

A Resolution of the Haines Borough Assembly adopting written findings of the July 14, 2015 appeal hearing of the Eagle's Nest Trailer Park nuisance abatement order.

WHEREAS, on April 22, 2015, borough staff was in the Eagle's Nest Trailer Park as a part of a townsite-wide addressing project and, while there, found excessive trash build up around two trailers located on the last row closest to the forested area off of Sawmill Road, and photos were taken at that time; and

WHEREAS, on May 6, 2015, following staff review of code, the borough manager declared it to be a public nuisance in violation of Title 8, and ordered the removal of the unlawful accumulation of trash no later than May 16, 2015; and

WHEREAS, this nuisance abatement order was issued to Eagle's Nest Trailer Park owners, Shane & Janis Horton via certified mail, and copies were hand-delivered to the owners of the two trailers; and

WHEREAS, the order informed the property owners of the right of appeal to the assembly and provided an appeal deadline of May 21, 2015; and

WHEREAS, on May 20, 2015, the borough clerk received a written appeal from trailer park owner, Janis Horton, as allowed by HBC 8.12, and this "stayed" the order (put it on hold); and

WHEREAS, on June 9, 2015, the borough clerk made the assembly aware of the appeal and scheduled the appeal hearing for July 14, 2015 which was the latest assembly meeting it could be in order to comply with the code-requirement that the hearing take place no later than 60 days from the date of the appeal letter; and

WHEREAS, on July 9, 2015, borough staff conducted a re-inspection of the property to determine if there were any improvements, and photos were again taken in preparation for the hearing; and

WHEREAS, for the hearing on July 14, 2015 the mayor acted as presiding officer and chose not to administer oaths or compel the attendance of witnesses; and

WHEREAS, the appellant Janis Horton appeared in person but co-owner of the property, Shane Horton, presented the appeal and made the following arguments during the presentation and responses to questions and comments:

- All trash considered to be bear attractants is gone, all of the organic garbage has been removed, the problem is largely resolved, and he drove by the day of the hearing to find the garbage was gone;
- One man's trash is another man's treasure, and he does not believe the code defines "garbage";
- There is a rental agreement with these tenants requiring cleanliness;
- It is nearly impossible to remove people from trailer parks; the eviction process is lengthy, and the tenants typically have no other place to go;
- The problem is the borough cites the property owner rather than the trailer owners themselves;

- The tenants need to be held responsible for their own actions;
- He is working with the tenants to correct the situation;
- There are four abandoned trailers, and he doesn't know what he is supposed to do with the trash that is left behind; and

WHEREAS, Borough Manager David Sosa summarized the borough's enforcement order and the reasons it was issued; borough staff found numerous bags of trash and other litter piled up outside of two trailers within the trailer park, took photos, and after returning to the office reviewed the conditions with him; he determined the type and quantity of accumulated trash to be a violation of borough code and ordered it to be cleaned up; staff issued the order to the owner of the property, but hand-delivered copies to the tenants, as well; and he is enforcing the following code, in this situation:

HBC 8.08.020 Litter Unlawful: "It is unlawful for any person to do any of the following within the townsite service area:

A) Cause or allow litter to be collected, deposited, or to remain in any place under the person's control, and/or possession, other than in an appropriate refuse container, designed for such purpose;

(E) Deposit any litter on private property, whether owned by the person or not;

(F) Possess or control private property that is not maintained in a litter-free condition;

(K) Deposit litter that may be offensive, noxious, or otherwise dangerous to the public health or safety on any public or private property, alley, street, or other roadway within the townsite service area."

HBC 8.12.020 Certain conditions declared nuisances. "It shall be unlawful for any person to cause or create the following declared nuisances within the townsite service area:

(I) To maintain a building in a state of disrepair or deterioration so as to reduce the surrounding property values or cause other unreasonable economic detriment to surrounding property owners, including, but not limited to, allowing on the premises: lumber, refuse, junk, debris, or abandoned, discarded, and unused objects, such as automobiles, fixtures, furniture, appliances, and other objects which are not kept for immediate use and have been allowed on the premises for more than 30 days; and

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

"Refuse" means garbage, rubbish, ashes, industrial waste, and all other liquid or solid waste.

"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, no members of the public gave testimony in support of the borough's abatement order; and

WHEREAS, no members of the public spoke in opposition of the borough's abatement order, although one person spoke of a general need for public education concerning the handling of waste within the community; and

WHEREAS, during deliberations the borough assembly asked questions of Mr. Horton and Manager Sosa, reviewed photographs, considered all written and oral statements, and a motion was made to uphold the manager's decision followed by a short recess to visit the site; and

WHEREAS, after returning and, after further discussion, the assembly concluded there was no significant improvement in the conditions when comparing the initial photographs with what was observed during the site visit; and

WHEREAS, two assembly members offered to assist with the clean-up, and a motion carried to postpone the decision on the appeal to July 28, 2015 to provide two more weeks for clean-up; and

WHEREAS, on July 28, 2015, the assembly resumed deliberation with the motion to uphold the manager's decision already on the table, and viewed photographs taken by staff earlier in that day; and

WHEREAS, based on consideration of all written and oral statements on both July 14 and July 28, 2015, and photographic and site observations, the assembly reached the following CONCLUSIONS:

1. It is a difficult situation;
2. The trailer park is not public property, and HBC 8.08.020(F) says it is unlawful to "[p]ossess or control private property that is not maintained in a litter-free condition;
3. The property owner, as the one with the legal authority, is responsible to enforce rental agreements including telling tenants to get rid of excessive trash;
4. A comparison of the initial photographs taken April 22 and observations made during the July 14 site visit showed no significant improvement;
5. The photographs taken July 28 showed effort had been made by the tenants to clean up the property, and there was a satisfactory reduction in the amount of accumulated trash;
6. The excessive garbage did exist in violation of borough code at the time the manager declared the nuisance, and the abatement order was appropriate;
7. No fines are necessary at this point since it has been satisfactorily cleaned up; and

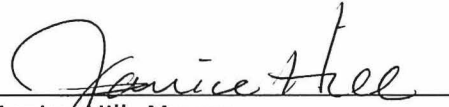
WHEREAS, as a result of these conclusions, and as allowed by HBC 8.12.130(G), the assembly took action to uphold the borough manager's nuisance declaration and abatement order, and additionally chose to levy no fines; and

WHEREAS, this decision is unique to the circumstances of this case; and

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 July 14, 2015 appeal hearing of the Eagle's Nest Trailer Park nuisance abatement order.

Adopted by a duly-constituted quorum of the Haines Borough Assembly this 11th day of August, 2015.



Janice Hill, Mayor

Attest:



Julie Cozzi, MMC, Borough Clerk

