



COUNTY OF HUMBOLDT

Legislation Text

File #: 21-1039, Version: 1

To: Board of Supervisors

From: Planning and Building Department

Agenda Section: Time Certain Matter

SUBJECT:

1 PM - Cost Recovery Hearing on Property Located at 531 Elm Street, Garberville (APN 032-133-002)

RECOMMENDATION(S):

That the Board of Supervisors:

1. Confirm the proposed Nuisance Abatement Assessment on the property located at 531 Elm Street, Garberville (APN 032-133-002) in the amount of \$78,252.04 in accordance with Section 351-20 titled Cost Recovery Hearing of Title III, Division 5, Chapter 2 of the Humboldt County Code (HCC); and
2. Adopt the Resolution to confirm the proposed Nuisance Abatement Assessment against First Church of Christ Scientist pursuant to Humboldt County Code sections 351-1 *et seq.*

SOURCE OF FUNDING:

Property Owner

DISCUSSION:

The Board of Supervisors is being asked to confirm the proposed Nuisance Abatement Assessment against First Church of Christ Scientist involving a real property located at 531 Elm Street, Garberville (APN 032-133-002) in the amount of \$78,252.04. The Property owner has appealed the Abatement Assessment and is requesting the Board of Supervisors not require full payment of county costs associated with this abatement. Humboldt County Code (“HCC”) section 351-20(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.”

Violations on the property date back to citizen complaints regarding conditions upon the premises made in October 2019. An inspection was arranged for Oct. 23, 2019 with representatives of the property owner, Graham and Dorothy (Dotti) Russell, Treasurer and President of the First Church of Christ Scientist Board of Directors, respectively. Mr. and Mrs. Russell stated there had been a structure

fire at the church in January 2019. During the inspection, the church was observed to have severe fire damage on both the interior and exterior of the structure. In addition to the condition of the building, there was solid waste stored outside including multiple garbage bags full of miscellaneous items, cardboard, clothing items and an appliance. Mrs. Russell also stated that an individual who appears to be without a home often slept on the property behind the main church building but did not enter any of the structures. Photos from the inspection are in Attachment A.

It was determined that the church structure was unsafe to be entered or occupied and temporary “red tags” were posted around entrances/exits of the building to alert that the structure was unsafe to enter or occupy. There was a smaller storage shed located at the rear of the property without fire damage.

On October 25, 2019, it was determined that the main church structure would need to be boarded up to secure it from entry. Mrs. Russell was advised of this and voluntarily boarded up the structure the same day as shown in the pictures in Attachment B.

On Nov. 13, 2019, the property owner was served a Notice to Abate Nuisance (NTA) for violations of HCC 521-4, improper storage and removal of solid waste and HCC 351-3(c), building conditions that endanger life, health, safety, or welfare of the public, see Attachment C. Additionally, the temporary “red tags” were replaced with permanent red tags pursuant to HCC 331-11(a) - Notice of Unsafe Structure: Do Not Enter or Occupy for the unsafe building conditions in violation of the California Building Code, California Fire code, California Plumbing Code and the California Health and Safety Code, see Attachment D.

The property owner did not submit an appeal hearing request for the NTA. The deadline to request an appeal hearing for the NTA was ten (10) days after the date of service of the notice, which would have been Nov. 23, 2019. No appeal hearing was requested resulting in the county acquiring authority to step in and abate the public nuisance pursuant to HCC section 351-13(a) which states “[u]pon expiration of the time limits set forth in the Notice to Abate Nuisance, ...the Code Enforcement Unit shall acquire jurisdiction to correct or abate the condition or conditions causing the Nuisance on the affected Property.”

In the months following the issuance of the notice, the property owner appeared to be attempting to make progress with correcting the public nuisance. However, it became apparent the individual was sleeping on the property on a more permanent basis than before and was now accompanied by another individual. The two occupants were bringing additional solid waste to the property and diminishing the efforts by the property owner to abate the solid waste nuisance. There were no plans submitted for repair or reconstruction of the church building.

During the period between November 2019 and September 2020, there were hundreds of emails and telephone calls exchanged between Mr. and Mrs. Russell and Code Enforcement and Building Division staff, as well as other county departments. The county offered assistance by connecting Mrs. Russell to housing assistance resources and the occupants with mental health and social service providers. In March 2020, Mrs. Russell informed staff the property owner was working with a contractor to assess the structure and develop feasible plans for rehabilitation. However, plans for corrective work were

never submitted.

