

A Resolution of the Haines Borough Assembly adopting written findings of the June 10, 2014 appeal hearing of the Nelson nuisance abatement order.

WHEREAS, on May 5, 2014, the borough issued a nuisance notice and order of abatement to Paul A.L. Nelson regarding solid waste disposal on his and adjoining property within Skyline Estates Subdivision, a single residential zone within the Townsite; and

WHEREAS, as was his right under HBC 8.12.130, Mr. Nelson submitted a timely appeal of that order; and

WHEREAS, per HBC 8.12.130(F), enforcement of the nuisance notice and order of abatement was stayed pending final disposition of the appeal; and

WHEREAS, on May 27, 2014, the borough clerk gave the appeal to the assembly and with the assembly's direction the clerk scheduled June 10, 2014 for the appeal hearing; and

WHEREAS, the mayor acted as presiding officer and chose not to administer oaths or compel the attendance of witnesses; and

WHEREAS, Mr. Nelson appeared in person on his own behalf and made the following ARGUMENTS as part of his presentation or in answer to assembly questions:

- *He used recycled glass as sub-grade fill on his property where he is building a house in the Haines Townsite;*
- *The recycled glass came from the free glass disposal site at Acme Transfer Co. Inc. (Acme); it did not come from garbage; the only glass he used is what citizens put in the Acme glass pile; he put up a sign telling people he could only accept "clean" glass;*
- *Acme has provided free disposal of glass to the people of Haines for over 10 years with no complaints, and in the past the state of Alaska, Department of Environmental Conservation (ADEC) has allowed him to use recycled glass from Acme with no mention of permits;*
- *When he first started, he included ceramics and pottery, but after ADEC corrected him, he took no more of that to the building site;*
- *All of the hauling of fill took place in 2013 both prior to May 2013 and again in the fall, because he believed ADEC communicated to him that no permit was required; he has hauled no material in 2014;*
- *A claim that he threw Sandra Woods, the ADEC Municipal Landfill Specialist, off of his property is untrue; she toured both Acme and his building site;*
- *His most recent communication with the ADEC was with Douglas Buteyn, Northern Solid Waste Program Coordinator, who said the ADEC will consider an application from him for the use of recycled glass as sub-grade fill if the Haines Borough allows him to use it for that purpose;*
- *He would like a variance to allow the use of recycled glass as sub-grade fill on his property, because there will be no glass exposed when he is finished building;*

- *The Constitution of the state of Alaska and Alaska Supreme Court decisions that enforce and support privacy on private property should be considered;*
- *The Haines Borough needs a Solid Waste Management Plan;*
- *This was his effort to recycle the glass to keep it out of the landfill;*
- *Three quarters of the house foundation is filled with the recycled glass; his intention is to cover all glass with at least 6-8 inches of pit run or three-quarter D-1;*
- *Before taking the glass up to his property from Acme, he ran over it with a loader and then loaded it into trucks for transport;*
- *It is a building site; his workers throw whole bottles on the ground;*
- *Glass has a very good compaction rate and was compacted as it went into the foundation; the foundation is anchored right into the bedrock; it will be insulated and then completely capped with concrete; it will be a vault; nothing will leach out of it;*
- *There are no hazardous materials in the fill such as petroleum products and batteries; he offered to pay for testing if the borough wants that; and*

WHEREAS, Borough Manager David Sosa summarized the borough's enforcement order: Mr. Nelson has been dumping broken glass as fill on his property for some time; the borough received complaints from residents due to overspill on adjacent private property, glass on the roadway, and foul smells coming from the fill; following site inspections, conversations with both the ADEC and the appellant, and a review of borough code and state statute, borough staff determined Mr. Nelson to be dumping unpermitted material in violation of the following laws and was ordered to cease dumping and to remove all of the already-deposited material:

HBC 8.08.020(E), "It is unlawful for any person to deposit any litter on private property, whether owned by the person or not";

HBC 8.12.020(B), "It shall be unlawful for any person to annoy, injure or endanger the safety, health, comfort, or repose of the public"; and

18 AAC 60.007(c), "[a] person may not place solid waste on the land until the person has submitted a proposal to the department [ADEC] and that proposal has been approved";

