement et du fait de manque de solidité.
Les conditions du bâtiment et des lieux sont décrites à
l’annexe « A », une copie conforme du rapport
d’inspection en date du 10 juin 2019 et préparé par
Catherine Lowe, IS et Rachel Van Wart, IS, agentes
chargé de l’exécution des arrêtés du gouvernement
local, révisé et en d’accorde avec par Amy Poffenroth,
ing., une agente chargée de l’exécution des arrêtés du
gouvernement local.

Ce qu’il y a lieu de faire pour y remédier: La
propriétaire doit restaurer les conditions en se
conformant aux recommandations du rapport
d’inspection susmentionné et d’amener le bâtiment et
les lieux en conformités avec l’Arrêté.

Dans l’éventualité que la propriétaire ne remédient pas
le bâtiment et les lieux dans le temps prescrit par le
présent avis de conformité, le bâtiment pourront être
démolis comme mesure corrective compte tenu qu’il
représente un danger pour la sécurité du public et les
lieux pourront être nettoyés.

Dans l’éventualité de démolition, tous les débris et
autres items sur les lieux seront disposés comme
mesure corrective dans le but de remédier le danger
pour la sécurité du public.

Les mesures correctives susmentionnées relativement

demolition of the building and the disposal of debris and items on the premises do not include the carry-out clean-up, site rehabilitation, restoration of land, premises or personal property or other remedial action in order to control or reduce, eliminate the release, alter the manner of release or the release of any contaminant into or upon the environment or any part of the environment.

Date before which the condition must be corrected:¹

- a) The demolition of the building, clean-up of the property and related remedies must be complete, or plans and permit applications for repair related remedies, must be submitted: within 30 days of being served with the Notice to Comply.
- b) The repair related remedies must be complete within 120 days of being served with the Notice to Comply.

Date for giving notice of appeal: Within 14 days of being served with the Notice to Comply.

Process to appeal: The owner may within 14 days after having been served with this Notice to Comply, send a Notice of Appeal by registered mail to the Common Clerk of The City of Saint John, City Hall – 8th Floor, 15 Market Square, Saint John, New Brunswick, E2L 4L1.

Potential penalty for not complying with notice within time set out in notice:² Subsection 11(1) of the By-law states that a person who fails to comply with the terms of a Notice to Comply given under section 7 of the said By-law, commits an offence that is punishable under Part 2 of the *Provincial Offences Procedure Act* as a category F offence.

Where an offence under subsection 11(1) continues for more than one day, the minimum fine that may be imposed is the minimum fine set by the *Provincial Offences Procedure Act* for a category F offence multiplied by the number of days during which the offence continues pursuant to subparagraph 11(3)(b)(i).

à la démolition du bâtiment et la disposition des débris et autres items sur les lieux ne comprennent pas le nettoyage, la remise en état des lieux, des terrains ou des biens personnels ou toute autre mesure corrective dans le but de contrôler ou de réduire, d'éliminer le déversement, de modifier le mode de déversement ou le déversement d'un polluant dans ou sur l'environnement ou toute partie de l'environnement.

Délai imparti pour y remédier :¹

- a) La démolition du bâtiment et le nettoyage des lieux doivent être complétés, ou à laquelle les plans et demande de permis pour les mesures des réparations, doivent être soumises, dans les 30 jours qui suivent la signification de l'avis de conformité.
- b) Les réparations reliées aux mesures doivent être complétées dans les 120 jours qui suivent la signification de l'avis de conformité.

Date limite pour donner l'avis d'appel: Dans les 14 jours qui suivent la notification de l'avis de conformité.

Processus d'appel : La propriétaire peut dans les 14 jours qui suivent la notification de l'avis de conformité, envoyé un avis d'appel par courrier recommandé à la greffière communale de la municipalité, à The City of Saint John, Édifice de l'hôtel de ville, 8^e étage, 15 Market Square, Saint John, Nouveau-Brunswick, E2L 4L1.

Peine possible en cas d'omission de se conformer aux exigences de l'avis dans le délai y imparti :² Le paragraphe 11(1) de l'Arrêté prévoit quiconque omet de se conformer aux exigences formulées dans un avis de conformité notifié aux termes de l'article 7 de ladite Arrêté, commet une infraction qui est punissable en vertu de la partie 2 de la *Loi sur la procédure applicable aux infractions provinciales* à titre d'infraction de la classe F.

