



COUNTY OF HUMBOLDT

For the meeting of: 11/2/2021

File #: 21-923

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

SUBJECT:

1:00 PM - Administrative Civil Penalty Assessment Appeal Hearing on Property Located in the 6000 block Elk River Road, Eureka (APN 304-211-011).

RECOMMENDATION(S):

That the Board of Supervisors:

1. Adopt a Resolution to confirm the Administrative Civil Penalty Assessment in the amount of \$36,977.05 on the property located in the 6000 block Elk River Road, Eureka (APN 304-211-011) which contains violations of various Humboldt County Code sections in accordance with Section 352-19 titled Administrative Civil Penalty Assessment Appeal Hearing of Title III, Division 5, Chapter 2 of the Humboldt County Code.

SOURCE OF FUNDING:

Property Owner

DISCUSSION:

The Board of Supervisors is being asked to confirm a proposed Administrative Civil Penalty Assessment against Werner Weltsch, Jonathan Weltsch and Sarah Weltsch involving real property located in the 6000 block of Elk River Road in Eureka (APN 304-211-011) in the amount of \$36,977.05. The decision before your Board is solely regarding the administrative civil penalties and not about whether the code violations continue to exist at the subject property. Humboldt County Code (HCC) section 352-19(a) states in part that “the Humboldt Board of Supervisors shall hear testimony and consider evidence concerning the validity of the proposed assessment and any other matters deemed pertinent.”

The property owners have had multiple opportunities to address the code violations on their property under terms that would have avoided any administrative civil penalties. It is due to the property owners lack of response that administrative civil penalties have accrued.

Background

The violations on the property date back to referrals and complaints from Humboldt County Division

of Environmental Health, and from citizens in 2014. The property owners were initially issued a Notice of Nuisance on Nov. 13, 2014, with an Amended Notice of Nuisance on April 7, 2016, advising them of the violations that occurred, along with the corrective actions needed to correct the violations (Attachment B.) Minimal improvement was observed relative to resolving the code violations, and inspections revealed the code violations continued or became worse after issuance of the notices. The property owners have had full access and control over their property since acquiring the property on December 14, 2010, leaving them solely responsible for the violations of the Humboldt County Code (Attachment A.)

On Oct. 25, 2017, the property owners were served with a Notice of Violation and Proposed Administrative Civil Penalty that included the following violations:

- Maintaining a Wrecking and Salvage Yard (HCC section 371-2)
- Junk and/or Inoperable Vehicles (HCC section 354-1)
- Building/Structure(s) in Violation of Building, Plumbing and/or Electrical Codes (HCC section 331-28)
- Grading Without Permits (HCC section 331-14)
- Development in a Streamside Management Area Without a Permit (HCC section 314-61.1)

The NOV assessed administrative civil penalties of \$1,600 per violation per day for a total of \$8,000 per day. The NOV is found in Attachment C and Attachment D contains photographs of the property supporting the NOV.

The property owners appealed the Notice of Violation and Administrative Civil Penalty (Attachment E). The appeal hearing took place on April 9, 2018, before an independent hearing officer. The Hearing Officer is from the Institute for Administrative Justice with the University of the Pacific McGeorge School of Law. The Hearing Officer issued a Finding of Nuisance and Order of Abatement and Finding of Violation and Order Imposing Administrative Civil Penalty resulting in penalties of \$950 per day for 35 days, or a total of \$33,250 (Attachment F.) The Hearing Officer upheld the Notice of Violation and Proposed Administrative Civil Penalty and ordered that the amount of the Proposed Civil Penalty could be reduced if the property owners completed the corrective actions within the timelines set out in the Order of Abatement.

The property owners filed a Notice of Appeal with County of Humboldt Superior Court on May 16, 2018 (Case No. CV180417) pursuant to Government Code section 53069.4 for the Finding of Violation and Order Imposing Administrative Civil Penalty. However, the property owners agreed to withdraw their Notice of Appeal and executed a no-penalty Compliance Agreement on February 14, 2019 (Attachment G.) Under the terms of the Compliance Agreement, the property owners agreed to perform the corrective actions within the timeframes specified and the County agreed to not seek enforcement and collection of the administrative civil penalty imposed by the Hearing Officer.

A permit record search and inspection of the property conducted on Aug. 21, 2019, showed that conditions on the property had not significantly improved, nor were the required permits applied for by

the property owners within the timeframes outlined in the Compliance Agreement, rendering the Compliance Agreement breached. The Compliance Agreement states under section 2.G “Effect of Noncompliance” that: “in the event that the Responsible Party fails to comply substantially with the terms and conditions of this Agreement, the administrative civil penalty in the amount of thirty-three thousand two hundred fifty dollars (\$33,250) imposed by the hearing officer will become immediately due and payable.” The County sent letters to the property owners informing them of their immediate responsibility to pay the administrative civil penalties (Attachment H.)

