



# Agenda Report

**MEETING DATE:** Tuesday, July 6, 2021

**TO:** City Council

**FROM:** COMMUNITY DEVELOPMENT DIRECTOR MERRIAM  
ROB ALLEN, ASSISTANT CDD DIRECTOR/BUILDING OFFICIAL

**SUBJECT:** DECLARATION OF A PUBLIC NUISANCE AT SUNSHINE GARDENS  
DEVELOPMENT IN THE CITY OF WATSONVILLE AS SPECIFIED  
STRUCTURES WITHIN THIS NOTICE SHALL BE DECLARED A  
PUBLIC NUISANCE

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## **STATEMENT OF ISSUES:**

The owner has failed to comply with all City notices and 26 of the 34 units at the Sunshine Gardens subdivision are a public nuisance and must be abated. The City must order abatement of the nuisance and if necessary, take responsibility for demolition of 26 of the 34 townhome units or seek a legal remedy in a court of law such as a receivership. The cost of abatement may be assessed upon the property and a lien recorded to secure the debt and/or add the costs to the yearly property tax bill as provided in §§ 5-17.11 et seq. This would remove the blight and terminate the nuisance.

## **RECOMMENDED ACTION:**

That the City Council adopts a resolution declaring the Sunshine Gardens Development (1773 Santa Victoria Avenue) consisting of (34) partially constructed units of mixed-use residential buildings with 26 of these units being a public nuisance and direct the Building Official to abate the nuisance without delay. The resolution shall also include the scheduling of a public hearing on August 24, 2021, to hear any interested party objections relating to the City's proposed abatement action.

## **DISCUSSION:**

### **Background:**

The Sunshine Gardens subdivision is located within District 1 between a residential neighborhood on Santa Victoria Avenue and the Watsonville Slough. The land is now and at all times has been owned by Pacific Sunshine Development, LLC. The lender is Long River Real Estate Holding, LLC, a limited liability company. The general contractor is now, and all times has been US Longton, a corporation.

Building permits for the first four dwellings were issued on July 11, 2017. Foundations were poured on or about August 31, 2017. Long River recorded a \$15,000,000 deed of trust on September 1, 2017. Building permits for 30 more units were issued on September 11, 2017.

The final subdivision map for Sunshine Gardens, Tract 1587, was recorded October 4, 2017, in Book 127 of Maps, page 9 et seq., Santa Cruz County records. A public and on-site improvement agreement (SIA) was signed on or about September 26, 2017. The security for the SIA was \$3,465.00 held at East West Bank.

Foundations for the 30 units were poured on or about April of 2018. On or about May 13th, 2018, Assistant Community Development Director and Chief Building Official Eric Simonson placed a stop work order on construction when inspection disclosed that US Longton framed all 3 floor levels and added the roof truss system without calling the Building Division for required building inspections at each consecutive floor level. Meanwhile some public improvements were completed to allow construction of some of the dwellings and satisfy the conditions for subdivision map approval and to comply with the SIA.

Building inspection then disclosed construction defects including but not limited to improper framing and foundations. The corrections were not made. And the building permits expired in November 2019 (six months).

A correction plan was agreed to on or about October 6, 2020, with a deadline of January 5, 2020, but the property owner and contractor again failed to do the agreed work.

The City has since conducted many follow up inspections and met with representatives of the property owner -developer and the general contractor many times to complete inspection and gain compliance. To date, after three years and three months, the 30 units begun in April 2018 remain incomplete, exposed to the weather, dilapidated and a blight on the surrounding neighborhood and continue to deteriorate with continued exposure to the weather conditions. Meanwhile, work required by the SIA is incomplete, in particular, bioswale retention basins required by the State Water Resources Board and an access road are not done. The City obtained the remaining \$1.34 million dollars held by East West Bank to secure performance of the SIA and is publicly bidding the work to get it done in time before winter rains and the October 15 State Water Resources Board deadline for outdoor construction.