WHEREAS, HBC Chapter 8.08 includes the following definitions:

"Garbage" means all waste accumulations of animal, fruit, and vegetable matter that attend the preparation, use, cooking, dealing in, or storage of meat, fish, fowl, vegetables, or fruits; "garbage" includes containers originally used to store, collect, or transport such food stuffs;

"Litter" means garbage, refuse, rubbish and all other waste material which, if thrown or deposited as prohibited in this chapter, tend to create a danger or nuisance to public health, safety, and welfare; and

"Rubbish" means all other refuse that is not considered garbage, ashes, or industrial waste; "rubbish" includes waste paper, cardboard, wood, tin cans, glass, bottles, yard rakings, tree limbs, bedding, metals, trash, sweepings, and all similar substances; and

WHEREAS, five members of the public gave testimony in support of the borough's abatement order, expressing concerns about stench, shards of glass, non-glass garbage, contaminated

soil, and the large volume of this material that has been dumped at this site, with one individual submitting as evidence a bucket of various materials he believed to have been brought to the site by the appellant, including plastic, whole bottles, and a syringe; and

WHEREAS, no members of the public spoke in opposition of the borough's abatement order; and

WHEREAS, the borough assembly asked questions of Mr. Nelson and Manager Sosa, reviewed photographs submitted by one of the complainants, and considered all written and oral statements before reaching the following CONCLUSIONS:

1. There is a foundation for a house at the site, and much of the glass material that has been brought to the site is inside the foundation that Mr. Nelson intends to encapsulate with concrete;

2. Outside the foundation, the broken up glass is used as fill, and it consists of larger items within a pile of non-uniform glass pieces;

3. There is a strong likelihood the fill contains hazardous materials including petroleum products, plastics, syringes, and other items the borough cannot be certain of;

4. The ADEC is not concerned about hazardous materials underneath a concrete floor; anything inside the foundation is likely not a public health risk, but materials outside the foundation are;

5. The glass came from Acme's free glass disposal site, and in spite of a posted sign telling people Acme could only accept "clean" glass, some people dumped plastics and other materials into the glass area; Mr. Nelson admitted he doesn't actually wash the glass or sift out the non-glass materials;

6. The glass was not processed correctly;

7. While it is possible Mr. Nelson did not completely understand the difference between crushed glass and other glass, it is more likely he understands the ADEC's "crushed glass" specifications since he is in the recycling business;

8. The site looks like a landfill in the middle of a nice residential neighborhood;

9. Mr. Nelson is trying to help the community with glass recycling;

10. Mr. Nelson made an assumption that he could dump the recycled glass as fill without communicating with the borough;

11. Damage has already been done to the Skyline Subdivision residents, and if Mr. Nelson had approached the neighbors ahead of time, they may have worked with him; the residents have waited long enough;

12. Removal of the fill within the foundation might be more disruptive than leaving it there and encapsulating it, because it could be difficult to deal with;

13. A maximum fine of up to \$300 per violation may be levied; and

WHEREAS, as a result of these conclusions, and as allowed by HBC 8.12.130(H), the assembly took action to modify the nuisance abatement order and they issued it to Paul A.L. Nelson, as follows:

1. The incorrectly processed glass may remain inside the foundation provided it is capped within 10 business days of the hearing date (June 21, 2014, midnight);

2. The fill outside of the foundation must be removed within 10 business days of the hearing date (June 21, 2014, midnight); and

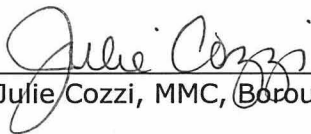
3. Mr. Nelson must pay a fine of \$300 for depositing improper fill onto private property.

WHEREAS, HBC 8.12.130(H) requires the assembly to adopt its findings by resolution following the public hearing,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly adopts the above-listed findings of the June 10, 2014 appeal hearing of the Nelson nuisance abatement order.

Adopted by a duly-constituted quorum of the Haines Borough Assembly on this 24th day of June, 2014.

Attest:


Julie Cozzi, MMC, Borough Clerk




Stephanie Scott, Mayor