As of December 2020, the property owners had still not provided any evidence of the corrective actions being initiated or completed. There were no permits applied for and the timelines stated in the Hearing Officer’s Order had passed. Furthermore, the administrative civil penalties remain unpaid. As a result of the property owner’s inaction, the Code Enforcement Unit consequently served a Notice of Administrative Civil Penalty Assessment for \$36,977.05 which includes the \$33,250 in administrative civil penalties plus \$3,727.05 for administrative costs incurred on this enforcement action. Attachment I is the Notice of Administrative Penalties and a summary of the administrative costs. Per HCC section 352-18(f) and as stated in the Notice of Administrative Civil Penalty Assessment, the final assessment as approved by your Board may become a lien against the real property on which the violation occurred or existed which has the same force, effect and priority of a judgment lien governed by the provisions of California Code of Civil Procedure sections 697.310 *et seq.*

The property owners requested an appeal hearing in response to the Notice of Administrative Civil Penalty Assessment pursuant to HCC section 352-16(g) which sets the matter before your Board (Attachment J.) As stated in their appeal hearing requests, the property owners contend that they have spent over 100 hours cleaning their property.

On Feb. 8, 2021, Mr. Werner Weltsch submitted a settlement offer dated Feb. 2, 2021 (Attachment K.) The settlement offer did not acknowledge the need to resolve violations and focused on the County dropping any abatement action. The issues raised by Mr. Weltsch in his settlement offer and in his request for an appeal hearing relate to Humboldt County Public Works Department are unrelated to the code violations identified in the Notice of Violation. On March 3, 2021, Code Enforcement responded to Mr. Weltsch’s letter and declined the settlement offer (Attachment L.)

Code Enforcement conducted an inspection on April 6, 2021, when current conditions on the property were observed to still be in violation of County Code (Attachment M.) Therefore, the Administrative Civil Penalty Assessment appeal hearing was scheduled, and proper notice served to the property owners.

This hearing gives the Board of Supervisors the opportunity to determine whether the fines and penalties levied against the property are appropriate. It is important to consider the following:

1. This property owner was given the opportunity to clean up the property prior to the Notice of Violation being posted;
2. After the NOV was posted the property owner could have cleared up the violations but instead

chose to file an appeal;

3. The Hearing Officer granted the property owner the ability to pay far less penalty fees in exchange for cleaning up the property within prescribed time frames; and
4. The property owner after appealing the Hearing Officer's Decision to the Superior Court withdrew the appeal and entered into a No Administrative Civil Penalty Compliance agreement but violated the terms of the Compliance Agreement and did not clean up the property.

As of the most recent inspection, the property has not been cleaned up and the property owner is asking for relief on the administrative civil penalty. The property owner has been given the opportunity to clean the property in exchange for no administrative civil penalty or reduced administrative civil penalty, but this has not brought about the desired result. The amount of the administrative civil penalty is a result of the number of violations on the property. At this point, there is not a rationale for a reduction or elimination of the administrative civil penalty which have been imposed. Based upon these factors, it is recommended that the Board of Supervisors confirm the Proposed Administrative Civil Penalty Assessment.

Regardless of the outcome of the appeal hearing, the County has obtained jurisdiction to abate the public nuisance that exists on the subject property and intends to perform abatement of the public nuisance located on the subject property.

FINANCIAL IMPACT:

The cost of preparing the case and serving the notices has been included as administrative costs in accordance with established policies and code sections. Administrative staff costs associated with this assessment total \$3,727.05. The Hearing Officer ordered \$33,250 as administrative civil penalties. Total administrative civil penalty assessment is proposed in the amount of \$36,977.05. The administrative staff costs have been budgeted in the salaries and expenses of budget unit 1100-269 (Code Enforcement). In the event that the property owners fail to pay the final assessment, the administrative civil penalty assessment will be recorded as a lien on the property pursuant to the timeline and procedures specified in the County Code and if necessary, the assessment will be returned to the County of Humboldt upon the sale of the property. There is no impact to the General Fund with this Board item.

STRATEGIC FRAMEWORK:

This action supports your Board's Strategic Framework by enforcing laws and regulations to protect residents

OTHER AGENCY INVOLVEMENT:

Department of Health and Human Services Environmental Health and the Sheriff's Department may be involved when necessary.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose to modify or discharge the Administrative Civil Penalty Assessment.

However, this is not recommended because staff recommendations align with Title III, Division 5 of Humboldt County Code.

ATTACHMENTS:

- Attachment A - Grant Deed
- Attachment B - Notices of Nuisance
- Attachment C - Notice of Violation and Administrative Civil Penalty
- Attachment D - Inspections Photos 9-15-2017
- Attachment E - Appeal Request
- Attachment F - Finding of Nuisance and Order of Abatement/Finding of Violation and Order Imposing Administrative Civil Penalty
- Attachment G - Executed Compliance Agreement
- Attachment H - Effect of Noncompliance with Compliance Agreement
- Attachment I - Notice of Administrative Civil Penalty Assessment (NACPA)
- Attachment J - NACPA Appeal Request
- Attachment K - Weltsch Settlement Offer
- Attachment L - Response to Weltsch Settlement Offer
- Attachment M - Inspection Photos 4-6-2021
- Attachment N - Resolution

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A