



# Agenda Report

**MEETING DATE:** Tuesday, August 24, 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**

---

## **STATEMENT OF ISSUES:**

The City Building Official is informed and believes that twenty-six of the thirty-four units under construction at the Sunshine Gardens subdivision are a public nuisance. The remaining 8 units are incomplete but are deemed a public nuisance. The Building Official recommends that the Council issue an order under § 5-17.08<sup>1</sup> of the Municipal Code that the Building Official see that the nuisance be abated. 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 § WMC 5-17.11 et seq.. This would remove the blight and terminate the nuisance.

## **RECOMMENDED ACTION:**

It is recommended that the City Council adopt a resolution declaring that 26 of the 34 units under construction at the Sunshine Gardens Development (1773 Santa Victoria Avenue) are a public nuisance and direct the Building Official to abate the nuisance of these 26 units without delay. These 26 units are on lots 3 through 28 inclusive of the subdivision. See diagram as Attachment 5 to this report.

## **DISCUSSION:**

### **Background:**

The Sunshine Gardens subdivision is located within Council 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

---

<sup>1</sup> 5-17.08 ORDERS TO ABATE NUISANCES. The Council, by resolution, shall order the Building Official to abate such nuisance, or cause the nuisance to be abated, by having the nuisance referred to destroyed or removed by any legal method, and the Building Official and his deputies, assistants, employees, contracting agents, or other representatives are hereby expressly authorized to enter upon private property for such purpose. Any property owner shall have the right to abate such nuisance himself or have the nuisance abated at his own expense; provided, however, such nuisance shall have been abated prior to the arrival of the Building Official or his authorized agents or representatives to take action to abate the nuisance.

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. A \$15,000,000 deed of trust was recorded on September 1, 2017. Building permits for 30 more units were issued on September 11, 2017. A public and on-site improvement agreement (SIA) was signed on or about September 26, 2017. The security for the SIA was \$3,465,000.00 in cash held at East West Bank. 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.

Foundations for 30 more units were poured on or about April of 2018. On or about May 13, 2018, Assistant Community Development Director and Chief Building Official Eric Simonson ordered construction stopped 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 prior to proceeding.

Meanwhile some but not all public improvements were completed to satisfy the conditions for subdivision map approval and to comply with the SIA.

Building inspection eventually disclosed construction defects, including but not limited to, improper framing and foundations. The defects were not adequately corrected. Time passed and the building permits expired in November 2019 (six months).

To allow time for correction and completion of defects, the Building Official provided three additional six-month extensions of the building permits. The City has conducted many follow up inspections and met with representatives of the property owner and the general contractor to complete inspections and gain compliance. After three years and three months, the 26 units proposed to be declared a public nuisance, which began construction in April 2018, are still incomplete, exposed to the weather, dilapidated and a blight on the surrounding neighborhood and continue to deteriorate with prolonged exposure to the weather. Four (4) of the 34 units are 95% complete weatherproofed single family homes on lots 1, 2, 59, & 60 and are not deemed a nuisance. Another four (4) of the 34 units have been roofed and are deemed repairable by the Building Official (demolition not likely required) and consist of four duplex units in two (2) structures on lots 55, 56, 57, & 58. (see diagram with this Report as Attachment 5.

Meanwhile, the public and on-site subdivision improvement work the Owner agreed in the SIA to do remains 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 before winter rains and the October 15 State Water Resources Board deadline for outdoor construction. We have been made aware within the last ten days that progress has been made on construction of the bioswale retention basins and that part of the work should be completed by the end of August.

In October 2019, the building inspectors noticed many building foundations & slabs with severe cracking, spalling, and open pockets within the concrete. A correction repair fix for the foundations was submitted by the project structural engineer to the City for review on or about October 6, 2020, the City reviewed the repair fixes and processed an approval on January 5, 2020, and made the General Contractor aware that the repair fixes were approved, and written approvals were ready to be picked up. No one ever picked up the approved repair fixes. completing the approved fixes would have caused the stop work order to be removed and the remainder of the repairs would have been allowed to continue.

The Building Official again notified the General Contractor on January 27th, 2020, via email, that the written approvals for the repair fixes were ready to be picked up and cautioned the contractor that some of the building permits would soon expire, while others would be expiring in early May, 2020. The Building Official also notified the general contractor several times over the next 3 months, either by email or voicemail, that the work must progress, or the permits would expire. The Contractor did not respond to these requests for action and did not communicate any intent to move the project forward at all.

The Building Official finally received a written request for permit extensions from Ben Atwood (prior superintendent for the General Contractor) on May 27, 2020. The request came after 80% of the permits had already expired and the remaining were due to expire in 17 days. So as of May 27, 2020, the repair fixes approved by the Building Division back on January 6, 2020 (four and a half months earlier) had not been picked up or paid for, so the May 13, 2018, stop work order was still in place.

When an extension request is made, the contractor must show reasonable justification due to circumstances beyond the applicant's control as to why the permit extension is required. When the Building Official finally did receive the written request for permit extensions the contractor claimed that Covid-19 was the cause for the delay, when in fact there was an exemption from the stay-at-home order by the County of Santa Cruz for all construction sites that have affordable housing units as part of their project. Since Sunshine Gardens includes 20% affordable units, it was exempt from any Covid-19 stay-at-home order shutdowns and could continue. The Building Official reviewed the written request for the extensions and the request was denied because the cause stated for the delays was insufficient. Further, Building Division staff was available and in the office throughout the Pandemic to review change orders and conduct inspections.