Numerous telephone calls and emails from citizens making complaints about the condition of the property continued to come in. Based on the worsening condition of the property and no evidence from the property owner that improvements to abate the unsafe structure were being made, it was determined that a county abatement of the nuisance would be necessary to abate the nuisance conditions. In preparation, both occupants were served with NTAs because it appeared the solid waste accumulating on the property belonged to them, see Attachment E. Neither occupant requested an appeal hearing in the timeframe allowed. On Nov. 16, 2020, Mrs. Russell informed staff that the property owner was in the process of evicting the occupants.

A permit record search and an inspection conducted in early December 2020 confirmed that conditions on the property had not improved, nor were the required permits applied for by the property owner. The Chief Building Official sent a letter dated Dec. 2, 2020 to the property owner informing them that “the corrective measures listed in the Notices have not been commenced or completed... and there has been no progress towards compliance and the present state and condition of the structure and property is still found to be unsafe and uninhabitable...”. It continued to state that the county has acquired jurisdiction to abate the public nuisance and shall now have the site cleared of all trash and debris including the demolition and removal of the unsafe structure. See Attachment F.

On Jan. 13, 2021 a Professional Service Agreement was entered into with McCullough Construction, Inc to perform the public nuisance abatement work for the county, see Attachment G. On Jan. 27, 2021 a project specific Task Order was executed with McCullough Construction, Inc. to complete the abatement on the subject property, see Attachment H. An Inspection Warrant and Order of Abatement was authorized on Feb. 2, 2021, Attachment I.

The abatement of the property began on Feb. 4, 2021 and concluded on March 2, 2021. The solid waste was removed from the property and the demolition of the unsafe structure was completed and debris from the demolition was removed from the property. See Attachment J for photos taken before the abatement on February 4, 2021. Approximately 80 (eighty) tons of solid waste and demolition debris were removed from the property. See Attachment K for post abatement photos taken on March 2, 2021.

Pursuant to HCC section 351-16 a Notice of Nuisance Abatement Assessment was served for \$78,252.04 which included the \$70,507.45 in costs paid to McCullough Construction, Inc. to perform the abatement, see invoice in Attachment L, plus \$7,744.59 for administrative costs incurred on this enforcement action; see Attachment M for the Notice and a summary of the administrative costs. Mr. and Mrs. Russell, as representatives of the property owner, objected to the proposed abatement assessment pursuant to HCC section 351-17(f) which sets the matter before your Board as a Cost Recovery Hearing, Attachment N. In their objection Mr. and Mrs. Russell contend that:

1. The county expenses are not documented.
2. The fee for the investigator and legal assistant is [sic] above costs.
3. The mileage is overstated.

4. The church was the victim of an arson.
5. Over protests by the church, valuable church and personal property was destroyed by the county in its site cleanup.
6. The county interfered with the church's nuisance abatement subsequently and comes to the hearing with unclean hands.
7. Charity to the needy is a religious obligation and may not be punished.

The issues raised by the representatives of the property owner in the Cost Recovery Hearing Request are responded to below:

1. **The County expenses are not documented.** Attachment O shows the number of hours, tasks performed, and miles driven for the subject case. This information is pulled directly from Accela, the department's record tracking database.
2. **The fee for the investigator and legal assistant is [sic] above costs.** The fully burdened rate for the Investigator and Legal Office Assistant are documented in the Burden Rate Table in Attachment P. The fully burdened rate includes salary, benefits, and indirect costs such as building maintenance, utilities and fiscal support services. The Planning and Building Department uses an average rate for each job classification to ensure staff time is billed evenly for all projects. For example, if there are three Code Enforcement Investigators the average fully burdened rate for all three are averaged and that amount is used for billing purposes. The current rates were set approximately 4 years ago with the staff present in the department at that time. As staff changes, so too does the average for each classification depending on length of service, experience, health benefits and other factors. The current burden rate for the Investigator is \$115 per hour and for the Legal Office Assistant it is \$83 per hour as it has been for the last 4 years.
3. **The mileage is overstated.** Attachment Q shows a Google Map image showing the distance from the Planning and Building office to 531 Elm Street, Garberville is 66.4 miles one-way or 133 miles round-trip. This amount corresponds to the actual mileage added to the administrative costs.
4. **The church was a victim of arson.** While it is unfortunate the church was involved in a fire that rendered the structure unsafe, the cause of the fire does not have any bearing on the costs associated with abating the public nuisance. Code Enforcement is seeking to recover the costs/public funds associated with the county abatement of a public nuisance.
5. **Over protests by the church, valuable church and person property was destroyed by the county in its site cleanup.** The county acquired jurisdiction to abate the public nuisance on the subject property on Nov. 23, 2019, which was ten (10) days after the date of service of the notice and the deadline to request an appeal hearing for the NTA. The county abatement did not begin until Feb. 4, 2021. The property owner had over a year to obtain a permit for repair, securement or demolition of the church and no submissions were made. Once the plan for a county performed abatement of the unsafe church building was imminent, Mr. and Mrs. Russell asked for permission to enter the building to retrieve items. The request was declined due to the Notice of Unsafe Structure: Do Not Enter or Occupy order prohibiting anyone from entering the structure. Granting the entry request would have placed the county at high liability risk due to the unsafe building conditions.
6. **The county interfered with the church's nuisance abatement subsequently and comes to**

