



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

J-1

For the meeting of: **March 7, 2017**

Date: **February 21, 2017**

To: **Board of Supervisors**

From: **County Counsel's Office, Code Enforcement Unit** *Sm*
Scott Miles, Senior Deputy County Counsel

Subject: **Administrative Abatement Hearing**
John McDowell
1680 Anderson Road, McKinleyville, California, AP# 508-291-007

RECOMMENDATION(S):

That the Board of Supervisors, pursuant to Humboldt County Code Sections 351-21 and 351-22:

- (1) Open the hearing;
- (2) Hold an administrative hearing to determine whether a public nuisance exists on the subject property;
- (3) Adopt the attached Findings of Nuisance and Order of Abatement consistent with the evidence presented at the hearing; and
- (4) Close the hearing.

SOURCE OF FUNDING:

Costs to prepare this agenda item and address the nuisances described to date have been borne by the General Fund. The recommended action before your Board may result in the recovery of some or all of these costs.

Prepared by Jeff Conner

CAO Approval *Erubia Hlog*

REVIEW:

Auditor _____ County Counsel *Sm* Personnel _____ Risk Manager _____ Other _____

TYPE OF ITEM:

☐ Consent
☐ Departmental
☒ Public Hearing
☐ Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. _____

Meeting of: _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Sundberg* Seconded by Supervisor *Bohn*

Ayes *Sundberg, Fennell, Bass, Bohn, Wilson*
Nays _____
Abstain _____
Absent _____

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *Mar 7, 2017*

By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

DISCUSSION:

This matter is before your Board sitting as a quasi-judicial tribunal to make a finding that a nuisance does or does not exist on the subject property.

Humboldt County Code Section 351-2 defines a "nuisance" as including:

- "(a) Any condition declared by any statute of the State of California or ordinance of the County of Humboldt to be a nuisance....
- (c) Any condition, act, or failure to act, which is dangerous to human life, or unsafe or detrimental to the public health or safety.....
- (f) Any establishment, use or operation of buildings, land or property contrary to the provisions of the ordinances of the county."

On August 26, 2013, the Code Enforcement Unit ("CEU") received a referral from the Division of Environmental Health alleging that there was a County Code violation dealing with the improper storage and removal of solid waste at 1680 Anderson Road in McKinleyville (hereinafter referred to as the "Property"). The CEU inspected the Property in September of 2013, confirming the violation, but also observing that John McDowell (hereinafter referred to as the "Owner") was working on removing the trash to an approved waste disposal facility. This progress, unfortunately, did not last long and in October of 2013, a Notice of Nuisance was served on the Owner listing the violations of County Code Sections 371-2; maintaining a junkyard; and 521-4, the improper storage and removal of solid waste.

The CEU monitored the Property. There was no further discernable progress and in February of 2014, an administrative penalty in the amount of \$2,500 was issued to the Owner. There was no response to the penalty and your Board eventually approved a special resolution allowing it to be added the secure tax rolls. In July of 2014, the CEU received a complaint that a travel trailer behind the house was being used as a residence and that there was an odor of sewage present. The CEU asked the Owner for consent to inspect the trailer, which was granted, although the Owner requested that no pictures be taken. The trailer was not occupied and there was no discernable odor of sewage. A considerable amount of solid waste was present, however. The CEU arranged to have a twenty (20) yard bin placed on the Property which the Owner filled.

The CEU again monitored the Property and continued to receive complaints from some of the neighbors. Many of the complaints dealt more with the activities and lifestyles of the numerous people living on the Property rather than the condition of the Property. In January of 2016, a complainant reported that a large tent had been erected in the backyard that covered a portion of the previously unoccupied travel trailer. In February of 2016, consent to inspect the backyard was again sought and granted, albeit without any pictures being taken. The travel trailer appeared to still be unoccupied, however, there was what looked like an outdoor kitchen underneath a large tarp that had been erected over a large portion of the backyard. The amount of solid waste in this area had also increased. In addition, the cover of a soft-sided storage shed at the end of the driveway had been damaged by the weather and it was now apparent that this structure was filled with solid waste, much of it consisting of filled, black, plastic bags of the type commonly used to hold trash.

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In September of 2016, in response to another series of complaints, the CEU sent the Owner a letter seeking consent to inspect his backyard including the taking of pictures. There was not an unequivocal response to this letter and on November 22, 2016, the CEU served an inspection warrant on the Property. The inspection found large amounts of solid waste in the front, side and backyards as well as an inoperable car, an inoperable boat and travel trailer that could no longer be used for its intended purpose. Numerous photographs were taken during the inspection and some of those are included in the exhibit package attached to this agenda item as well as being shown on the Smart-Board. A check of Google Earth and the records of the Building Division showed that the soft-sided structure filled with solid waste had been built without permits. An Amended Notice of Nuisance was served on the Owner listing violations of County Code Sections 331-28, construction without permits; 352-26, junk vehicles; 371-2 maintaining a junkyard; and 521-4, the improper storage and removal of solid waste.

Shortly after the service of the inspection warrant, the CEU arranged to have another twenty (20) yard bin placed at the Property as well as removing and disposing of an inoperable, utility trailer filled with trash. This only made a small improvement, however, and the CEU elected to place the Property into the queue for an abatement hearing.

The CEU believes that an Order of Abatement is necessary to ensure timely corrective action of the violations. The Order of Abatement is based on the following:

1. The violations present on the Property include conditions that violate both state and local law.
2. The violations are: Humboldt County Code Sections 331-28, construction without permits; 352-26, junk vehicles; 371-2, maintaining a junkyard; and 521-4, the improper storage and removal of solid waste.
3. The violations have created conditions that are unsafe and detrimental to public health and safety, and constitute a public nuisance, which should be abated.