Lorsqu'une infraction prévue au paragraphe 11(1) se poursuit pendant plus d'une journée, l'amende minimale qui peut être imposée est l'amende minimale prévue par la *Loi sur la procédure applicable aux infractions provinciales* pour une infraction de la classe F multipliée par le nombre de jours pendant lesquels l'infraction se poursuit conformément à l'alinéa 11(3)b)i).

Local government's authority to undertake repairs or remedy:³ Paragraphs 12(1)(a), 12(1)(b) and 12(1)(c) of the By-law state that if an owner or occupier does not comply with a Notice to Comply given under section 7 within the time set out in the said Notice, the City may, cause the premises of that owner or occupier to be cleaned up or repaired, or cause the building or other structure of that owner or occupier to be repaired or demolished. Further, subsection 12(3) of the By-law states that the cost of carrying out such work, including any associated charge or fee, is chargeable to the owner or occupier and becomes a debt due to the City.

Pouvoir du gouvernement local d'entreprendre des réparations ou de remédier à la situation :³ Conformément aux alinéas 12(1)a), 12(1)b) et 12(1)c) de l'Arrêté, si un avis de conformité a été signifié aux termes de l'article 7 de ladite Arrêté et, que le propriétaire ou l'occupant ne se conforme pas à cet avis de conformité dans le délai imparti et tel qu'il est réputé confirmé ou tel qu'il est confirmé ou modifié par un comité du conseil ou par un juge en vertu le paragraphe 12(3) de ladite Arrêté, la municipalité peut faire nettoyer ou réparer les lieux de ce propriétaire ou de cet occupant ou de faire réparer ou démolir le bâtiment ou autre construction de ce propriétaire ou de cet occupant, et les coûts afférents à l'exécution des ouvrages, y compris toute redevance ou tout droit connexe, sont mis à la charge du propriétaire ou de l'occupant et deviennent une créance de la municipalité.

Dated at Saint John the 10th day of June, 2019.

Fait à Saint John le ____ juin, 2019.

Local government: The City of Saint John

Gouvernement locale : The City of Saint John

Signature of the officer of the local government:

Signature du fonctionnaire du gouvernement local:



Contact information of the officer of the local government:

Coordonnées du fonctionnaire du gouvernement local:

Name: Catherine Lowe, EIT
Mailing address:

Nom : Catherine Lowe, IS
Adresse postale:

Growth and Community Development Services

Service de la Croissance et du Développement Communautaire

The City of Saint John
15 Market Square
City Hall Building, 10th Floor
P. O. Box 1971
Saint John, New Brunswick
E2L 4L1

The City of Saint John
15 Market Square
Édifice de l'hôtel de ville, 10^e étage
Case postale 1971
Saint John (Nouveau-Brunswick)
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Telephone: (506) 658-2911
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Télécopieur : (506) 632-6199

Corporate seal of the local government



Sceau du gouvernement local

Notes:

1. All appropriate permits must be obtained and all relevant legislation must be complied with in the course of carrying out the required remedial action.
2. Payment of the fine does not alleviate the obligation to comply with the by-law, standard or notice.
3. Costs become a debt due to the local government and may be added to the joint local government and provincial Real Property Assessment and Tax Notice.

Notes :

1. Tous les permis prescrits doivent être obtenus et toute la législation pertinente doit être respectée pendant l'exécution des mesures de remédiation.
2. Le paiement de l'amende n'a pas pour effet d'annuler l'obligation de se conformer à l'arrêté, à la norme ou à l'avis.
3. Les coûts deviennent une créance du gouvernement local et peuvent être ajoutés à l'avis commun d'évaluation et d'impôt foncier des gouvernements local et provincial.

INSPECTION REPORT
Schedule "A"
361-363 Lancaster Street
Saint John, New Brunswick
PID# 367904

Inspection Date: May 23, 2019

Inspection Conducted by: Catherine Lowe, EIT & Rachel Van Wart, P.Eng.

Introduction

Inspections of the property at 361-363 Lancaster Street, PID# 367904, have revealed that there is one building on the premise (the "Building"); a multi-storey, five-unit apartment building. Staff first became aware of the property's vacancy in February 2016 and began standard enforcement procedures. The property is located on the City's West side in a mid-rise residential zone on the corner of Lancaster Street and Woodville Road. The Building is considered to be abandoned. Attempts were made to contact the owner of the Building and any other interested parties, however all attempts were unsuccessful. For this reason, an entry warrant was obtained in order to conduct an internal inspection to assess the interior conditions of the Building. The Building is a hazard to the safety of the public by reason of being vacant, by reason of dilapidation and by reason of unsoundness of structural strength.