the hearing with unclean hands. The property owner had over a year to obtain a permit for repair, securement or demolition of the church and no submissions were made. The solid waste accumulation during the same time period worsened. The situation had become an attractive nuisance and complaints continued to come in. The photographs taken in February 2021 (Attachment J) shows a significant change in the property condition from October 2019 (Attachments A & B). There is no rationale to support a claim that the property owner was in the midst of voluntary abatement when the county stepped in to perform the county abatement of the unsafe structure and removal of solid waste.

7. **Charity to the needy is a religious obligation and may not be punished.** This statement does not have any bearing on the costs the county has expended to abate the public nuisance on the property owned by the church.

The property owner was given ample opportunity to address the public nuisances on the property and to avoid a county performed abatement. The amount of the proposed Nuisance Abatement Assessment equals the \$70,507.45 in costs paid to McCullough Construction, Inc. to perform the abatement, plus \$7,744.59 for administrative costs incurred by staff. There are no Administrative Civil Penalties associated with this case. At this point, there is not a rational basis for a reduction or elimination of the proposed Nuisance Abatement Assessment because it is based on expenses already paid.

Based upon these factors, it is recommended that your Board confirm the proposed Nuisance Abatement Assessment.

Upon the approval of the Nuisance Abatement Assessment, the property owners will be served a Notice of Nuisance Abatement Assessment Lien. This notice will inform the property owners of the assessment and provide the property owners forty-five (45) calendar days to pay the assessment before the recording of the Notice of Nuisance Abatement Assessment Lien.

Pursuant to HCC section 351-24 after the Notice of Nuisance Abatement Assessment Lien is recorded “the Humboldt County Auditor-Controller shall enter each Nuisance Abatement Assessment upon the affected Property on the Humboldt County Secured Tax Roll. The Nuisance Abatement Assessment shall continue until it is paid, together with interest at the legal maximum rate computed from the Imposition date until payment is received. The Nuisance Abatement Assessment may be collected at the same time and in the same manner as ordinary property taxes are collected and shall be subject to the same penalties and the same procedures and sale in case of delinquency as provided for ordinary property taxes...”. The Nuisance Abatement Assessment shall also have 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.*

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 Nuisance Abatement Assessment total \$7,744.59 and have been budgeted in the salaries and expenses of budget unit 1100-269 (Code Enforcement). The cost of the abatement totals \$70,507.45 and was

paid out of monies set aside for county abatements in the General Fund and transferred to budget unit 1100-269. The total Nuisance Abatement Assessment is proposed in the amount of \$78,252.04. In the event that the property owners fail to pay the final assessment, the Nuisance Abatement 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 Humboldt County upon the sale of the property. With staff recommendation, there is minimal 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:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the Nuisance Abatement Assessment. However, this is not recommended because staff recommendations align with Title III, Division 5 of Humboldt County Code. By choosing this option there will be no reimbursement from the property owner for the public funds spent to clean up and abate the public nuisance.

ATTACHMENTS:

- Attachment A - Oct. 23, 2019 Inspection Photos
- Attachment B - Oct. 25, 2019 Boarded-Up Photos
- Attachment C - Notice to Abate Nuisance
- Attachment D - Notice of Unsafe Structure
- Attachment E - Notice to Abate Nuisance for Occupants
- Attachment F - Dec. 2, 2020 Letter from Building Official
- Attachment G - Professional Services Agreement McCullough
- Attachment H - Task Order McCullough
- Attachment I - Inspection Warrant and Order of Abatement
- Attachment J - Before Abatement Photos Feb. 4, 2021
- Attachment K - Post Abatement Photos March 2, 2021
- Attachment L - McCullough Invoice
- Attachment M - Notice of Nuisance Abatement Assessment
- Attachment N - Request for Cost Recovery Hearing
- Attachment O - Itemized County Expenses
- Attachment P - Burden Rate Table
- Attachment Q - Mileage and Map
- Attachment R - Resolution to Confirm NTA Assessment

PREVIOUS ACTION/REFERRAL:

Board Order No.: N/A

Meeting of: N/A

File No.: N/A