Therefore, the CEU requests that your Board find that a nuisance exists on the Property and order the Owner to abate the nuisance within thirty (30) days after service of the attached Findings of Nuisance and Order of Abatement.

FINANCIAL IMPACT:

If your Board adopts the proffered recommendations, there will not be an immediate financial impact. However, if the Owner does not complete the necessary actions within the time allotted by your Board, the CEU will have the authority to abate the violations. The Code Enforcement Trust Fund is the primary source of monies for abatements conducted by the CEU. The balance of the Code Enforcement Trust Fund is currently about \$57,000. However, there are several potential expenditures on other abatements that have either been ordered by your Board or will be presented to your Board in the near future.

Today's recommended action supports the Board's Strategic Framework by enforcing laws and regulations and creating opportunities for improved health and safety.

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OTHER AGENCY INVOLVEMENT:

None at this time

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Find that a public nuisance does not exist, and terminate the abatement proceeding. This alternative is not recommended as there is a serious violation of state and local law on the Property that is impacting the health, safety and welfare of the public.

ATTACHMENTS:

- A. Proposed Findings and Order
- B. Exhibit Packet – to be provided no later than March 1, 2017

Administrative Abatement Hearing

In Re: John McDowell
1680 Anderson Road, McKinleyville, California; AP# 508-291-007

ATTACHMENT “A”

Findings of Nuisance and Order of Abatement

**BOARD OF SUPERVISORS
COUNTY OF HUMBOLDT
825 FIFTH STREET
EUREKA, CALIFORNIA 95501 PHONE (707) 445-7471**

FINDINGS OF NUISANCE & ORDER OF ABATEMENT

In Re: Abatement Hearing

John McDowell
1680 Anderson Road, McKinleyville, California; AP# 508-291-007

March 7, 2017

WHEREAS, Humboldt County Board of Supervisors ("Board") considered the evidence concerning the condition of the subject property, including relevant documents, writings, codes, ordinances and oral testimony; and

WHEREAS, the Board declares that the conditions on the property are public nuisances in that the conditions are detrimental to the health, safety, comfort and general welfare of the public and persons residing in the neighborhood

Now therefore the Board Finds:

1. The property located at 1680 Anderson Road, McKinleyville, California is located in a Residential: Suburban zone, in the unincorporated area of McKinleyville, Humboldt County, California, referred to as Assessor's Parcel Number 508-291-007; and

2. The staff of the Code Enforcement Unit for the County of Humboldt confirmed the existence of violations on the property; and

3. The property owner was served with an Amended Notice of Nuisance pursuant to Humboldt County Code Sections 351-12 and 351-13, describing the conditions constituting the violations and ordering abatement of those conditions and that the Amended Notice of Nuisance was posted on the property pursuant to said County Code; and

4. The property owner has had significant and reasonable time to correct all violations, but has refused and/or failed to meet the deadlines prescribed by the Notice; and

5. The property owner was served with a Notice to Abate Nuisance pursuant to Humboldt County Code Section 351-15; to wit, the Notice to Abate Nuisance was posted on the property pursuant to said County Code and the property owner was sent a certified letter containing the Notice to Abate Nuisance with the date and time of the hearing; and

6. The property owner has the legal responsibility for maintenance of the property, including abatement of all violations and compliance with all orders of the County; and

7. The violations still exist at the property and the property remains in violation of Humboldt County Code Sections 331-28, construction without permits; 352-26, junk vehicles; 371-2, maintaining a junkyard; and 521-4, the improper storage and removal of solid waste; and

8. The conditions on the property are public nuisances in that the conditions are detrimental to the health, safety, comfort and general welfare of the public and persons residing in the neighborhood.

NOW, THEREFORE, IT IS HEREBY:

ORDERED:

1. The forgoing findings, including the findings of conditions constituting a public nuisance on the subject property, are incorporated herein by reference and made a part hereof;
2. That the property owner abate all violations of the Humboldt County Code as described above. The property owner shall take the following actions:

§331-28 Construction without permits

Corrective Action:

- a) Apply for and obtain a building permit from the Building Division,
or
- b) Remove the unpermitted storage shed

§352-26 Junk vehicles

Corrective Action:

- a) Repair vehicles to operable condition, and/or
- b) Store vehicles inside of a permitted structure, and/or
- c) Remove inoperable vehicles

§371-2 Maintaining a junkyard

Corrective Action:

- a) Reduce the amount of salvageable materials to less than 200 square feet, and/or
- b) Store the salvageable materials inside of a permitted structure, and/or
- c) Remove all salvageable materials from the property

§521-4 Improper storage and removal of solid waste

Corrective Action:

Store all solid waste in containers with tight fitting lids and dispose of all waste in a timely manner;

3. That the abatement of all violations be completed within 30 days of the service of these Findings of Nuisance and Order of Abatement, including a final inspection by the Code Enforcement Unit;
4. That the Code Enforcement Unit is directed to take all necessary steps to assure the abatement is completed as ordered. If the property owner fails to comply with this order the Code Enforcement Unit shall be empowered and authorized to abate said nuisance and shall return to the Board for authorization for a transfer of funds to abate such nuisance, and that the costs of abatement shall become a lien on the subject property.

Dated: 3/7/17

Virginia Barr
Chair, Humboldt County Board of Supervisors