Discussion

The Building is not in compliance with the *Saint John Unsightly Premises and Dangerous Buildings and Structures By-law*, By-law Number M-30, and amendments thereto (the "By-law").

Unsightly Premise Conditions

Subsection 6(1) of the By-law states:

No person shall permit premises owned or occupied by him or her to be unsightly by permitting to remain on any part of such premises

- (a) any ashes, junk, rubbish or refuse;
- (b) an accumulation of wood shavings, paper, sawdust or other residue of production or construction;
- (c) a derelict vehicle, equipment, machinery or the body of any part of a vehicle equipment or machinery, or
- (d) a dilapidated building.

1. There is an accumulation of junk, rubbish, and refuse on the property. These items include, but are not limited to; discarded wood, a mattress and box spring, a metal bed frame, broken doors, broken outdoor furniture, roof shingles, discarded vehicle parts such as a storage box, a truck cap, a seat, and tires, as well as other various loose garbage. The aforementioned accumulation of junk, rubbish, and refuse is unsightly.
2. The Building is dilapidated. The right and left side of the rear roof is damaged and sagging. Holes can be seen in the rear left side of the roof. A window on the left side of the Building is broken with jagged pieces of glass still in the window frame. The doors at the right side of the Building are broken. The paint on the right side stairs is weathered. The stairs are also leaning and have green algae growth. The Building has two brick chimneys, the bricks of both chimneys are deteriorated while some bricks from the right side chimney are loose or have fallen from the chimney completely. The top door trim to 363 Lancaster Street is

hanging. There is a rusted section of metal siding approximately 2 by 1 feet in size on the front of the Building, to the left of the door for 363 Lancaster Street. There are many wires hanging from the front of the Building to the left of the door for 363 Lancaster Street as well. The vinyl siding of the Building is in good condition however, there are sections on the left side of the Building that are discolored. These conditions are unsightly.

Vacant and Unoccupied

Subsection 6(2) of the By-law states:

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of being vacant or unoccupied.

The Building is a hazard to the safety of the public by reason of being vacant or unoccupied for the following reasons:

1. Buildings in a dilapidated condition that are known to be vacant can attract vandalism, arson and criminal activity. The property's condition affects the quality of life of neighboring properties and negatively impacts property value of real estate in the area due to negative perceptions of unsafe and deteriorating conditions. The property is considered to be abandoned. Bankruptcy documents were registered on title with Service New Brunswick on March 9, 2017. A Disclaimer by Trustee was registered on title with Service New Brunswick on December 21, 2018, to release and disclaim any or all right, title or interest in and to the property. Attempts to contact the owner by phone and by process server were unsuccessful. No other party has come forward to claim care and control of the property. Saint John Energy confirmed that the power has been disconnected since August 2016. In January 2016 water was gushing out of the Building from an unknown internal source. Attempts were made to contact the owner or a representative to address this matter, however all attempts were unsuccessful. The City was forced to turn off water services to the Building on January 5, 2016; no request has been made to date to restore the services.
2. There is a higher risk of a fire event occurring at the property since it is known to the public that the Building is vacant. The rear of the Building is separated only by approximately 1 foot from the neighboring five unit building at 288-290 Woodville Road. If a fire event were to occur within the Building, it could easily spread to the neighboring property, which would cause significant damage to the buildings and endanger the lives of the occupants.
3. There is a concern for emergency personnel safety in the event of an emergency. If firefighters suspect there may be people inside the Building, it would be reasonable to expect they may be required to enter it. They may also need to enter the Building to fully extinguish the fire. The condition of the interior is not known to firefighters, which poses a hazard to their safety and others who may be inside in the event of a fire. The Building does not have proper exiting and fire separation. This is a hazard as it could make the navigation of the Building difficult for responders in the event of an emergency. The roof of the Building is damaged, particularly at the rear of the Building. The ceilings and floors of the Building are severely water damaged in many locations. These conditions would be hazardous for any emergency responders required to enter the Building.

