



COUNTY OF HUMBOLDT

For the meeting of: 2/2/2021

File #: 21-78

To: Board of Supervisors
From: Planning and Building Department
Agenda Section: Consent

SUBJECT:

Approve Administrative Civil Penalty Assessment on Property Located at 473 Quarry Road, Trinidad

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve the proposed Administrative Civil Penalty Assessment on the property located at 473 Quarry Road in Trinidad which is in violation of various Humboldt County Codes in the amount of \$62,431.79 in accordance with Title III, Division 5, Chapter 2, section 352-20 Summary Approval of Proposed Administrative Civil Penalty Assessments.

SOURCE OF FUNDING:

Property Owner

DISCUSSION:

The Board is being asked to approve the proposed Administrative Civil Penalty Assessment against a property owned by Charles Garth located at 473 Quarry Road in Trinidad (APN 515-172-010). A list of the public nuisances and code violations located on the property are itemized in Attachment A.

Code enforcement received complaints about the public nuisances on the property in 2017. Attachment B is a complete timeline of the enforcement efforts since 2017, while a summary of actions is below.

On August 14, 2017, a multi-agency inspection of the subject property was conducted which resulted in the issuance of a Notice to Abate Nuisance (NTA) and a Notice of Violation and Proposed Administrative Civil Penalty (NOV) for violations of Humboldt County Code (HCC). The proposed Administrative Civil Penalty was for a total of \$8,000 per day for twelve (12) violations, for a period of up to 90 days. Attachment C includes copies of the inspection report, NTA and NOV.

The property owner submitted an appeal hearing request for the NTA and the NOV pursuant to HCC sections 351-8(g) and 352-8(g). On June 11, 2018, the administrative appeal hearing was held via video conference before Hearing Officer Kimberly Buchholz with the Institute for Administrative

Justice, University of the Pacific, McGeorge School of Law. Mr. Garth and his counsel, Mr. Frederic Fletcher appeared at the administrative hearing.

On July 26, 2018, the Hearing Officer issued an Administrative Hearing Finding of Nuisance and Order of Abatement and Finding of Violation and Order Imposing Administrative Civil Penalty (Finding and Order, in Attachment D). In this ruling, the Hearing Officer upheld all violations except for Uniform Housing Code (UHC) sections 1001.11 and UHC section 1001 because these two code sections were duplicative of the HCC violations and ordered the property owner to pay administrative fines in the amount of \$40,500 to the County. The Hearing Officer added that if the property owner abated the violations by complying with the ordered corrective actions within the respective timelines for each violation, the total administrative fine for each of the abated violations would be reduced to \$1,000; if all violations were abated timely, the total administrative fine shall be reduced to \$9,000.

The Hearing Officer's Finding and Order was served upon the property owner as of July 30, 2018. The maximum timeframe allowed by the Hearing Officer to complete the corrective actions was 60 days from the issuance of the order, or from date the order was served.

In August 2018, the County received a Notice of Appeal of the Hearing Officer's Finding and Order pursuant Government Code section 53069.1(b)(1) and (2) that was filed with the Humboldt County Superior Court, Case No. CV180688. HCC section 352-13(a) permits judicial review of the Hearing Officer's decision in the Humboldt County Superior Court.

On December 21, 2018, about 143 days after service of the Finding and Order, a follow up inspection of the property occurred to document any abatement effort which had been ordered after the administrative appeal hearing. This inspection found that all violations still existed on the property and the property owner had not completed the corrective actions in order to lessen the amount of the Administrative Civil Penalty ordered by the Hearing Officer.

The Notice of Appeal before the Humboldt County Superior Court proceeded through the litigation process. On July 11, 2019, after various legal filings relating to the civil procedures including whether the Notice of Appeal may be used to request judicial review of the Finding of Nuisance and Order of Abatement, Judge Gregory Elvine-Kreis ordered that the Finding of Nuisance and Order of Abatement cannot be appealed by way of Government Code section 53069.4, leaving the property owner's appeal with the Superior Court to only challenge the Hearing Officer's Finding of Violation and Order Imposing Administrative Civil Penalty.

On July 23, 2019, pursuant to California Code of Civil Procedure 904.1(a)(6), the property owner appealed Judge Elvine-Kreis' July 11, 2019 ruling to the First District Court of Appeals, Division Three. On June 24, 2020, the Court of Appeals issued their unpublished opinion, (*County of Humboldt v. Garth* (June 24, 2020, No. A157878) 2020 Cal. App. Unpub. LEXIS 3949; 2020 WL 3446037) dismissing the property owner's appeal because the July 11, 2019 Court ruling is a non-appealable judgment or order.

The property owner's challenge to the Hearing Officer's Finding of Violation and Order Imposing

Administrative Civil Penalty proceeded in the Superior Court. On April 21, 2020, after submittal of briefs and oral arguments, Judge Elvine-Kreis granted the County's Motion to Narrow Issues which established that the ten (10) out of the twelve code violations exist on the property and found the total assessment of civil penalties due to the County is \$45,000 and ordered that amount be paid by the property owner.

On August 6, 2020, judgment on the property owner's appeal de novo was entered. On August 10, 2020, Notice of Entry of Judgment was filed. The time to appeal this judgment has passed pursuant to California Rule of Court Rule 8.104. Attachment E contains the Notice of Entry Judgement.

On September 20, 2020, the Notice of Administrative Civil Penalty Assessment (Attachment F) was issued via U.S. mail to the property owner and posted on the subject property. There was no request for an appeal hearing received within the 10-day timeframe.

To date, the property owner has not made efforts to abate the public nuisances on the subject property and the public nuisances continue to exist.

As the property owner has exhausted all of his options for appealing the Hearing Officer's Finding and Order, the Board is asked to summarily approve the assessment.

Humboldt County Code Section 352-20 states "If an objection to the proposed assessment is not filed by a Responsible Party within ten (10) calendar days after service of the Notice of Administrative Civil Penalty Assessment, the Humboldt County Board of Supervisors shall summarily approve the proposed assessment without holding an Administrative Civil Penalty Assessment Hearing."

The total of the assessment is derived from the \$45,000 ordered by the Superior Court and the administrative costs incurred by the Department to date. Attachment G is a summary of the administrative costs.

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 Seventeen Thousand Four Hundred Thirty-One Dollars and Seventy-Nine Cents (\$17,431.79) and Forty Five Thousand Dollars (\$45,000.00) as ordered by the Superior Court. Total penalties are proposed in the amount of \$62,431.79. The administrative staff costs have been budgeted in the salaries and expenses of budget unit 1100-269 (Code Enforcement). The administrative penalty will be recorded as a lien on the property and will be returned to the Humboldt County upon the sale of the property. There is no impact to the General Fund with this Board item.

Click or tap here to enter text.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 not to approve the issuance of the Administrative Civil Penalty. However, this is not recommended because staff recommendations align with Title III, Division 5 of Humboldt County Code.

ATTACHMENTS:

Attachment A - List of Code Violations

Attachment B - Timeline of Enforcement Actions

Attachment C - Inspection Report and Photos and Notice to Abate Nuisance and Notice of Violation and Administrative Civil Penalty

Attachment D - Administrative Hearing Finding of Nuisance and Order of Abatement and Finding of Violation and Order Imposing Administrative Civil Penalty

Attachment E - Notice of Entry of Judgment

Attachment F - Notice of Administrative Civil Penalty Assessment

Attachment G - Administrative Costs

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A