The City's Nuisance Abatement Ordinance is in Chapter 17 (Nuisances) of Title 5 (Public Welfare, Morals and Conduct) of the Municipal Code. Section 5-17.01<sup>1</sup> provides that anything within the City which is "injurious to health, indecent, offensive to the senses, an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in the customary manner of any stream, public park, square, street, highway, or alley of the City" is a nuisance. And subdivision (a) of § 5-17.02 states that a public nuisance is a nuisance which affects at the same time the entire community, a neighborhood, or any considerable number of persons therein, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

This report is the Building Official's report of the existence of a public nuisance required by § 5-17.05: This subdivision was determined to be a public nuisance because:

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<sup>1</sup> All further section numbers refer to the Municipal Code

- Townhomes have been left partially constructed for over three years and exposed to the elements and weather without protection.
- The subdivision is used to store abandoned and deteriorated construction materials.
- The owner-developer and general contractor have failed to reasonably keep the project moving forward and the buildings maintained.
- The buildings under construction appear to be unsalvageable and unable to be repaired.
- The dilapidated condition of the partially constructed townhomes is offensive to the senses because it is a blight on the neighborhood and nearby homes and so an obstruction to the free use of property so as to interfere with the comfortable enjoyment of neighboring property.

Therefore, the Building Official considers this property a public nuisance and recommends that the Council approve a resolution declaring the property a public nuisance.

**Process:**

The following steps are required by the City’s Nuisance Abatement ordinance.

- Step 1: The Building Official makes a report to the City Council on the existence of a nuisance within the City. § 5-17.05
- Step 2: The City Council reviews the Building Official’s findings and decides whether to declare the property a public nuisance or not. If the property is declared a public nuisance, Council would also direct the Building Official to abate the nuisance without delay and schedule a public hearing date. § 5-17.06
- Step 3: A “Notice to Abate Nuisance” is prepared and sent to the property owner of record and other interested parties (mortgage holders, etc.). The notice would direct the property owner to abate the nuisance immediately and state that the City will abate the nuisance if they do not. The notice would also indicate when the “Nuisance Abatement” is scheduled before the City Council to hear any public or interested party objections to the removal of the Nuisance. After the hearing, and objections given due consideration by the City Council, the Building Official will be directed to proceed with the abatement of the nuisance. § 5-17.06
- Step 4: After the abatement work is completed, the Building Official presents a report to the City Council on the completed abatement and the associated costs. A public hearing is required as part of this report so the City Council can hear objections on the proposed assessment. Upon confirmation of the assessment amount, the abatement amount would become due and payable. If the amount

is not paid for whatever reason, it would be added to the yearly property tax bill and a lien will be placed on the property to secure the debt. §5-17.06

**Conclusion:**

The Sunshine Gardens Development (1773 Santa Victoria Avenue) is a public nuisance and must be abated. In so far, as the owner has failed to comply with all City notifications. The City must abate the nuisance, by assuming the responsibility to either demolish and/or repair the deteriorated buildings. The cost of such abatement will be assessed upon the property and a lien recorded to secure the debt and/or add the costs to the yearly property tax bill as stipulated under the provisions of Title 5 Chapter 17 in the Watsonville Municipal Code (Nuisance Abatement). This would address the immediate and dire need to remove the blighted conditions in this neighborhood.

**STRATEGIC PLAN:**

This action reflects the City Council's strategic goals for 2021-2023, to continue Code Enforcement efforts in maintaining and preserving the neighborhoods health, safety, and welfare while also encouraging a positive City image.

**FINANCIAL IMPACT:**

The City would expend general fund monies to proceed with abatement of the nuisance. These advances may be recovered under §§ 5-17.11 et seq. The City may also seek the appointment of a receiver by the Superior Court in a lawsuit and seek recovery of the legal fees out of any equity in the property after review and approval of the Superior Court. The Receivership fees and expenses may after noticed motion take precedence over all other financial liens on the property except property taxes. Further costs for this action should be borne by the owners of the property for their failure to perform the work, allowing the nuisance to occur and continue for several years.

**ALTERNATIVE ACTION:**

The City Council could do nothing. Or the City could continue to notify the property-owner and general contractor in hope of eventually gaining compliance and abatement of the nuisance.

**ATTACHMENTS AND/OR REFERENCES**

1. Photos dated June 22, 2021
2. Sunshine Gardens Permit Chronological List 2016-2018
3. Sunshine Gardens Chronological List 2017-2020