Dilapidated Building Conditions

Subsection 6(3) of the By-law states

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

The Building is a hazard to the safety of the public by reason of dilapidation for the following reasons:

Exterior Conditions:

1. The two chimneys on the Building are dilapidated. The brick chimney on the right side of the Building is in a hazardous condition as bricks have already fallen. The remaining bricks are deteriorated and are in danger of falling as well. The bricks on the left chimney are also deteriorated and could fail at any moment. The Building is directly adjacent to the sidewalk, if a pedestrian walking on the sidewalk near the Building were struck by a falling brick it would cause serious injury.
2. There is a broken first storey window on the left side of the house. Jagged pieces of glass remain in the window frame. Should glass fall from the window it would land directly onto the sidewalk, causing further hazard for pedestrians.
3. The wooden right side stairs that provide access to the second storey entrance are weathered and deteriorating. There is green algae growth covering the stairs, which indicates the wood of the stairs remains damp for long periods of time, which can cause rot in the wood. The stairs are leaning and are not properly supported. These conditions could cause the stairs and second storey landing to fail should load be applied.
4. The roof overhang above the right side entrances of the Building is sagging. A wooden board approximately 2 x 2 inches in size has been placed on the railing of the landing of the stairs as an attempt to vertically support the overhang. The board meets the overhang approximately two feet left of center. The board itself is leaning to the right and the stairs it rests on are leaning as well. This is not an acceptable method to support the overhang. The wooden members of the overhang that are visible when standing beneath the overhang are discolored, likely due to rot and water damage. These conditions could cause the overhang to suddenly fail and is a hazard to anyone standing beneath the overhang.

Interior Conditions:

5. The Building is out of plumb. This has caused ceilings, walls and floors to slope and sag. There is a gap between the wall and ceiling of a room in unit 1 of approximately three inches. Floors are visibly sloped by as much as an inch while other floors are sagging. Many ceilings and walls in the Building are cracked due to structural movement. The floor of the bathroom in unit 5 deflects significantly under load and is unsafe to walk on. These conditions are a hazard to anyone entering the Building as the floors or ceilings may fail.
6. The roof of the Building is deteriorated. This is evident from the extensive water damage throughout the Building. The most significant damage in the roof is on the right rear of the Building where sunlight can be seen through the holes in the roof when standing on the second storey inside the Building. The ceiling and floor below the hole are completely saturated due to exposure to rain and snow. The lath in the ceiling is sagging and moldy. There is water pooled on the floor causing mold and causing the floor to be soft under load. Most ceilings and floors of the Building show signs of water infiltration. In some rooms, large sections of drywall hang from the ceiling while in other rooms the fallen drywall or plaster remains on the floor below. Most of the debris from the ceilings now rest in wet moldy heaps on the floor. Other sections of hardwood flooring are heaved due to water infiltration.

7. The water damage in the Building has caused extensive mold and algae growth. There is black and white mold growth on many surfaces of the Building. A room on the first storey has extensive green algae growth over the ceiling debris on the floor, walls, and around the hole in the ceiling. In another room on the first storey, there is what appears to be light brown fungi growth on the ceiling. These conditions are a respiratory hazard. It could also be hazardous to skin should someone in the Building accidentally touch any affected surfaces.
8. The dirt floor basement of the Building is very damp. Basements should be kept dry and the dirt floor should be compacted in order to provide proper support to the structural members of the Building. The dirt floor is saturated; at the time of the inspection, the weight of walking on the floor created a boot indent of approximately a half inch. The condition of the dirt floor has contributed to the sloped floors, walls and ceilings of the Building. The damp condition of the basement has also created mold growth on many surfaces. There are a number of cracks in the concrete foundation that will worsen due to the dampness of the basement, as freezing water in concrete will cause it to crack. The concrete stairs leading to the basement are deteriorated and unsafe. The rise and run of the stairs are too steep and the concrete is crumbling
9. There is evidence of animals in the Building. There are rodent droppings in several rooms of the Building. Feces observed on the second storey of the Building would suggest that a larger animal, such as a raccoon, had been in the Building recently. While conducting the exterior inspection of the Building on May 23, 2019 neighbors reported that they had seen many raccoons entering and leaving the Building on multiple occasions. Animals such as raccoons can cause damage to buildings and may have contributed to the damaged ceilings of the Building. Animals can also be aggressive to humans and carry harmful diseases, thus threatening the health and safety of neighboring residents. It is likely that animals are gaining access to the Building through the holes in the roof.