In late June 2020, the Building Official informed the general contractor that the plan reviews for the foundation repair fixes from January 6, 2020, still had not yet been paid for. Shortly after, the General Contractor did drop off a check in the City utility drop box but failed to inform the Building Division that they had paid for the plan reviews or how it was paid. Nor did they identify to whom the check was to be sent for processing. The City utilities department took in the check in their outside drop box but did not know where to send it. This was again, lack of communication by the General Contractor to inform the Building Division what was happening. They further failed to pick up the approved foundation repair fixes that had been submitted by the project engineer for over 8 months.

The City's Nuisance Abatement Ordinance is in Chapter 17 of Title 5 of the Municipal Code. Section 5-17.01 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 says 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:

1. Partially constructed townhomes have been left partially constructed for over three and one-half years and exposed to the elements and weather without durable protection.
2. The exterior sheathing and all floors were constructed using Oriented Strand Board (O.S.B.). The manufacturer of this product has stated to the Building Department that O.S.B. is not designed to remain rigid and structurally durable with long term exposure to any weather conditions, specifically rain, standing water, and/or sunlight. The Building Official is informed and believes that this unprotected long-term exposure to moisture and U.V. rays have caused the OSB to break down, deteriorate, and develop mold fungus on the surfaces of the exterior sheathing and the interior floors as well as a good portion of the flooring structural members.
3. The subdivision (approximately 3.5 acres) is used to store abandoned and deteriorated or discarded construction materials. The developer's representatives have stated that all stored materials are stored inside garages on the project site. This is untrue. The Building Division has recent photos (June of 2021) of building materials stored outside in the open and unprotected on site.
4. The City has been in negotiation with the developers and general contractor since October, 2020 for a Memorandum of Understanding (M.O.U.) and related documents to establish a plan for mutual expectations to assist both parties in moving the project forward. The M.O.U was finally delivered on August 7, 2021 and the Reimbursement Agreement and a check for \$40,000 was delivered on August 12, 2021, but the rest of the related documents (1<sup>st</sup> Amendment to SIA and 1<sup>st</sup> Amendment to SIA Set-Aside Agreement have not yet been provided as of August 19, 2021 which is after the August 16 deadline. No security for the First Amendment to the SIA Set Aside has been submitted as of August 19th. There is a promise to provide the remaining documents and the security sometime in the near future but no date certain. There has been no contact from any bank nor any explanation of what form of security to expect: cash, bond, or letter of credit.
5. If all documents were delivered and signed and the increased SIA set aside funds delivered, the building permits could be provided with one final extension on all of the

structures. They would be valid for six months, about February 15, 2022, to allow the construction to proceed. (These building permits had expired at least 15 months ago). Construction progress by the general contractor and an approved City inspection on each building permit would continue to extend the permit another six months each time an inspection was approved. Without these progressive inspections being performed and approved, the permits would expire in another six months and the project would be deemed abandoned.

6. The Building Official is required to use his discretionary authority to make such judgement call whether to declare this project a public nuisance.
7. The buildings under construction appear to be unsalvageable and unable to be repaired.
8. The General Contractor has recently hired an industrial hygienist for the second time to examine the mold growth issues. An inspection has been completed without involvement by the Building Division. The first examination was complete, and a thorough examination of every single unit was conducted. The new partial report still shows high levels of mold within the units that were examined (shown as level 4). A remediation contractor has within the last week been providing mold remediation services on the project.

Therefore, the Building Official considers the above identified 26 partially constructed improvements a public nuisance and recommends that the Council approve a resolution declaring those 26 units 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 [This report]

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. [This is the Building Official's request tonight.]

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. [This will occur if the Council finds a public nuisance tonight].

**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 [depends on who abates the nuisance and how much City staff involvement is required]. A public hearing is required as part of this report so the City Council can hear objections on the proposed assessment. This would occur in the future. Upon confirmation of the assessment amount, the 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

**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 pay for staff to proceed with abatement of the nuisance. These advances may be recovered under §§ 5-17.11 et seq. The City may also at a later time seek the appointment of a receiver by the Superior Court and seek recovery of the legal fees from the Receiver after review and approval of the Superior Court. The Council has not authorized the Building Official to contact the City Attorney to seek appointment of a receiver. Such authorization would require separate action from the Council at a later date, likely in closed executive session, but in any event at a public meeting. Attorney's fees, Receivers fees, costs and expenses may after noticed motion be made a lien on the affected lots and take precedence over all other financial liens on those lots except property taxes.

**ALTERNATIVE ACTION:**

The City Council could decline to take any action to declare a public nuisance and decline to authorize the Building Official to abate the nuisance. The Council could also allow the property owner more time before taking any action. Staff does not recommend allowing more time as sufficient time has been provided in the past and winter weather is approaching making abatement more difficult and expensive. Staff has expended extraordinary effort seeking compliance without substantial compliance to date.

**ATTACHMENTS AND/OR REFERENCES (If any):**

1. Photos
2. Emails
3. Report from the Project Architect
4. Detailed chronology for Sunshine Gardens (Historical record from the Building Official)
5. Diagram of subdivision showing location of affected units by lot number.