Structurally Unsound Building Conditions

Subsection 6(3) of the By-law states

No person shall permit a building or other structure owned or occupied by the person to become a hazard to the safety of the public by reason of dilapidation or unsoundness of structural strength.

The Building is a hazard to the safety of the public by reason of unsoundness of structural strength for the following reasons:

1. The Building is structurally unsound. Ceilings, walls and floors are out of plumb, sloped and sagging. There are multiple cracks in the concrete foundation of the Building. The wooden structural supports of the Building are out of plumb and are deteriorated. The dirt floor of the basement is saturated. These conditions will worsen should the Building continue to experience structural movement.
2. The roof overhang on the right side of the Building is sagging and deteriorated, rendering it structurally unsound. The overhang is being supported vertically by a wooden board that is attached to the railing of the landing of the stairs. This does not provide proper structural support. The wooden members of the overhang appear rotten and water damaged. Anyone standing beneath the overhang when it collapses would suffer personal injury.

3. The roof of the Building has been compromised. There is significant water damage throughout the Building indicating that water is infiltrating from many different areas of the roof. There are large holes in the right rear section of the roof the Building. Continued exposure to the elements could cause the roof to collapse which would be hazardous for anyone inside or near the Building.

Required Remedial Actions

The owner must comply with one of the two options stated below:

Option 1: Remedy the conditions of the Building through all repair and remedial actions as follows:

1. The Building must be completely repaired to remedy the above mentioned hazards to public safety while meeting the requirements of the *National Building Code of Canada (2010)* as well as all other applicable by-laws.
2. The Building must be maintained, kept secure, and monitored on a routine basis while the property remains vacant or unoccupied.
3. A detailed plan must be submitted to the Growth and Community Development Services Department of the City of Saint John (the “Department”) for review and approval. The plan should also include a schedule for the work that is to be carried out. The repaired Building must meet the *National Building Code of Canada (2010)* as well as other applicable codes.
4. The detailed plan, including schedules and any engineering reports, must be approved by the Department prior to commencing repair work.
5. A building permit must be obtained for any and all applicable work prior to commencing said work from the City of Saint John in order to comply with the *Saint John Building By-law*, By-law Number C.P. 102 and amendments thereto (the “*Saint John Building By-law*”).
6. The premise must be cleared of all debris found on the property, including any and all rubbish that may be considered hazardous or unsightly. The debris from the premise must be disposed of at an approved solid waste disposal site, in accordance with all applicable by-laws, acts and regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department. The premise must comply with all applicable By-laws, Acts, Codes and Regulations.

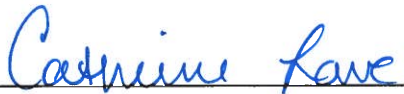
Option 2: Demolition of the Building and cleanup of all debris on the premise by complying with all the remedial actions as follows:

1. The Building must be demolished to remove the hazard to the safety of the public by reason of dilapidation and by reason of being vacant or unoccupied.
2. A demolition permit must be obtained from the City of Saint John in order to comply with the *Saint John Building By-law*.
3. The premise must be cleared of the debris from the demolition and the lot must be made reasonably level with grade so as to not create a tripping or falling hazard. All debris must be disposed of at an approved solid waste disposal site, and in accordance with all applicable By-laws, Acts and Regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department.
4. All debris that is currently on the premise must be removed and disposed of at an approved solid waste disposal site, and in accordance with all applicable By-laws,

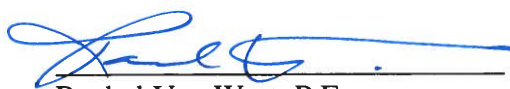
Acts and Regulations. Documented proof, that clearly demonstrates an approved solid waste disposal site was used for the disposal of debris, must be provided to the Department.

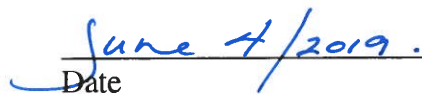
5. The property must be in compliance with all applicable By-laws, Acts and Regulations.

Prepared by:


Catherine Lowe, EIT
Technical Services Officer
Growth and Community Development Services


Date


Rachel Van Wart, P.Eng.
Technical Services Officer
Growth and Community Development Services


Date

Reviewed by and concurred in by:


Amy Poffenroth, P. Eng., MBA
Building Inspector
Deputy Commissioner
Growth and Community Development Services


Date